IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.29266 of 2019

B.Jayarani ...Petitioner

Vs.

1. The Authorized Officer,
   REPCO Bank,
   T.S.No.2593, South Main Road,
   Thanjavur - 613 009.

2. The Registrar,
   Debt Recovery Appellate Tribunal,
   No.55, Willingdon Estate, Indian Bank,
   Ethiraj Salai, Chennai - 600 008.

3.K.Sivakumar ...Respondents

[R3 impleaded vide order of this Court dated 08.01.2021 in W.M.P.No.8162 of 2020 in W.P.No.29266 of 2019]

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the entire records and quash the final order dated 05/12/2017 passed in waiver petition by the 2nd respondent in IA No.1440 of 2017 in AIR (SA) No.492 of 2017.

For Petitioner	:	Mr.D.Durairaj
For R1	:	Mr.A.Ilangovan Standing Counsel
R2	:	Tribunal
For R3	:	Mr.G.Mani Prabhu

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)
(Through Video Conferencing)

The petitioner has availed housing loan of Rs.9.50 Lakhs from the respondent REPCO Bank on 01.08.2011, and in order to secure due repayment of the loan, also created equitable mortgage in respect of the property situated at Plot No.35, R.S.No.179/1, K.V.Naidu Nagar, Melavali Vattam, Thanjavur, admeasuring an extent of 2400 sq.ft. The petitioner appears to have committed default in repayment of the dues, and therefore, proceedings were initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for brevity) by issuing demand notice under Section 13(2) of the said Act on 31.07.2014, followed by possession notice, dated 21.10.2014. The respondent Bank has brought the property for sale, in which, the 3rd respondent became the successful bidder, and sale certificate was also issued on 28.04.2017, after making the full payment of Rs.22,76,000/-.

2.The petitioner made a challenge to the sale notice, dated 06.03.2017, by filing S.A.No.147 of 2017, before the Debts Recovery Tribunal-III, Chennai.

3.Learned counsel appearing for the petitioner would submit that the Debts Recovery Tribunal-III, Chennai, vide order dated 03.08.2017, has dismissed the SARFAESI Appeal, and challenging the same, the petitioner filed further appeal in AIR (SA) No.492 of 2017 before the Debts Recovery Appellate Tribunal, Chennai, and in order to waive the Pre-Deposit, also filed I.A.No.1440 of 2017. The primordial submission made by the learned counsel appearing for the petitioner is that, in the light of the fact that the petitioner has repaid the loan amount of Rs.7,00,703/- on 10.11.2016 itself, the impugned conditional order passed by the Debts Recovery Appellate Tribunal by directing the Pre-Deposit of Rs.2,50,000/- to be paid in two installments, is not at all in order, and prays for interference.

WEB COPY

4.The writ petition was entertained on 22.10.2019 and status quo with regard to the possession of the petitioner's residential house was ordered to be maintained by the concerned parties.

5.Mr.A.Ilangovan, learned Standing Counsel appearing for the respondent Bank, has drawn the attention of this Court to the proceedings of the Debts Recovery Tribunal-III, Chennai, dated 03.08.2017, and would submit that, after adjustment of the sale proceeds of Rs.22,76,000/- received from the 3rd respondent, the balance amount was ordered to be returned to the petitioner in the form of Demand Draft for a sum of Rs.7 Lakhs on 29.04.2017 itself, and therefore, the question of adjustment of Rs.7 Lakhs in view of the Pre-Deposit before the Debts Recovery Appellate Tribunal, Chennai, would not arise for consideration, and the said fact has been totally burked by the petitioner.

6.Learned counsel appearing for the 3rd respondent would submit that, in the auction sale held on 20.04.2017, the 3rd respondent became the successful bidder, and he has been issued with the sale certificate on 28.04.2017, after making the full sale consideration of Rs.22,76,000/- and the physical possession is not yet taken.

7.In response to the said submission, the learned Standing Counsel appearing for the 1st respondent Bank would submit that, steps have already been taken to take actual physical possession of the Secured Asset by initiating proceedings under Section 14 (1) of the SARFAESI Act before the District Collector, Thanjavur. It is also brought to the knowledge of this Court that, in the said proceedings under Section 14(1) of the SARFAESI Act, the District Collector, Thanjavur, has passed a positive order on 26.06.2018. However, in the light of the interim order of status quo granted by this Court in the present writ petition, the actual physical possession could not be taken.

8.This Court has carefully considered the rival submissions and also perused the materials placed before it.

9.A perusal of the impugned proceedings of Debts Recovery Appellate Tribunal, Chennai, dated 05.12.2017, in I.A.No.1440 of 2017, would disclose among other things that the petitioner was directed to make a Pre-Deposit of Rs.2,50,000/- in two installments.

10.In the light of the fact that, as per the order of the Debts Recovery Tribunal-III, Chennai, dated 03.08.2017, in S.A.No.147 of 2017, after adjusting the sale proceeds, the balance sum of Rs.7,00,000/- was given to the petitioner by way of Demand Draft on 29.04.2017 itself, the question of adjustment of the said amount would not arise at all for consideration, and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that apart, though the impugned order came to be passed as early as on 05.12.2017, the writ petition came to be filed only on 27.08.2019, after considerable delay. Even for the sake of arguments, the petitioner is having merits, in the light of the delay and laches on the part of the petitioner in approaching the Court after nearly two years challenging the impugned order without assigning any proper reason for the considerable delay, there is absolutely no merit in this writ petition.

In the result, this writ petition is dismissed and the interim order of status quo granted on 22.10.2019 in this writ petition is vacated. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mkn
To

1.The Registrar,
Debts Recovery Appellate Tribunal,
No.55, Willingdon Estate, Indian Bank,
Ethiraj Salai, Chennai - 600 008.

2.The Authorized Officer,
REPCO Bank,
T.S.No.2593, South Main Road,
Thanjavur - 613 009.

+1 CC to Mr.A.Ilangovan, Advocate sr 2010.
+1 CC to Mr.D.Durairaj, Advocate sr 1512.

सत्यमेव जयते
W.P.No.29266 of 2019

GMR(CO)
SP(19/02/2021)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/