



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.2994 OF 2022

Manju Chamundeswari

... Petitioner

.Vs.

1. The Union Bank of India,
Rep. by its Authorised Officer,
Assets Recovery Branch,
Union Bank Bhavan, Ground Floor,
No.139, Prakasam Road, Broadway,
Chennai - 600 108.

2. Bhuvan kumar
3. Malliga
4. Ramachander Singh
5. Narayan Singh
6. Janki Devi
7. Neha Singh
8. Pramodh Singh
9. Pallvai Singh
10. Kanish Singh
11. Manju Singh

12. The Sub Registrar,
T.Nagar Sub Registrar Officer,
T.Nagar, Chennai - 17.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records culminated in the impugned order dated 09.04.2021 passed by the learned Presiding Officer, Debts Recovery Tribunal-II in S.A.183 of 2018 and quash the same and consequently allow S.A.No.183 of 2018.

For the Petitioner : Mr.P.V.Balasubramaniam
For M/s.P.Munnuswamy



ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

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By this writ petition a challenge is made to the order dated 9.4.2021 passed by the Debts Recovery Tribunal-II at Chennai. The order aforesaid was passed on an appeal preferred by the petitioner under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, "the Act of 2002"].

2. Learned counsel for the petitioner submits that the appeal aforesaid was dismissed by the Tribunal ignoring the fact that a suit for partition is pending at the instance of the petitioner in regard to the property auctioned. The petitioner has claimed 1/5th share in the property so auctioned, with confirmation of sale, though the document has not yet been registered by the Sub Registrar. The appeal was dismissed on the ground that it is not maintainable to adjudicate the issue raised by the petitioner. It is in ignorance of the fact that the suit is at the matured stage and if the claim of the petitioner is accepted with grant of decree, the right would be affected.

3. Learned counsel for the petitioner further submitted that the Tribunal has erroneously recorded that the civil suit has already been dismissed, though the fact remains that pursuant to dismissal of the suit for non-prosecution, an application was filed and the suit was restored to the file and was pending on the date of passing of the order by the Tribunal. In paragraph (9) of the order, the Tribunal has recorded its finding that the suit has been dismissed, though it is pending. In view of the above, the Tribunal was under an obligation to adjudicate the issues raised by the petitioner, as the appeal on the issues raised by the petitioner is maintainable.

4. Giving out the details of the property and the transaction, it is submitted that the petitioner is having 1/5th share in the property mortgaged to the bank by the borrower. On knowing about the mortgage, immediately he filed a civil suit in the year 2011 for partition by impleading the bank as a party. The civil court declined to grant injunction in favour of the petitioner. However, now the suit is in final stage and, therefore, the prayer is to set aside the order of the Tribunal and to protect the right of the petitioner at least by issuing direction on the auction purchaser not to further alienate the property.



5. We have considered the submission and perused the records.

6. The appeal preferred by the petitioner was not accepted by the Tribunal after giving reasons. It is not only that the nature of the issue raised before the Tribunal was not amenable to the jurisdiction of appeal under Section 17 of the Act of 2002, but even on facts the appeal was not maintainable. If the facts of the case are looked into, the petitioner knowing about the mortgage of the property in the year 2010 by the borrower in favour of the bank maintained a suit for partition in the year 2011. The bank was party to the litigation. The petitioner prayed for injunction in the civil suit, but was refused. It seems that no appeal against the order was maintained to seek injunction and, accordingly, the bank was at liberty to proceed further to auction the property.

7. The appeal under Section 17 of the Act of 2002 was preferred basically to seek injunction against the auction and further in regard to the alienation of the property. It was to seek a direction which was otherwise denied by the civil court in partition suit. It was an indirect way of the petitioner to seek the same benefit which was denied by the civil court, where not only the bank, but the borrower was also a party.

8. Looking to the facts of the case, we do not find any error in the order passed by the Tribunal. It is, however, a fact that against the order of the Tribunal an appeal has been preferred before the Debt Recovery Appellate Tribunal and in the absence of the Presiding Officer, the writ petition was filed and is now considered and decided on merits. It is with a clarity that the disposal of the writ petition would be the disposal of the appeal, because the entire issue has been threadbare considered by this court.

9. Finding no merit in case, we are unable to accept even the prayer for grant of direction against the alienation of the property by the auction purchaser.

For the foregoing reasons, the writ petition is dismissed. No costs. Consequently, W.M.P.Nos.3168 and 3169 of 2022 are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Authorised Officer,
The Union Bank of India,
Assets Recovery Branch,
Union Bank Bhavan, Ground Floor,
No.139, Prakasam Road, Broadway
Chennai - 600 108.
2. The Sub Registrar,
T.Nagar Sub Registrar Officer,
T.Nagar, Chennai - 17.
3. The Presiding Officer,
Debts Recovery Tribunal - II.

W.P.NO.2994 OF 2022

NMI (CO)
PBS/04/03/2022