IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.05.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P.(PD).No.1724 of 2023
and
CMP.No.11198 of 2023

Mrs.Rama ... Petitioner

Vs.

1.M/s.Bank of Baroda,
R.K.Nagar Branch,
Now Rep. By Chief Manager
Regional Office Stressed
Asset Recovery Branch,
10, C.P. Ramaswamy Road,
First Floor, Alwarpet,
Chennai – 600 018.

2.Mr.R.Ramprasad ... Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India to set Aside the order in Transfer Appeal No.5 of 2023 passed by the learned Debt Recovery Tribunal – III, Chennai on 24.04.2023.

For Petitioner ... Mr.E.Omprakash
Senior Advocate

ORDER

(Order of the Court was delivered by C.V.KARTHIKEYAN.J)

This Civil Revision Petition has been filed by the petitioner questioning an order in Transfer Appeal No.5 of 2023 passed by the learned Debt Recovery Tribunal – III, Chennai on 24.04.2023.

2.Incidentally, the petitioner and the second respondent are spouses. The petitioner is the wife and the second respondent is the husband. For loan obtained by the second respondent, proceedings under the SARFAESI Act, 2002 has been initiated, The matters were pending before the Debt Recovery Tribunal – II. It is stated that orders were reserved, when the transfer order came to be passed on administrative grounds owing to change in the territorial jurisdiction. The matter was transferred from Debt Recovery Tribunal – II to Debt Recovery Tribunal – III.

3.An affidavit had been filed by the first respondent Bank before the Debt Recovery Tribunal – III seeking physical possession of a particular property, which according to the learned Senior Counsel appearing for the petitioner, stands in the name of the petitioner herein. It should be mentioned that this particular property originally stood in the name of mother-in-law of the petitioner who had executed a settlement deed in favour of the second respondent and who, for good measure, out of extreme love and affection had settled the same in favour of the petitioner herein. However, it cannot be denied that amounts are due and payable to the first respondent and this particular property came to be attached by proceedings in the year 2021. No steps have been taken from the year 2021 questioning such attachment. Thereafter, the Recovery Officer has stepped in and had initiated the proceedings and had taken possession of the property and brought it for auction.

4.These steps were questioned by the petitioner herein originally before the Debt Recovery Tribunal – II. Even though the learned Senior Counsel had stated that the petitioner is not pressing statements relating to oral observations made by the Debt Recovery Tribunal – II, it is however understood that the petitioner had a reasonable hope that favourable orders would be passed by the Debt Recovery Tribunal – II. Unfortunately that hope was brought down to the ground by the transfer order, which is now challenged in this Civil Revision Petition. After transfer, the transferee Tribunal viz. Debt Recovery Tribunal – III had taken up the matter and has adjourned to it to 22.06.2023.

5.The immediate cause for filing this Civil Revision Petition is the steps taken by the Recovery Officer, who is now, according to the learned Senior Counsel for the petitioner is practically standing at the door steps of the property to take physical possession.

6.Unfortunately, when the matter is now under the consideration before the Debt Recovery Tribunal – II, which is a statutory authority vested with authority to examine all issues, this Court cannot enter into any discussion on merits or issue any direction. The learned Senior Counsel seeks some protection may be given for the property to be held back till all the issues are argued before the Debt Recovery Tribunal – III. He also stated that the steps taken by the Recovery Officer should be examined by this Court and protection should be given. An apprehension is raised that before 22.06.2023, the Recovery Officer would take coercive steps to the disadvantage of the petitioner herein.

7.Unfortunately, this Court cannot act as a monitoring authority over the proceedings, which are now pending before Debt Recovery Tribunal – III. We can only urge that the petitioner can file an application to advance the hearing from 22.06.2023 and urge that the Debt Recovery Tribunal – II may hear the matter on urgent basis, since the petitioner apprehends that possession would be disturbed.

8.Repeated observations have been made that the property vests with the petitioner and therefore, the property could not be brought for auction towards the settlement of the outstandings by the second respondent. It is also stated that in the affidavit filed before the Debt Recovery Tribunal – II, the first respondent had stated that the property had been offered as collateral towards repayment of the loan which stated, according to the learned Senior Counsel, is factually not correct, since it is the property has not been so offered as collateral.

9.Be that as it may, all these issues can be examined by the Debt Recovery Tribunal – III. The petitioner may file necessary application to advance the hearing and if it is so filed, the Debt Recovery Tribunal – III may give proper consideration for the same and advance the hearing. The petitioner can also challenge any action taken by the Recovery Officer and also urge all other issues. No further direction can be issued by this Court. The Court is a third party to the entire proceedings and cannot step into a pending matter before the Debt Recovery Tribunal – III. The petitioner may also file necessary application seeking protection of the property.

10.If applications are filed, we are confident that necessary orders will be passed on the basis of the averments made in the respective affidavits and on the basis of the records.

11.With the above observations, the Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Index :Yes/No
Internet :Yes/No
sms/mrp

(C.V.K.J.) (S.K.R.J.)
17.05.2023

To

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Chennai – 600 018.

2. The learned Debt Recovery Tribunal – III,
Chennai.

C.V.KARTHIKEYAN,J.
and
SENTHILKUMAR RAMAMOORTHY,J.

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