IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA , CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.25787 of 2023
and WMP No.25225 of 2023

K.Suresh .. Petitioner

-vs-

1.The Debts Recovery Appellate Tribunal,
Rep by its Chair Person, Chennai.

2. Authorised Officer,
City Union Bank,
Administrative Officer,
No.24-B, Gandhi Nagar,
Kumbakonam-612 001.

3. The City Union Bank Tambaram (West),
Rep by its Branch Manager,
No.24/38, Rajaji Salai, Tambaram West,
Chennai-600 045.

4. M/s Asia Trading Centre,
Rep. by Muhammed Othumanisha Maricar
No.1/27, Saidapet Road, Vadapalani,
Chennai-600 026.

5. Muhammed Othumanisha Maricar,

6. Mrs.Rabiyathul Falil Banu,
7. K.Vetrivel .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the 1st respondent in RA (SA) No.59/2023 order dated 04.08.2023 and quash the same and further direct the respondents 1 and 2 to return the original document of the mortgaged property.

For the Petitioner	:	Mr.R.Sankarasubbu
For the Respondents	:	Mrs.Ananda Gomathy for RR 2 and 3
	:	Mr.A.Murali for R-7/Caveator

* * * * *

ORDER

(Made by the Hon'ble Chief Justice)

We have heard Mr.R.Sankarasubbu, learned counsel for the petitioner, Mrs.Ananda Gomathy, learned counsel for respondent Nos.2 and 3 and Mr.A.Murali, learned counsel for the 7th respondent/ Caveator.

2. The petitioner had filed Securitisation Application challenging the order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act'). In the said application, interim order was passed to maintain status quo on condition that the petitioner deposits the amount as directed by the Debts Recovery Tribunal. The petitioner was directed to pay an amount as under in the order dated 20.08.2022:

> *“Accordingly, applicant is permitted to deposit 10% of Rs.70,00,000/- to the credit of borrower's loan account with respondent bank and on compliance of the same, respondent bank is directed to maintain status quo against the property belonging to applicant. Applicant is also permitted to cause deposit of balance amount of Rs.28 lakhs to the credit of borrower's loan account as undertaken by him within a period of four weeks. Thereafter and on compliance of second part of conditional order, there shall be an order of interim stay of all further proceedings under SARFAESI. Non-compliance of any of the above conditions would entitle respondent to proceed further in accordance with law.”*

3. The petitioner could not deposit the amount as directed by the Debts Recovery Tribunal. Thereafter, the Debts Recovery Tribunal dismissed the application filed by the petitioner. The Tribunal while

dismissing the application filed by the petitioner passed the following order:

> *"In the circumstances, as applicant could not make out any infirmity in the procedure adopted by the respondent bank while obtaining the impugned CJM order, there are no tenable merits in the present SA and the same is liable to be dismissed. Applicant is also permitted to cause deposit of Rs.28 lakhs to the credit of his loan account as undertaken before this Tribunal today.*
>
> *Accordingly, this SA stands dismissed, however without costs.*
>
> *However, liberty be with applicant to approach respondent bank by or before 30.12.2022 and redeem his property, failing which respondent bank will be entitled to execute the warrant pursuant to the order of Ld.CJM as well as to proceed further in accordance to law for recovery of thie dues. This order be restricted only to the property mortgaged by applicant herein and not to any other security, if available to the respondent bank. Interim order, if any granted and subsisting till this day stands vacated and all other IAs, if any pending stand closed."*

4. The auction purchaser challenged the aforesaid order before the Debt Recovery Appellate Tribunal. The Debt Recovery Appellate Tribunal allowed the appeal and set aside the judgment of the Debts Recovery Tribunal. It was observed by the Debt Recovery Appellate Tribunal that the petitioner had not challenged the sale certificate and the right of redemption is already lost.

5. The learned counsel for the petitioner submits that time to deposit the amount was extended by the Tribunal under order dated 17.10.2022. Accordingly, the petitioner had deposited the entire amount by 02.12.2022, that is Rs.80 lakhs. It was incumbent upon the respondent bank to redeem the property mortgaged as per the order of the Debts Recovery Tribunal. The learned counsel submits that right to property is a constitutional right under Article 300A of the Constitution. The property is valued much more. As the respondent earlier arrived at OTS with the petitioner for Rs.80 lakhs, the upset price could not have been fixed below Rs.80 lakhs. In the present case, the upset price was fixed at Rs.70 lakhs and the auction purchaser purchased the property at Rs.70,10,000/- and the amount which he had previously paid by participating in the earlier auction, that is in the year 2021, is sought to be adjusted. The same is also illegal.

6. In view of the judgment of the Apex Court in the case of ***Civil Appeal Nos.5542 – 5543 of 2023, dated 21.09.2023 (Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. and others)***, the right of redemption is lost once the auction sale notice is issued.

7. Be that as it may, the sale certificate was issued in favour of the auction purchaser on 17.08.2022. The petitioner filed the Securitisation Application on 18.08.2022, however, he did not challenge the sale certificate, but challenged the order under Section 14 of the SARFAESI Act. Till date, the sale certificate is never challenged. In the absence of a challenge to the sale certificate, the Debt Recovery Appellate Tribunal was not in error in passing the impugned order. Moreover, the petitioner also did not deposit the amount within the time frame as directed by the Debts Recovery Tribunal.

8. As the sale certificate itself was not challenged, the infirmities in the sale could not be alleged by the petitioner.

9. In view of all the aforesaid facts, it would not be possible for this Court to interfere with the order of the Debt Recovery Appellate Tribunal.

10. The learned counsel for the petitioner submits that the petitioner may challenge the sale deed. The limitation period is provided under the statute. In case the limitation period is available to the petitioner, then the petitioner may take steps in accordance with law.

With this observation, the writ petition is disposed of. There will be no order as to costs. Consequently, W.M.P.No.25225 of 2023 is closed.

(S.V.G., CJ.) **(D.B.C., J.)**
17.10.2023

Index : Yes/No
Neutral Citation : Yes/No
sra

To

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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(sra)

3. The Branch Manager,
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