IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM :

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

W.P.No.30188 of 2023

The Authorized Officer
M/s.LIC Housing Finance Ltd.
“Harrington Chamber”, Block No.C
No.30/1A, Abadul Razack 1st Street
Saidapet, Chennai – 600 015. .. Petitioner

Vs.

1. R.Rani

2. The Registrar
Debt Recovery Appellate Tribunal
7th Floor Additional Office Building
Shastri Bhavan, Haddows Road
Nungambakkam, 600 006. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records of the impugned order dated 15.05.2023 passed in R.A.(S.A) No.72 of 2019 on the file of the 2nd respondent and to quash the same and consequentially rule in favour of the petitioner that they are justified in forfeiting the 25% of bid amount from the second respondent as per SARFAESI Act.

For the Petitioner : Mr.Imayavaramban
for M/s.Ramalingam and Associates

ORDER

(Made by the Hon'ble Chief Justice)

Heard Mr.Imayavaramban, learned counsel appearing for M/s.Ramalingam and Associates for the petitioner.

2. The petitioner is challenging the order passed by the Debt Recovery Appellate Tribunal, directing the return of the amount forfeited by the petitioner.

3.1. It appears that the petitioner herein resorted to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, hereinafter referred to as "the SARFAESI Act"] and sold the property in auction. The auction took place on 13.10.2008. The first respondent herein had bid in the auction. She was the highest bidder and paid 25% of the amount on the same day.

3.2. On the ground that the first respondent did not deposit the balance 75% of the amount within fifteen days, i.e., on or before 28.10.2008, the petitioner forfeited the amount. The petitioner thereafter re-auctioned the property in the year 2011 to another person. The petitioner was not returning the amount of 25% i.e., Rs.2,94,250/- (Rupees Two Lakhs Ninety Four Thousand Two Hundred and Fifty Only) to the first respondent, who was the successful bidder in the auction held on 13.10.2008.

3.3. The first respondent thereby filed an application before the Debts Recovery Tribunal, Chennai under Section 17 of the SARFAESI Act for the return of the 25% of the amount, i.e., Rs.2,94,250/- (Rupees Two Lakhs Ninety Four Thousand Two Hundred and Fifty Only) paid by the first respondent on 13.10.2008. The Debts Recovery Tribunal, Chennai rejected the application. The first respondent filed an appeal before the Debt Recovery Appellate Tribunal at Chennai. The appeal was allowed, aggrieved thereby, the present petition.

4. Learned counsel for the petitioner submits that the successful bidder is required to pay 25% of the amount on the same day and the remaining 75% of the amount should be deposited within a period of fifteen days as per Rule 9(3) and (4) of the Security Interest (Enforcement) Rules, 2002. If default is committed, in payment of the said amount (75%), then as per Rule 9(5) and (9) of the Security Interest (Enforcement) Rules, 2002, the amount shall be forfeited. The petitioner has exercised its rights available under Rule 9(5) and (9) of the Security Interest (Enforcement) Rules, 2002. The petitioner was within its rights. It is because the first respondent failed to deposit the 75% of the amount, the petitioner had forfeited the amount. The action of the petitioner cannot be found fault with and is within the framework of the Security Interest (Enforcement) Rules, 2002.

5. We have considered the submissions canvassed by learned counsel for the petitioner and we have also gone through the judgment delivered by the Debt Recovery Appellate Tribunal.

6. It appears that the first respondent raised two grounds, (i) when the public auction notice was issued in the year 2008, the petitioner did not state that the property is in possession of the tenants (third parties); and (ii) there was no confirmation of sale.

7. The Debt Recovery Appellate Tribunal has considered the provisions of Rule 9(2), (4) and (5) of the Security Interest (Enforcement) Rules, 2002. The Debt Recovery Appellate Tribunal has come to the conclusion that there is nothing on record to remotely suggest that the present petitioner had communicated to the first respondent that the sale has been confirmed, so as to enable her to deposit 75% of the amount.

8. Rule 9(2) of the Security Interest (Enforcement) Rules, 2002 states that "t*he sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to*

confirmation by the secured creditor." In the absence of any communication that the sale stands confirmed, the liability of the first respondent to pay 75% of the amount does not commence. *Inter alia*, Rule 9 (5) of the Security Interest (Enforcement) Rules, 2002 could not have been resorted to by the petitioner. The said aspect has been considered by the Debt Recovery Appellate Tribunal in its judgment.

9. The Debt Recovery Appellate Tribunal has observed that in the counter filed before the Debts Recovery Tribunal, the petitioner had not suggested that the sale was confirmed at any material point of time. Even in the appeal, no document was filed demonstrating confirmation of the sale. The Debt Recovery Appellate Tribunal has directed refund of the amount with interest at the rate of 9% per annum from the date of deposit till payment.

10. Learned counsel for the petitioner submits that as far as the interest is concerned, the same is unreasonable. The petitioner is a non-banking institution.

Though the petitioner is a non-banking institution, it is a financial institution engaged in giving loans and recovering interest or loans. The interest is granted as the petitioner has used and enjoyed the said amount. The same is granted by way of damages for depriving the person the use and enjoyment of the amount.

11. The rate of interest of 9% per annum granted is not an unreasonable rate of interest. In the light of that, we do not find any merit to entertain the present writ petition. The writ petition, as such, stands dismissed. There will be no order as to costs. Consequently, W.M.P.No.29800 of 2023 is closed.

(S.V.G., CJ.) (D.B.C., J.)
18.10.2023

Index : Yes/No
Neutral Citation : Yes/No

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To

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Nungambakkam, 600 006.

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

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