BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

C.R.P.(MD)No.201 of 2017 (NPD)
and
C.M.P.(MD)No.911 of 2017
& C.M.P.(MD)No.487 of 2019
& C.M.P.(MD)No.16695 of 2024

1.Satyam Educational Trust
II Floor, S.D.S.Building,
Court Road, Nagercoil 619 001,
Rep. by its Chairman,
Mr.A.Thinagar.

2.A.Thinagar

3.T.Athisaya Raja

4.A.Kanimozhy ... Petitioners / Appellants 1 – 4/ Applicants 1 - 4

5.A.Dhanalakshmi

6.Rathina Samy ... Petitioners 5 -6 / Appellants 5 – 6 / Applicants 5 - 6

Vs.

The Authorised Officer /
Chief Manager (in charge)
Bank of Maharashtra,
Chennai Zonal Office,
No.4, Sivagnanam Road,
T.Nagar, Chennai 600 017. ... Respondent / Respondent / Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 06.01.2017 made in AIR (SR) No.341 of 2015 on the file of the Debt Recovery Appellate Tribunal at Chennai, in S.A.No.326 of 2014 on the file of the Debt Recovery Tribunal, Madurai and allow this civil revision petition.

For Petitioners : Mr.Veera Kathiravan
Senior Counsel
for Mr.C.Jegannathan

For Respondent : Mr.C.Godwin

ORDER

(Order of the court was delivered by G.R.Swaminathan, J.)

Heard the learned senior counsel for the revision petitioners and the learned standing counsel for the respondent bank.

2.The revision petitioners availed financial assistance from the Bank of Maharastra by providing security. The borrower committed default. Hence, action under SARFAESI Act was initiated. Questioning the possession notice issued under Section 13(2) of the SARFAESI Act, the borrower filed S.A.No. 326 of 2014 before the Debt Recovery Tribunal at Madurai. The said appeal was dismissed on 30.04.2015. Challenging the same, the borrower filed AIR (S.A) No.341 of 2015 before the Debts Recovery Appellate Tribunal at Chennai. They filed I.A.No.341 of 2015 seeking waiver of the pre-deposit amount. The appellate tribunal vide order dated 08.09.2015 disposed of the waiver application in the following terms:-

> "8.In view of the contention of the learned counsel for the appellants, it is appropriate to direct the appellants to deposit 25% of the amount demanded through Section 13(2) SARFAESI Act. This is because of the huge amount involved and the contention of the appellants that the sale notice has been affecting the admission process. Further, as even 25% of the amount involved is a considerable amount, I deem it appropriate to direct the appellants to deposit the same in two equal instalments, one within six weeks from the date of this Order and the 2nd instalment within six weeks from the last day of the six weeks of the 1st instalment period. If the amounts are deposited accordingly, waiver petition shall stand allowed and in such event, the appeal shall stand numbered. If not, the waiver petition will stand dismissed in which event the appeal would automatically stand rejected. To facilitate the appellants to deposit the 1st instalment amount covered by Section 13(2) notice, the case is adjourned to 26.10.2015. In even the conditions are complied with, this petition shall stand adjourned for a further period of six weeks thereafter to enable the appellants to make the 2nd instalment. Ordered accordingly."

3. It is not in dispute that the borrower deposited the first installment. The second installment came to around Rs.79,85,288/-. Towards the second installment, the borrower paid a sum of Rs.61,45,200/- on 01.12.2015. As regards the balance amount of Rs.18,40,088/-, the borrower claimed that the amount deposited by them already is lying with the bank and that entries can be appropriately reversed. The bank did not agree to the said course of action and the appellate tribunal agreed with the stand of the bank. Since it was held that the second installment was not paid in full, the appeal itself came to be dismissed on 06.01.2017. Challenging the same, this revision petition came to be filed.

4. During the pendency of the revision petition, two items of property mortgaged with the bank were sold in public auction. Questioning the same, the borrower had filed SARFAESI application before the DRT and they are still pending. We make it clear that it is for the borrower to work his rights in the manner known to law in those two SARFAESI applications.

5. When the third item of property was sought to be brought to sale, the borrower filed C.M.P(MD)Nos.16695 & 16699 of 2024 before this Court.

It is not in dispute that the auction sale notice published by the bank did not elicit any bidder even though we permitted the bank to go ahead with the auction sale, but only restrained the confirmation of the same. We are of the view that instead of taking up C.M.Ps for disposal, the main CRP can be taken up for disposal.

6.The Debts Recovery Appellate Tribunal had allowed the SARFAESI application. It is not in dispute that the SARFAESI application filed by the borrower was allowed subject to the condition that they should pay around a sum of one crore & sixty lakhs. Except the disputed amount of Rs.18,40,088/-, the remaining amount had already been paid by the revision petitioners. Thus, there has been a substantial compliance of the condition imposed by DRAT. Today, the revision petitioners have produced the demand drat favouring the Bank of Maharastra, Nagercoil Bank for a sum of Rs.32,10,000/-. This can be adjusted towards the balance amount as per the conditional order passed by DRAT. We direct the learned standing counsel for the bank to accept this demand draft without prejudice to their contentions. Since the condition imposed by the appellate tribunal has been more than complied with, it is only just and proper that Debts Recovery Appellate Tribunal takes up the appeal filed by the borrower on merits. The order dismissing the appeal for default passed by the Appellate Tribunal is set aside. The matter will now go back to the Debts Recovery Appellate Tribunal and AIR (SR)No.341 of 2015 will stand restored to file. The Debts Recovery Appellate Tribunal is directed to dispose of the appeal filed by the borrower on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

7. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S., J.) **(R.P., J.)**
02.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
rmi

To:

The II Additional District Munsif Court,
Tiruchirappalli.

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

rmi

C.R.P.(MD)No.201 of 2017

02.12.2024