
(2015) 04 MAD CK 0164

In the Madras High Court

Case No : Writ Petition (MD) No. 3861 of 2015 and M.P.(MD) Nos. 1 to 3 of 2015

E.P. Jeyaraman

APPELLANT

Vs

The Authorized Officer, Indian Bank and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4)

Citation : (2015) 04 MAD CK 0164

Hon'ble Judges : S. Manikumar, J;G. Chockalingam, J

Bench : Division Bench

Advocate : R. Murugan, for the Appellant; S. Devaraj, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Manikumar, J.

1. Challenging the Notice of Intended Sale, dated 09.03.2015, issued under rules 6(2) and 8(6) of the Security Interest (Enforcement) Rules, 2002, framed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in short "SARFAESI Act", issued by the first respondent, the petitioner has come forward with this writ petition.

2. Record of proceedings shows that on 19.03.2015, while ordering notice in the writ petition, the Hon'ble Division Bench has directed the respondents 1 and 2 to file counter affidavit. So far, counter affidavit has not been filed. However, Mr. R. Murugan, learned counsel for the petitioner submitted that sale is fixed on 17.04.2015. He further added that being aggrieved by the order passed under Section 13(4) of the SARFAESI Act, a statutory appeal in S.A. No. 260 of 2012 was filed before the Debts Recovery Tribunal at Madurai and on dismissal of the said SARFAESI Appeal, a further appeal has been filed before the Debts Recovery Appellate Tribunal, Chennai, with a delay. Due to inadvertence on the part of the learned counsel, the petition filed for condonation has been dismissed. Later on,

the said petition has been restored on 30.12.2014 and that the respondents therein have been directed to file counter affidavit. At this juncture, Mr. R. Murugan, learned counsel for the petitioner submitted that it was not a huge delay and that there was only nine days delay in filing the appeal. He also submitted that so far, no counter affidavit has been filed in the petition to condone the delay. In the meanwhile, the impugned sale notice, dated 09.03.2015, has been issued, fixing the sale date as 17.04.2015. Therefore, the petitioner has rushed to this Court.

3. Though a statutory remedy is available to the petitioner to file an appeal, which he has also availed, it is the grievance of the petitioner that by protracting the proceedings in the Debts Recovery Appellate Tribunal in filing counter affidavit to the delay excuse petition, the respondents are attempting to bring the property for sale, by issuing the impugned notice.

4. Per contra, Mr. S. Devaraj, learned counsel for the respondents 1 and 2, submitted that there was no periodical sitting of Debts Recovery Appellate Tribunal. Though the learned counsel for the respondents bank submitted that the petitioner did not make periodical payments, as directed by this Court, vide order in W.P. (MD) No. 19997 of 2014, dated 09.12.2014, the learned counsel for the petitioner submitted that pursuant to the directions of this Court, on 10.01.2015, the petitioner has paid or deposited a sum of Rs. 25,00,000/- and so far, the petitioner has paid Rs. 50,00,000/- as directed by this Court in the said order, but, further payments could not be made as the respondents bank have not furnished the details, then and there, as directed by this Court. The petitioner has also alleged fraud against the Manager of the 2nd respondent bank, who later on stated to have committed suicide.

5. As the sale is posted to 17.04.2015 and in view of the pendency of the delay excuse petition for nearly four months, this Court deems it fit to direct the Debts Recovery Appellate Tribunal, Chennai, to dispose of the delay excuse petition, as expeditiously as possible. In the meanwhile, there shall be an interim stay of the sale/auction scheduled on 17.04.2015. It is made clear that the order granted by this Court, in this writ petition, should not be taken advantage of by the petitioner in protracting the delay excuse petition, pending before the Debts Recovery Appellate Tribunal, Chennai. Interim order granted by this Court would be subject to the final outcome of the delay excuse petition. If the Debts Recovery Appellate Tribunal deems it to condone the delay, stay petition be taken-up for hearing, immediately.

6. With the above directions, the writ petition is disposed of. No costs. Considering the peculiar facts and circumstances of this case, we deemed it fit to pass the above order. It should not be taken as a precedent in any other case, arising out of SARFAESI Act. Connected miscellaneous petitions are closed.