(2016) 10 MAD CK 0023

In the Madras High Court

Case No : Civil Revision Petition No.1442 of 2016

M/s. Sekar Stores Home Mart — APPELLANT

Vs

The Authorised Officer — RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 18

Citation : (2017) 1 MLJ 809

Hon'ble Judges : Mr. S. Manikumar and Mr. N. Authinathan, JJ.

Bench : Division Bench

Advocate : Mr. B. Natarajan, Advocate, for the Petitioners; Mr. Srinath Sridevan for Mr. R. Ramesh, Advocates, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J. - Challenge in this Civil Revision Petition is to an order made in S.A.No.16 of 2016, dated 26th April 2016, by which, the Debt Recovery Tribunal - I, Chennai, while posting the matter for orders in S.I.A. Nos. 24, 25 and 26 of 2016, filed in S.A.No.16 of 2016 has dismissed S.A.No.16 of 2016.

2. Material on record discloses that S.I.A. No. 24 of 2016 has been filed to amend the prayer and grounds in S.A.No.16 of 2016 to challenge the auction sale dated 11/3/2016. S.A.No.16 of 2016 has been filed, under Section 17 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, against e-auction sale notice, dated 30/1/2016, issued by M/s. Pridvi Asset Reconstruction and Securitisation Company Limited, Hyderabad.

3. During the course of hearing of the instant Civil Revision Petition, attention of this Court was brought to the notice of the record of proceedings in S.A.No.16 of 2016 and Mr. B. Natarajan, learned counsel for the petitioners submitted that after hearing the arguments of the learned counsel for both parties, orders in

S.I.A. Nos. 24 to 26 of 2016, were reserved and thereafter, the said interim petitions were listed before the Tribunal.

4. According to the learned counsel for the petitioners, no arguments were made in S.A.No.16 of 2016. But the Tribunal, while delivering orders in S.I.A. Nos. 24 to 26 of 2016, simultaneously, by a separate order, dismissed S.A.No.16 of 2016 and thus, denied the petitioners, an opportunity of advancing arguments, on the merits of the appeal, with reference to the grounds raised.

5. On the above submission, we posed a question to Mr. Srinath Sridevan, learned counsel for the respondent, as to whether any arguments were advanced by the learned counsel for both parties in S.A. No. 16 of 2016. The learned counsel for the respondent submitted that this case has a checked history. He further submitted that as against the order made in S.I.A. Nos. 24 to 26 of 2016, permitting the petitioners to raise additional grounds, an appeal has been filed by the respondent before the Debt Recovery Appellate Tribunal. It is also the submission that the petitioners are attempting to protract the matter. Learned counsel for the respondent further submitted that the order impugned in this Civil Revision Petition could be challenged, by way of an appeal, under Section 18 of the above said Act, and that therefore, the instant writ petition is not maintainable.

6. We heard the learned counsel for the parties and perused the material available on record.

7. S.A. No. 16 of 2016 has been filed against e-auction sale notice, dated 30/1/2016, issued by the respondent bank. Pending appeal, writ petitioners/ borrowers have filed three interim applications.

8. Record of proceedings enclosed at page No.63 of the typed set of papers filed along with the Civil Revision Petition is extracted hereunder.

"11.4.2016 @ 3.00 p.m.

Heard the learned counsel for both sides in SIA Nos. 24, 25 and 26/2016. Orders by 21/4/2016. In the meanwhile, the respondent is directed not to register the sale, which has already taken place till 21/4/2016.

21/4/2016

Orders are not ready. Matter is posted for orders on 25/4/2016. Ld. Counsel for both sides are informed accordingly. Respondent is directed not to confirm the sale till 25/4/2016."

9. Mr. Srinath Sridevan, learned counsel for the respondent submitted that at the time when S.I.As were heard, arguments were advanced by the respondent that even if the amendment sought for, has to be allowed, there is no merit in the appeal and therefore, taking note of the said submissions, the Tribunal has passed a separate order in S.A.No.16 of 2016. He prayed to sustain the same.

10. Record of proceedings in S.A.No.16 of 2016 discloses that arguments have been heard only in S.I.A.Nos.24 to 26 of 2016 and the Tribunal has posted the matter for orders, in S.I.A.Nos.24 to 26 of 2016, on 21/4/2016. As orders were not ready, the same were subsequently adjourned to 26/4/2016 and on that date, while allowing S.I.A.Nos.24 to 26 of 2016, the Tribunal, without providing an opportunity, to the petitioners, to argue S.A.No.16 of 2016, on merits, has dismissed the appeal, and thus, there is an error apparent on the face of record, and it is our considered view that violation of principles of natural justice, is per se apparent on the face of record. At this juncture, it is also to be noted that being aggrieved by the orders made in S.I.A. Nos. 24 to 26 of 2016, M/s. Pridhvi Asset Reconstruction & Securitisation Co. Ltd., Hyderabad is stated to have filed an appeal before DRAT.

11. Though Mr. Srinath Sridevan, learned counsel for the respondent submitted that the order made in S.A. No. 16 of 2016 could be challenged by way of an appeal before the DRAT, this Court is not inclined to accept the same. It is also to be noted that on 4/5/2016, when C.R.P has been entertained, placing on record the submission of the learned counsel for the petitioners that as on the date of hearing of the Civil Revision Petition, there was no Presiding Officer and taking note of the endorsement to that effect, revision petition has been entertained. Remedy under Article 226 of the Constitution of India is extraordinary in nature and Article 227 of the Constitution of India is supervisory in notice and violation of principles of natural justice, is per se apparent on the face on record, and therefore, on the facts and circumstances of the case, we are of the view that it would be inappropriate, to drive the petitioners, to approach DRAT, Chennai, and to burden the petitioner with deposit, as provided for, under Section 18 of the said Act. For the mistake committed by the Tribunal, the petitioners need not be fastened with liability. While rejecting the submissions of the respondent, on maintainability, order made in S.A. No. 16 of 2016, dated 26/4/2016, requires to be set aside.

12. Accordingly, this Civil Revision Petition is allowed and the order made in S.A. No. 16 of 2016, dated 26/4/2016, on the file of the Debt Recovery Tribunal ? 1, Chennai, is set aside. Tribunal is directed to provide reasonable opportunity, to both parties in S.A.No.16 of 2016 and pass appropriate orders, in accordance with law, within a period of four weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.