(2017) 12 MAD CK 0080

In the Madras High Court

Case No : 31179 of 2017

R. Devasena Vs The Authorised Officer/Chief Manager?Bank of India & Ors.

Date of Decision : 08-12-2017

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 13, Section 18 - Enforcement of security interest - Appeal to Appellate Tribunal

Citation : (2017) 12 MAD CK 0080

Hon'ble Judges : S.Manikumar, R.Pongiappan

Bench : DIVISION BENCH

Advocate : S.Manikumar, R.Pongiappan

Judgement

1. Petitioner, availed home loan of Rs.7,65,000/- from Bank of India, Mount Road Branch, Chennai/first respondent and executed an equitable mortgage, in favour of the Bank. Bank had issued notice under Section 13 (2) of the SARFAESI Act, dated 31/10/2015 and thereafter, possession notice, dated 18/2/2016, under Section 13 (4) of the said Act. Bank demanded a sum of Rs.13,81,797/-. Petitioner prayed time to settle the loan. However, Bank has issued sale notice, dated 13/5/2016, mentioning the amount as Rs.13,98,929/-.

2. Challenging the sale notice, petitioner has filed S.A.No.337 of 2016 before the Debt Recovery Tribunal - III, Chennai, on various grounds, inter alia, under valuation of the property, and that there was only a single bidder. During the pendency of the proceedings, payments stated to have been made. However, S.A.No.337 of 2016 has been dismissed. Subsequently, sale was concluded, on 20/12/2016. Challenging the same, the petitioner and others have filed S.A.SR.No.442 of 2017. On 10/7/2017, S.A.SR.No.442 of 2017 has been dismissed, by the Debt Recovery Tribunal - III, Chennai, as hereunder:- "Whereas it is the case of the appellants that they intend to settle their dues with the respondent bank, they could not file the present appeal within time and had filed it subsequently after the period of limitation and therefore, had remained in

SASR stage only.

In the circumstances, stated above, as the respondent bank had complied with provisions as warranted under law, the objections raised by the appellants to survive this SA are lacking merits and therefore, the proposed appeal by the appellants stands dismissed on merits, however, without costs."

3. Being aggrieved by the same, petitioner and others have filed AIR SA No.475 of 2017. On 5/9/2017, Debts Recovery Appellate Tribunal, Chennai, in AIR (SA) No.475 of 2017, has ordered as hereunder:- "Ld. Counsel Mr.R.K.M.Suresh for appellants present.

Proof of service is produced.

Ld. Counsel Mr.Sudhan Raj for R.1 bank present and undertakes to file vakalath.

Ld. Counsel Mr.H.Md.Hussain for R.2 auction purchaser present and files vakalath for Ld. Counsel Mr.M.L.Ganesh.

Appellants are directed to supply typeset.

Heard on I.A.No.1293 of 2017 application for waiver of pre-deposit.

Appellants have challenged the order, dated 10/7/2017 of DRT III, Chennai, by which SASR No.442 of 2017 of Appellants was dismissed in which sale notice was challenged.

In view of the fact that R.1 Bank has issued notice under Section 13 (2) of the SARFAESI Act, on 31/10/2015, for recovery of Rs.13.81 lakhs and on 28/6/2016, appellants made a deposit of Rs.1.50 lakhs in Bank, thereafter, on 20/12/2016, made a deposit of Rs.40,000/- in Bank, I hereby direct the appellants to make a pre-deposit of Rs.4,50,000/- (Rupees four lakhs and fifty thousand only) with the Registrar of this Tribunal within four weeks from today. It is made clear that if appellants fail to make the pre-deposit as stipulated above, the appeal shall stand dismissed automatically without any reference to this Court.

I.A.No.1293 of 2017 is disposed of accordingly.

List for confirmation of pre-deposit of Rs.4.50 lakhs on 4/10/2017."

4. In as much as the order of pre-deposit, dated 5/9/2017, has not been complied with, subsequently, on 4/10/2017, the Debts Recovery Appellate Tribunal, Chennai, has dismissed the appeal, as hereunder:- "Ld. Counsel Mr.J.Srinivasan for appellants present.

Ld. Counsel Mr.S.R.Sudhanraj for R.1 Bank present and files vakalath.

Ld counsel Mr.P.Ganesh Kumar for R.2 present.

Order of pre-deposit has not been complied.

Appeal is dismissed for want of compliance of pre-deposit."

5. Being aggrieved by the same, instant writ petition has been filed.

6. Heard Mr.R.Manoharan for Mr.Gerold, learned counsel for the petitioner.

7. As per the notice issued under Section 13 (2) of the SARFAESI Act, dated 31/10/2015, petitioner and others have been directed to pay a sum of Rs.13.81 lakhs. On 28/6/2016, petitioner and others have made a deposit of Rs.1.50 lakhs in the Bank. Thereafter, on 20/12/2016, they have made a deposit of Rs.40,000/- in the Bank. Considering the amount claimed under Section 13 (2) of the SARFAESI Act, 2002, Debts Recovery Appellate Tribunal, Chennai has directed the petitioner and others to make a pre-deposit of Rs.4,50,000/- with the Registrar of the Tribunal, within four weeks, from 5/9/2017, failing which, the appeal would stand dismissed automatically, without reference to the Tribunal. Thus, on 4/10/2017, when predeposit was not made, Debt Recovery Appellate Tribunal has dismissed the appeal.

8. Though Mr.R.Manoharan, learned counsel for the petitioner contended that the entire loan amount with interest as demanded by Bank of India, Chennai/first respondent, would be remitted, within one month, we are not inclined to accept the said submission, for the reason that to set aside the sale, on the grounds raised, second respondent has to be heard. That apart, when S.A.SR.No.442 of 2017 had already been filed, with a delay, testing the correctness of the dismissal of S.A.No.337 of 2016, before the appellate forum, viz., Debts Recovery Appellate Tribunal, Chennai, challenge to the sale, the same has to be adjudged only by the said forum. All that we are concerned is whether Debt Recovery Appellate Tribunal, Chennai, was right in imposing a condition of pre-deposit, for entertaining the appeal.

9. Learned counsel for the petitioner submitted that if one week time is given from today, petitioner would make the pre-deposit of Rs.4,50,000/- with the Registrar of Appellate forum. As per second proviso to Section 18 of the SARFAESI Act, 2002, no appeal shall be entertained, unless the borrower has deposited with the appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less.

10. As per third proviso to the said Section, Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt referred to in the second proviso. After deducting a sum of Rs.1,90,000/-, said to have been paid, on 28/6/2016 and 20/12/2016, respectively, the remaining amount to be discharged by the petitioner and others, as per the notice issued under Section 13 (2) of the Act, is Rs.11.91 lakhs. Thus, the Tribunal has ordered pre-deposit of a sum of Rs.4.50 lakhs, slightly above 25% of the debt due as on the date of 13 (2) notice. Appellate forum has exercised its discretion in favour of the writ petitioner and other applicants therein. There is no error.

11. However, having regard to the submission of the learned counsel for the writ

petitioner, permission is granted to the petitioner, to make a pre-deposit of Rs.4,50,000/-, to the Registrar of Debts Recovery Appellate Tribunal, Chennai, within a period of one week from today. On making the said pre-deposit, Registrar of Debts Recovery Appellate Tribunal, Chennai, is directed to process the appeal papers, assign regular appeal number, if it is otherwise in order and place the matter before the appellate forum.

12. With the above directions, writ petition is disposed of. No costs.