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Court : DRAT Madras

Decided On : Mar-12-2002

Reported in : II(2003)BC6

Judge : A Subbulakshmy

Appellant : Ramesh Chand and ors.

Respondent : Global Trust Bank and ors.

Judgement :

1. The appeal is directed as against the order passed by the Presiding Officer, Debt Recovery Tribunal (DRT) in IA-212/2001 in OA-1481/1998 dated 25.6.2001. The respondent Bank filed this IA seeking permission to sell the property situated at 307, P.H. Road, by private sale and deposit the sale proceeds to the account of the Bank. The 2nd defendant has no objection. The 5th defendant has also given consent subject to the condition mentioned in their compromise letter dated 21.6.2001, The learned Presiding Officer allowed the IA granting permission of the interim sale of the property at 307, PH Road, which are mortgaged with the Bank over which defendant No. 5 is also having a charge. The learned Presiding Officer has further ordered that the sale shall be conducted by inviting tenders and the sale proceeds shall be appropriated by the Bank only after the sale is confirmed by the Court and subject to the appropriate conditions which may be imposed by the Court in the light of the Supreme Court decision in Dena Bank case.

Aggrieved against that order the appellant has filed this appeal.

2. The learned Counsel appearing for the appellants submits that the appellants were set ex parte and they filed petition to set aside the ex parte Order and that is still pending and while the main OA itself is pending before the DRT-I, Chennai, and before decree is passed in that, the order passed by the Presiding Officer, DRT-I, ordering interim sale of the mortgaged property is not proper. He further submitted that he was also not given any notice in the petition for interim sale of the property and even though he was present in the Court at that time and was prepared to argue, he was not heard and without notice being given to him and also without giving any opportunity to the appellant to contest that petition the Presiding Officer has passed the order and the appellant has been denied his opportunity to put forth his case and it is against the principles of natural justice.

3. The learned Counsel appearing for the respondent Bank submitted that the amount involved is Rs. 37 crores and the mortgaged property is under the Bank's custody and the Bank is engaging its own watchmen and the Bank has to spend a lot for safeguarding that property and the Bank experiences much difficulty in safeguarding that property and since heavy stake of amount is involved, in the interests of justice it was felt necessary to bring this property for interim sale and accordingly the petition was filed and it was ordered by the DRT and there is no irregularity or illegality in passing such order and the order passed by the Presiding Officer, DRT-I, has to be sustained.

4. The significant factor is that the main OA itself is pending before the DRT-I, Chennai. It is seen from the submission made by the appellants' Counsel that petition to set aside the ex parte order is pending before the DRT-I, The learned Presiding Officer has also stated in his order that a perusal of the petition IA-855/01 filed by D1, D3 and D4 shows that they have sought relief for setting aside of the ex parte order and unless and until the ex parte order is set aside, the defendants have no locus standi to oppose the application for interim sale and so their objections are rejected and however they are at liberty to file necessary application in that respect. So, even his order reveals that at the time when he passed the order, the petition to set aside the ex parte order was pending before that Court.

5. Natural justice implies that the petition filed by the appellant to set aside the ex parte order has to be disposed of and then only the property can be brought to sale. Until the decree is passed and Recovery Certificate is issued, sale of the property cannot be ordered.

Further the question of interim sale also does not arise when the main OA itself is pending. Section 19(12) of the Recovery of Debts Due to Banks and Financial Institutions (RDDB&FI) Act, 1993 (the Act) reads as follows: "Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal." 6. Interim order can be passed only by way of injunction or stay or attachment. The question of bringing the property to sale will arise only after the decree is passed and Recovery Certificate issued.

7. Counsel for the respondent Bank submitted that as per Rule 18 of the Act, the Tribunal may make such orders as may be necessary or expedient to give effect to its orders to secure the ends of justice and the Presiding Officer, DRT-I, has acted under Rule 18 and the order passed by the Presiding Officer is sustainable.

8. Simply because Rule 18 provides that the Tribunal may make such orders to secure the ends of justice, it does not mean that the DRT can override the other provisions of the Act and pass such orders which are not in accordance with the provisions of this Act. The Presiding Officer, DRT-I, has passed order for sale of the property during the pendency of the proceedings before it. The trial in that case was not over and no decree has been passed. Further, the petition to set aside the ex pane order is also pending before that Tribunal. Without passing any order on that petition and without disposing of the main OA, the interim order passed by the Presiding Officer, DRT-I, ordering sale of the mortgaged property is opposed to the legal principles and also the principles of natural justice. The interim sale ordered by the Presiding Officer, DRT-I is not sustainable and it is liable to be set aside and it is set aside.

9. Appeal allowed. Since the matter is pending for a long time and as heavy stake of amount is involved in this case, the Presiding Officer, DRT-I, is directed to

dispose of the matter according to law within a period of one month from today.

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