

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.11.2015
DATE OF DECISION : 02.12.2015

CORAM

THE HON'BLE Mr. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE Dr. JUSTICE P.DEVADASS

W.P.No.15097 of 2015
and
M.P.No.1 of 2015

M/s.St. Mary's Kalmane & Arekal Estates
A registered partnership firm
represented by Mr.Avinash Prabhu
Partner,
Niduvale Post,
Via Javali,
Chikmagalur District-577 122 ...Petitioner

vs.

- 1.The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55 Ethiraj Salai,
Chennai - 600 008.
- 2.State Bank of India,
represented by its
Asst. General Manager,
Commercial Branch,
Walajapet-632 513
Vellore District.
- 3.M/s.Skyline Leather Industries Ltd.,
represented by the Official Liquidator,
High Court,
Madras.
- 4.Peter J.R.Prabhu
- 5.M/s.Skyline Construction Private Limited,
represented by its Managing Director,
having its corporate office at
No.80, III Cross, Lavelle Road,
Bangalore-1.

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6.M/s.Apollo Impex Private Limited,
represented by its Managing Director,
having its corporate office at
No.80, III Cross, Lavelle Road,
Bangalore-1.

7.M/s.Industrial Development Bank of India,
represented by its Asst. General Manager,
No.480, Anna Salai,
Nandanam,
Chennai-35.

8.M/s.Federal Bank Limited,
represented by its Senior Manager,
No.62, Anna Salai,
Chennai-2.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the order passed by the first respondent in AIR No.640 of 2014 dated 27.04.2015 and quash the same and consequently direct the first respondent appellate tribunal to number the appeal and proceed with the appeal on merits and in accordance with law.

For Petitioner ... Mr.Srinath Sridevan
R1 Tribunal

For Respondents ... Mr.E.Omprakash for R-2

Mr.A.P.Babu for R-3

Mr.M.Thiagarajan
for Mr.V.Girishkumar for R-8

Notice served on RR4 to 7 -
No appearance

ORDER

SATISH K.AGNIHOTRI, J.

Questioning the correctness of the order dated 27th April, 2015 passed by the Debt Recovery Appellate Tribunal, Chennai, the instant writ petition is preferred by the petitioner.

2 The second respondent Bank has preferred an Original Application, being O.A.No.669 of 2001 before the Debts Recovery Tribunal-I, Chennai, which, on transfer to the Debts Recovery Tribunal-III, Chennai, was renumbered as O.A.No.187 of 2007, seeking direction to the respondents 3 to 6 herein to jointly

and severally pay to the bank a sum of Rs.9,73,63,935.26 being the amount due and payable together with interest at the rate of 14% per annum in respect of the loan account raising and falling with the bank advance rate from the date of the application, i.e., 12th October, 2001 till the date of payment in full and to draw recovery certificate for the same, or in the alternative, the Schedule 'B' land mortgaged with the second respondent Bank on second charge basis may be permitted to be sold. The Schedule 'B' land in question reads as under :

SCHEDULE 'B'

All these pieces and parcels of land admeasuring 1.74 acres in Plot No.83, Survey No.255/4A, 4B and 255/3 in Narasingapuram Village, Walajah Taluk, Arakonam Sub-Registration District, Vellore District together with buildings and structures thereon and all Plant and machinery attached to the earth or permanently fastened to anything attached to the earth."

3 The second respondent Bank, thereafter, made an application, being I.A.No.751 of 2002 (I.A.No.760 of 2002), for interim injunction on 9th September, 2002, seeking to restrain the second defendant therein from dealing with the properties mentioned in the Schedule, whereunder, several other lands were included.

4 The Debts Recovery Tribunal-III, Chennai, by order dated 11th September, 2002, directed to maintain status quo in respect of the properties mentioned in I.A.No.751 of 2002. The Debts Recovery Tribunal, by order dated 1st January, 2003, also granted status quo in respect of the properties stated in the schedule to I.A.No.986 of 2002.

5 Thereagainst, the writ petitioner herein preferred applications, being I.A.Nos.27, 28 and 29 of 2003, to vacate the interim order dated 11th September, 2002 in I.A.No.751 of 2002, directing the second respondent therein, Mr.Peter J.R.Prabhu to maintain status quo in respect of the properties in the schedule to the said petition and to direct the Bank to publish the vacation of the said orders in the local dailies having large circulation in the State of Karnataka and also to vacate the interim order dated 1st January, 2003 made in I.A.No.986 of 2002, directing Mr.Peter J.R.Prabhu to maintain status quo in respect of the properties stated in the schedule to the said petition, on the ground that the assets listed in the schedule to the petition in I.A.No.986 of 2002 are owned and possessed by the petitioner firm. The said Peter J.R.Prabhu was the partner of the petitioner partnership only during the period between May, 1971 and May, 1983. Thereafter, he retired from the partnership under the Partnership Deed dated 1st May, 1983.

6 All the interim applications, being I.A.Nos.27, 28 and 29 of 2003 were taken up together by the Debts Recovery Tribunal-III, Chennai and decided on 15th December, 2009, holding as under :

"7.As can be seen from the evidence produced by the 3rd Party it is apparent that the properties mentioned in the sub schedule I of the schedule to the IA No.751(760) & 752(761)/2002 (except the properties mentioned in sub schedule II & III of the schedule) belong to the 3rd party. Similarly, the properties in the Schedule to the IA 986 & 987/2002 belong to the third party only and there cannot be any status quo order against them. It is submitted by the third party petitioner that Mr.P.J.R.Prabhu was a partner in the petitioner's firm. This fact is evident from the partnership deed dated 1.5.1983. Later he resigned from the firm and also relinquished all his claims over the assets of the firm. This fact is clear from the release deed dated 2.12.1983 filed by the 3rd party petitioner. Therefore, it is conclusively established that the properties described in IA No.986/2002 and covered by the status quo order are of the firm and Mr.P.J.R.Prabhu has no right over them. In respect of the properties described in IA 751(760)/2002 (vide sub head I of the schedule) also are owned by the firm and there cannot be any status quo order against these properties also. However for the properties described in the sub head II & III the 3rd party petitioner has no claim and there can be continuation of the status quo order.

8.In the result, IA No.27 to 29/2003 are allowed modifying the interim order dated 11.9.2002 and 01.1.2003 as follows: -

(a)The interim order of status quo dated 11.9.2002 and 01.01.2003 shall stand vacated in respect of the following properties:-

Schedule of properties in IA No.751(760)/2002

Properties situated in Niduvale Village, Balur Hobli, Mudigere Taluk, Chickmagalore District:-

S.No.	Survey Number	Extent in Acres	M.R.Numbers
1	44/P3	1.05	11/95-96 & 8-8/81-82
2	45	31.39	9/90-91
3	46	16.21	9/90-91
4	48/1	1.39	9/90-91
5	48/2	1.25	9/90-91
6	48/3	0.22	9/90-91
7	48/4	0.03	9/90-91
8	51	2.06	9/90-91

9	52	35.39	22/84-84 & 9/90-91
10	55	17.21	9/90-91
11	59/2	0.23	14/95-96 & 4/84-85
12	63/2BP1	2.06	13/95-96 & 4/84-85

Schedule of properties in IA No.986/2002

The properties situated in Naduvale Village, Mudigere Taluk, Balur Hobli chickmagalore District :-

S.No.	Survey Number	Extent in Acres	M.R.Numbers
1	53	20.25	9/90-91
2	49	0.32	9/90-91
3	50	8.00	9/90-91
4	49	0.11	9/90-91
5	49	1.5	9/90-91
6	49	0.11	9/90-91
7	49	2.39	9/90-91
8	49	2.02	9/90-91
9	47	0.20	9/90-91
10	47	0.20	9/90-91

(b)The status quo order dated 11.9.2002 shall continue in respect of the following properties (sub schedule II & III of Schedule in IA 751(760)/2002) and certain properties described in schedule to the IA 986/2002:-

Sub Schedule II & III of Schedule in IA 751(760)/2002

II. All that piece and parcel of land measuring 88 cents together with the Building " Skyline Enclave" situated at Ward 14, Block No.3, door No.187/3, 187/4, 187/21, 187/26, 183/27, 188/2, 188/8, 188/34 and 188/35 in R.S.No.71, T.S.No.96 of City Corporation Managalore, bound on the

East by - Sales and Service Station of Mandovi Motors (P) Ltd.,

West by- Cross Road / Triveni Buildings

North by - Balamatta Road and

South by- Private property

III. Land situated at Haandi Village, Aldur Hobli, Chikmagalur Taluk measuring 0.11 acres in S.No.130/P6 and land measuring 0.11 acre in S.No.130/P4 within the Revenue Jurisdiction of the Tahsildar, Chickmagalur Taluk and the Deputy Commissioner, Chikmagalur District, Karnataka State.

Schedule of properties in IA No.986/2002

S.No.	Survey Number	Extent in Acres	M.R.Numbers
1	128	0.20	2/95-96
2	90	25.00	14/96-97 15/96-97
3	78	2.00	2/95-96
4	72	2.14	2/95-96
5	67	1.08	3/94-95
6	66	1.19	3/94-95
7	65	4.2	3/94-95
8	64	25.03	3/94-95
9	63	1.25	3/94-95
10	61	3.25	3/94-95
11	44	1.12	1/96-97
12	44	1.32	21/84-85

Accordingly, the order dated 11.9.2002 and 1.1.2003 is modified as per the observations and directions recorded above.

9.The applicant bank is directed to publish the details of the properties in respect of which the status quo order is vacated in "Deccan Herald", Bangalore Edition quoting the earlier publication and also communicate copy of this order to the concerned SRO for recording the same. "

7 Finally, the O.A.No.187 of 2007 has been disposed of by the Debts Recovery Tribunal-III, by order dated, 26th February, 2010, granting relief to the applicant Bank. Thereafter, a corrigendum to the final order dated 26th February 2010 has been issued on 5th May, 2010, observing as under :

" 2.The OA was finally disposed of vide order of this Tribunal dated 26.02.2010. Later on it is observed that a typographical error has crept up in the said order. However, this Tribunal has got inherent powers to rectify the same. It is therefore ordered that following amendments be made in Paragraphs 11 & 14 of the order dated 26.02.2010. The remaining portion of the order remains unchanged.

At Para 11 Last sentence

For : The order dated 18.12.2009 shall form part of this order.

Read: The order dated 15.12.2009 shall form part of this order.

At Para 14(c) 2nd line from top

For : the order dated 18.12.2009

Read : the order dated 15.12.2009

3.This order shall form part of the order dated 26.02.2010. A copy of the order be communicated to all the parties concerned immediately by personal delivery under acknowledgement or by registered post with acknowledgement due."

8 Feeling aggrieved, the petitioner herein has preferred an appeal before the Debt Recovery Appellate Tribunal, Chennai, under provisions of Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, (for short "the Act,1993") stating therein that the petitioner was neither borrower nor any amount was due and payable from him. Thus, the petitioner was not liable to make any pre-deposit as provided under Section 21 of the Act 1993.

9 The Appellate Tribunal, by the impugned order dated 27th April, 2015, held that the petitioner is required to file waiver application and memorandum of valuation, while directing him to deposit the court fee of Rs.30,000/- after deducting the amount of Rs.250/- already paid.

10 Mr.Srinath Sridevan, learned counsel appearing for the petitioner submits that the petitioner, being third party and no amount of debt is due from him, is not liable to make any pre-deposit of amount of debt due on filing appeal under the provisions of Section 21 of the Act, 1993. It is further contended that the waiver application is maintainable only in the event when the appeal is preferred by the person from whom the amount of debt is due to the bank. Indisputably, no amount is due from the petitioner firm to the Bank or any financial institution and as such, the direction to file waiver application and memorandum of valuation is unsustainable in the eye of law.

11 On the other hand, Mr.E.Omprakash, learned counsel appearing for the second respondent Bank submits that there is no cavil that no amount of debt is due from the petitioner firm. However, the petitioner is required to make application, seeking waiver of pre-deposit as prescribed under Section 21 of the Act, 1993. The petitioner can seek full waiver on the ground that since no amount of debt is due from him to the bank, the

petitioner is not liable to make pre-deposit. It is lastly urged that the issue in respect of condition to pre-deposit under Section 21 of the Act, 1993 can be decided in waiver application. What the Appellate Tribunal has directed is to make waiver application only and not a direction to make deposit as condition precedent to entertain the appeal.

12 We have heard the learned counsel for the parties and examined the pleadings and documents annexed thereto.

13 Indisputably, the purported appeal was preferred under the provisions of Section 20 of the Act, 1993. There is no quarrel on the maintainability of the appeal under Section 20, *ibid*. Section 21 prescribes for pre-deposit of amount of debt due on filing appeal. In this regard, it is beneficial to extract the said provision as under:

"21. Deposit of amount of debt due, on filing appeal

Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy five per cent of the amount of debt so due from him as determined by the Tribunal under Section 19;

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Section."

14 On a bare perusal of the aforestated provision, it is luculent that pre-deposit is mandated only in a case where the appeal is preferred by a person from whom the amount of debt is due to a bank or the concerned financial institution. It is eloquent that no appeal filed at the instance of a person from whom the amount of debt is due is entertainable, unless 75% of the total amount due is deposited with the Appellate Tribunal. However, the Appellate Tribunal is empowered to consider the application for waiver or reduction of the amount to be deposited under the said section.

15 As analysed above, the deposit is mandatory by a person from whom the amount of debt is due while filing appeal under Section 20, *ibid*. If the deposit is mandatory and the appellant has some difficulty in making the deposit, liberty is given to the appellant to make an application for waiver or reduction of the amount.

16 A reading of the provisions of Section 21, which is plain and unambiguous, makes it clear that pre-deposit is mandated only in case of an appeal preferred by a person from whom the amount of debt is due. It is a salutary principle of interpretation of law that a provision of law must be understood in its plain meaning and the effect should be given to each and every word employed therein.

17 At this juncture, it is apropos to point out that the Supreme Court in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*¹, while considering the provisions of the Arbitration and Conciliation Act, 1996, referring to the observations made by Lord Diplock in *Duport Steels Ltd vs. Sirs*², which read as under:

"... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount."

(emphasis supplied)

"... But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts..."

(emphasis supplied)

held as under:

"64. x x x x x that it is not the function of the court to supply the supposed omission, which can only be done by Parliament. In our opinion, legislative surgery is not a judicial option, nor a compulsion, whilst interpreting an Act or a provision in the Act. The observations made by this Court in *Nalinakha Bysack* would tend to support the aforesaid views, wherein it has been observed as follows: (AIR p. 152, para 9)

1 (2012) 9 SCC 552

2 (1980) 1 WLR 142: (1980) 1 All ER 529 (HL)

"9. ... It must always be borne in mind, as said by Lord Halsbury in Commissioners for Special Purposes of Income Tax v. Pemsel, that it is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature the Court cannot, as pointed out in Crawford v. Spooner, aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in Hansraj Gupta v. Official Liquidators of Dehra Dun-Mussoorie Electric Tramway Co. Ltd., for others than the courts to remedy the defect."

18 In the case on hand, incontrovertibly, the proposed appellant/petitioner was not a person from whom any amount was due. The case of the petitioner is that the property was made a schedule of the property mortgaged by the borrower, when the borrower had nothing to do with the said property.

19 Thus, we are of the considered opinion that no waiver application is necessary. It is for the Appellate Tribunal to examine the facts before coming to a conclusion as to whether the proposed appeal is filed by a person from whom the amount of debt is due or not. If the amount is not due from the appellant, no deposit is mandatory under the provisions of Section 21 of the Act, 1993.

For the analysis and reasons mentioned hereinabove, the writ petition is allowed, setting aside the impugned order dated 27 April 2015 passed by the first respondent in AIR No.640 of 2014 and remitting back the matter to the first respondent Appellate Tribunal to consider the issue afresh on its own merits in the light of the of the aforestated observations. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar

To

1.The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55 Ethiraj Salai,
Chennai - 600 008.

2.The Asst. General Manager,
State Bank of India,
Commercial Branch,
Walajapet-632 513
Vellore District.

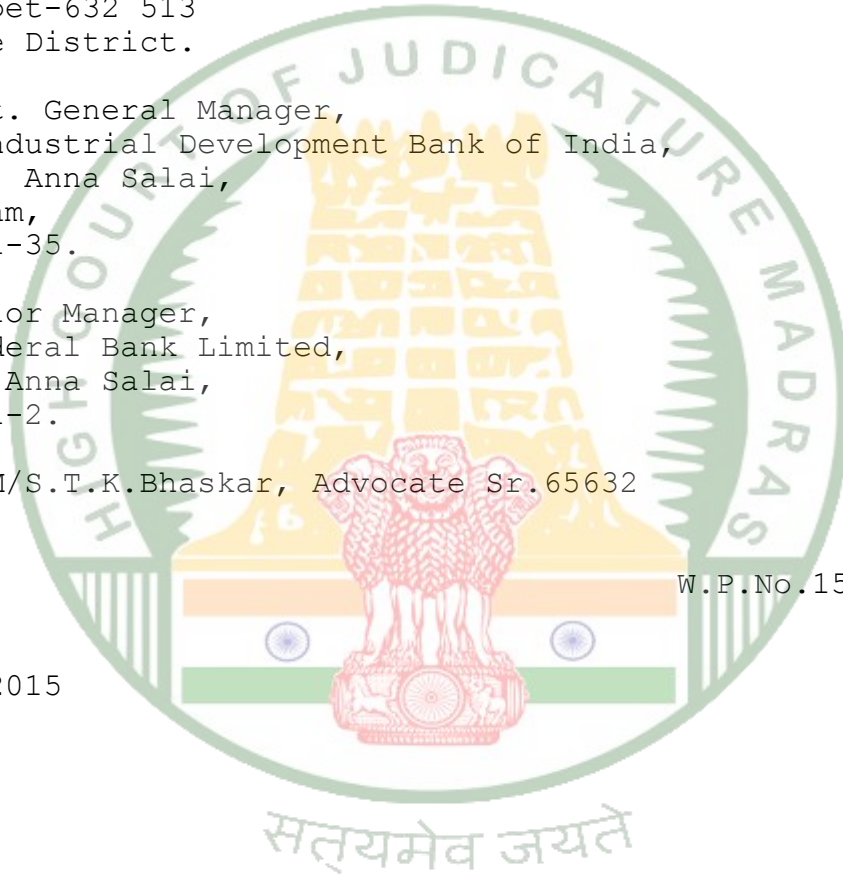
3.The Asst. General Manager,
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Chennai-35.

4.The Senior Manager,
M/s.Federal Bank Limited,
No.62, Anna Salai,
Chennai-2.

+1`cc to M/S.T.K.Bhaskar, Advocate Sr.65632

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