

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M. VENUGOPAL

W.P. Nos.24598 & 24353 of 2014 and M.P. Nos.1,1,2,2 and 3 of 2014

T.C. Ramadoss	Petitioner in WP No.24598 of 2014
V. Venkatesan	Petitioner in WP No.24353 of 2014

Vs.

- 1 The Chief Manager & Authorised Officer
State Bank of India
Stressed Assets Management Branch
Red Cross Buildings
No.32, Montieth Road
Egmore, Chennai 600 008
- 2 The State Bank of India
represented by its Authorised Officer
Thiru S. Muralikumar
having its branch at
No.32, Montieth Road
Egmore, Chennai 600 008
- 3 Hi-Grade Shoe
represented by its Managing Director
No.33/1,2,3, NH-46, MC Road
Jamin Kulithigai Village
Vengili Post
Vadapadupete (via)
Vaniyambadi Taluk
Vellore 635 812
- 4 Hi Design Shoe
represented by its Managing Director
No.33/1,2,3, NH-46, MC Road
Jamin Kulithigai Village
Vengili Post, Vadapadupete (via)
Vaniyambadi Taluk, Vellore 635 812
- 5 K.S. Sivakumar
- 6 K.S. Gandhi

7 S. Kanchana
8 V. Venkatesan
9 V. Shanmugam
10 K. Santhanam
11 K. Santhosh Kumar
12 D. Krishnamoorthy Respondents in the WPs No.24598/14

1 The Chief Manager and
Authorised Officer State Bank of India
Stressed Assets Management Branch Red Cross
Buildings No.32 Montieth Road Egmore
chennai 8

2 The State of Tamilnadu
Rep by its Auth Officer Thiru.S.Muralikumar
No.32 Montieth Road Egmore Chennai 8

3 M/s.Hi-Grade Shoe
No.33/1 2 3 NH 46 MC Road Jamin Kulithigai
Village Vengili PO Vadapadupet Via
Vaniyambadi TK Vellore 635 812

4 M/s.Hi Design Shoe
No.33/1 2 3 NH 46 MC Road Zamin
Kulithigai Village Vengili Post
Vadapadupet Via Vellore 635 812

5 Shri.K.S.Sivakumar
6 Shri.K.S.Gandhi
7 Smt.S.Kanchana
8 Shri.V.Shanmugam
9 Shri.K.Santhanam
10 Shri.K.Santhosh Kumar
11 Shri.T.C.Ramadoss
12 Shri.D.Krishnamoorthy

..Respondents in WP.24353/14

Prayer in W.P. No.24598 of 2014:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the order passed on the file of the Chief Judicial Magistrate in Crl.M.P. No.864 of 2012 dated 23.07.2012 and consequential e-auction notice vide SAMB/CLO III/1081 dated 28.07.2014 issued by the first respondent, in respect of item No.3 with land measuring 1,202.50 sq. ft. with two stories residential building measuring 1,795 sq. ft. situated at Door No.2/A, Valliammai Street, Pallikonda, S.F. No.60/1A, Vellore District and quash the same as illegal and consequently, direct the respondents to restore the possession of the above mentioned property in Item No.3 of the e-auction notice dated 28.07.2014 to the petitioner.

Prayer in W.P. No.24353 of 2014:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the order passed on the file of the Chief Judicial Magistrate in Crl.M.P. No.864 of 2012 dated 23.07.2012 and consequential e-auction notice vide SAMB/CLO III/1081 dated 28.07.2014 issued by the first respondent and quash the same as illegal and consequently forbearing the respondents from in any way dispossessing the petitioner from the land measuring 79,280 sq. ft. (1.82 acres) with 1306 sq. ft. of residential house situated at Survey No.19/70 and 4,844 sq. ft. building viz., Sri Vettri Teacher Training College"situated at S.R. No.170, 169/2A and 2B, Gandhi Raod, Anaicut, Vellore, without due process of law.

For petitioner in Mr. AR.L. Sundaresan, Sr. Counsel
both the WPs for M/s. V. Madhavan
For R1 Mr. M.L. Ganesh
For R6 Mr. M. Rajendran-No appearance

COMMON ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Both the instant writ petitions arise from the common order dated 23.07.2012 passed by the Chief Judicial Magistrate, Vellore (for short "the CJM") in Crl.M.P. No.864 of 2012.

2 The facts in nutshell are that the respondents 3 and 4 borrowed loan to the tune of Rs.22.82 crores from the respondent bank against movable and immovable properties pledged/mortgaged as secured assets in favour of the respondent bank. When the borrowers became defaulters, the respondent bank classified the secured assets as Non Performing Assets as on 31.12.2011. Thereafter, a demand notice was issued on 30.03.2012 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act, 2002") to the borrowers and guarantors, i.e., the petitioners also. No payment was made as statutorily required within 60 days from the date of the said notice. However, a representation was made under Section 13(3-A) of the Act, 2002, on 24.04.2012. Thereafter, a notice under Section 13(4) of the Act, 2002 was issued on 18.06.2012, wherein, symbolic possession of the secured assets was effected. An Original Application being O.A. No.8 of 20112 was also filed by the respondent bank for recovery of money to the tune of Rs.24 crores before the Debt Recovery Tribunal-I, Chennai. Thereafter, the respondent bank preferred an application under Section 14(1) of the Act, 2002, before the CJM, who, in exercise of his presumptive power under Section 14 of the Act, 2002, passed the impugned order dated 23.07.2012, holding that the respondent bank was entitled to take over actual possession of the property in question and also, assistance thereon was granted.

3 The present petitioners, who were arrayed as respondents in all the proceedings, have come up with the instant writ petitions stating that they have no role in the loan transaction and that they have also not stood guarantee for the loan and in fact, they have been deceived by the beneficiaries, i.e., the borrowers.

4 It is contended by Mr. AR.L. Sundaresan, learned Senior Counsel appearing for the petitioners that the order passed by the CJM is illegal and non-est as the CJM has no authority to exercise jurisdiction under Section 14 of the Act, 2002 for passing the order of taking over actual possession and granting assistance accordingly. The learned Senior Counsel relies on a decision of a Full Bench of this Court in K.Arokiyaraj and Others vs. The Chief Judicial Magistrate, Srivilliputhur, Virudunagar District and Others, wherein, it was held that in districts where there is no Chief Metropolitan Magistrate having jurisdiction, the District Magistrate alone has the jurisdiction to exercise power under Section 14 of the Act, 2002. Thus, the impugned order passed by the CJM be set aside and the consequential action be held as null and void.

5 On the other hand, Mr. M.L. Ganesh, learned counsel for the respondent bank would submit that the Full Bench judgment of this Court in K. Arokiyaraj (supra), was pronounced on 27.08.2013, after the CJM exercising his power under Section 14 of the Act, 2002, had passed the order on 23.07.2012. Thus, applying the principle of prospective overruling, the impugned order is valid and sustainable in the eye of law. It is further contended that the petitioners, who are the guarantors, have not taken any steps before filing of an application under Section 14 of the Act, 2002. In such an event, when notice was issued under Section 13(4) of the Act, 2002, to all the parties, viz., borrowers and guarantors, including the petitioners, the course open to them was to approach to the Debt Recovery Tribunal against the order. At this stage, the petitioners cannot be permitted to raise the issue and question the order passed by the CJM, on technicalities. The learned counsel for the respondent bank would further submit that a Special Leave Petition has been preferred challenging the Full Bench judgment of this Court in K. Arokiyaraj¹ (supra), which is pending consideration before the Supreme Court.

6 We have considered the submissions made by the learned counsel for the respective parties.

7 To facilitate security of financial assets of banks and financial institutions and further, to accelerate recovery of defaulting loans and monitoring levels of Non Performing Assets of banks and financial institutions, the Act, 2002 was enacted, which came into force with effect from 17.12.2012. The Act, 2002, provides for regulation of securitisation and reconstruction of financial assets of banks and financial institutions, mechanism for enforcement

of security interest, mechanism for adjudication with right of appeal before the Debt Recovery Tribunal and also before the Debt Recovery Appellate Tribunal. In order to effectuate recovery after the secured asset has been declared as a Non Performing Asset, under Section 13 of the Act, 2002, there is a provision to afford sufficient opportunity to the defaulters to make good the default. There is also an opportunity to make a representation for settlement of the dispute. Thereafter, symbolic possession of the secured asset of the borrower is taken under sub-section 4 of Section 13 of the Act, 2002. A mechanism under Section 14 of the Act, 2002, is prescribed to seek the assistance of the Chief Metropolitan Magistrate or the District Magistrate, depending on their respective jurisdiction, as the case may be, for taking actual possession of the secured asset. If a person is aggrieved by any measure referred to under sub-section 4 of Section 13 of the Act, 2002, taken by the secured creditor, under Section 17, statutory appeal before the Debts Recovery Tribunal, having jurisdiction in the matter, within a specified period, is available.

8 The grievance of the petitioners that they were hoodwinked to be guarantors, could have been raised after Section 13(4) measure before the Tribunal. It is stated that the petitioners have not approached the Tribunal for any relief whatsoever.

9 Be that as it may, at this stage, we are concerned with the jurisdiction of the CJM under Section 14 of the Act, 2002. Section 14 of the Act, 2002, reads as under:

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.-

(1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-
(a) take possession of such asset and documents relating thereto; and
(b) forward such asset and documents to the secured creditor.

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that--

i the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

ii the borrower has created security interest over various properties and that the Bank or financial institution is holding a valid and subsisting security interest over such properties and the

claim of the Bank or Financial Institution is within the limitation period;

iii the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

iv the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

v consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

vi affirming that the period of sixty days notice as required by the provisions of sub section (2) of Section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

vii the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower.

viii The borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of Section 13 read with Section 14 of the principal Act;

ix that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

1-A The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him, --

i to take possession of such assets and documents relating thereto; and

ii to forward such assets and documents to the secured creditor

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

10 The aforestated provision is plain, unambiguous and admits no confusion. In a metropolitan area, the Chief Metropolitan Magistrate has the jurisdiction and in areas other than a metropolitan area, the District Magistrate has the jurisdiction. As such, there is a clear prescription that the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction, any such secured asset or other documents relating thereto may be situated or found to take possession thereof, as the case may be, shall exercise jurisdiction. There is no dispute that the property in question is situate within the jurisdiction of Vellore District. Vellore is not a part of a metropolitan area. As such, there is no Chief Metropolitan Magistrate to exercise Magisterial jurisdiction.

11 Section 12 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") provides for appointment of a Chief Judicial Magistrate or an Additional Chief Judicial Magistrate in every district. In the said provision, it is clearly prescribed that in every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the first class to be the Chief Judicial Magistrate. Likewise, under Section 19 of the Cr.P.C., appointment of Chief Metropolitan Magistrate in a metropolitan area is mandated. Thus, there is no confusion on the jurisdiction of both the authorities, viz., Chief Metropolitan Magistrate and Chief Judicial Magistrate.

12 The legislators have made it clear that in any area other than a metropolitan area, the District Magistrate of the concerned area will have jurisdiction to exercise power under Section 14 of the Act, 2002, but, in metropolitan area, it is only the Chief Metropolitan Magistrate, who has the jurisdiction to exercise power under Section 14 of the Act, 2002.

13 The aforesaid issue came up for consideration in K.Arokiyaraj¹ (supra), wherein, the Full Bench of this Court held as under:

"35. From the perusal of the above judgments as well as the statutory provisions contained in Section 14 of the SARFAESI Act, 2002, in its independent existence, we are of the firm view that Section 14 does not contemplate the secured creditors to approach the Chief Judicial Magistrates for assistance to secure their assets and the secured creditors can approach the Chief Metropolitan Magistrate in metropolitan areas and in non-metropolitan areas, the secured creditors has to approach the District Magistrate, and not the Chief Judicial Magistrate."

14 On the question of prospective ruling, the learned counsel for the respondent bank has relied on a decision of the Supreme Court in P.V. George and Others vs. State of Kerala and Others², wherein, after considering several decisions, it was held as under:

"18. x x x x x The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf."

Thus, the said judicial decision is of no aid to the respondents.

15 The doctrine of prospective overruling was recognised for the first time in the American jurisprudence in *Great Northern Railway Co. Vs. Sunburst Oil & Refining Co.*³ The said doctrine was for the first time applied in *Golak Nath Vs. State of Punjab*⁴ in India and thereafter referred and relied on in various decisions, and as such, the doctrine of prospective overruling is now an integral part of the Indian Legal System. It is well settled that the overruling decision is a new decision, because it has overruled the settled precedent and it has decided an issue of first impression, where at least one earlier case has not foreshadowed the overruling decision. In the case on hand, the Full Bench in *K.Arokiyaraj*¹ (supra) has not unsettled the settled position of law. The settled position of law has been interpreted on plain reading of the provisions. Thus, the contention of the learned counsel for the respondent that the decision of the Full Bench would be applicable prospectively does not merit acceptance and it is accordingly rejected. The language of the relevant provision is plain and clear admitting no confusion, which has been interpreted by the Full Bench in its decision.

16 It is a well settled principle of law that any order passed by an authority without jurisdiction is void and non est and as such, any consequential action taken on the basis of the said order falls to the ground. (See *Chief Justice of A.P. vs. L.V.A. Dixitulu*⁵, *A. Jithendernath vs. Jubilee Hills Cooperative House Building Society*⁶, *Ashok Leyland Ltd. vs. State of Tamil Nadu*⁷, *Union of India vs. Pramod Gupta*⁸, *National Institute of Technology vs. Niraj Kumar Singh*⁹, *Hasham Abbas Sayyad vs. Usman Abbas Sayyad*¹⁰, *Deepak Agro Foods vs. State of Rajasthan*¹¹, *Chandrabhai K. Bhoir vs. Krishna Arjun Bhoir and Union of India*¹² vs. *Association of Unified Telecom Service Providers of India*¹³).

17 Resultantly, we set aside the impugned order dated

3 287 U.S. 358 (1932)

4 AIR 1967 SC 1643

1 2013 (6) MLJ 641: 2013 (4) LW 485

5 (1979) 2 SCC 34

6 (2006) 10 SCC 96

7 (2004) 3 SCC 1

8 (2005) 12 SCC 1

9 (2007) 2 SCC 481

10 (2007) 2 SCC 355

11 (2008) 7 SCC 748

12 (2009) 2 SCC 315

13 (2011) 10 SCC 543

23.07.2012 passed by the CJM, reserving liberty to the respondent bank to take recourse to the appropriate jurisdictional forum under the provisions of law.

18 The writ petitions stand allowed accordingly. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad
To

- 1 The Chief Manager & Authorised Officer
State Bank of India
Stressed Assets Management Branch
Red Cross Buildings
No.32, Montieth Road
Egmore, Chennai 600 008
- 2 The Authorised Officer
State Bank of India
Thiru S. Muralikumar
having its branch at
No.32, Montieth Road
Egmore, Chennai 600 008

+ 4 ccsto Mr. V. Madhavan, Advocate Sr.4633 and 4634
+ 1 cc to Mr.M.C. Ganesh, Advocate Sr.4646

सत्यमेव जयते W.P. Nos.24598 and 24353 of 2014

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