IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15 - 07 - 2015

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA
Writ Appeal No. 880 of 2010
and
M.P. No.1 of 2010

1. C.R. Krishnan

2. M/s Dedicated Locker System (India) Ltd.
Rep. By C.R. Krishnan
Chairman
76 Luz Avenue
Chennai - 600 004 ... Appellant
[R6 transposed as 2nd Appellant vide
order dated 26.4.2012 made in
M.P. No. 1 of 2012]
(cause title amended vide order of court dae 3.4.12 in M.P.3 of 2011)

Vs.

1. JRP / KRP Benefit Fund Ltd.and
KRP Ecofin Services Ltd.
Depositors Welfare Association
Rep. By its Secretary
Mr. G. S. Bhaskaran
Office at 19/8 Jeyamma Road, II Floor
Teynampet
Chennai - 18

2. The Reserve Bank of India
Constituted under the RBI Act 1934
Having its Regd. Offict at
Rajaji Salai, Chennai - 1

3. Union of India
through the Secretary
Ministry of Law and Company Affairs

Govt. of India
Shastri Bhavan
New Delhi

4. The State of Tamil Nadu
Rep. By the Inspector General of Police
Economic Offences Wing II
Government Estate
Chennai - 2

5. The Central Bank of India
Industrial Finance Branch
48/49 Montieth Road
Chennai - 8

6. M/s Dedicated Locker System (India) Ltd
(transposed as 2nd appellant)

7. KRP Benefit Fund Ltd.

8. JRP Benefit Fund Ltd.

9. KRP Ecofin Services Ltd.
RR 7 - 9 rep. By Mr. K.R. Prkash Kumar

10. M/s Tejonidhi Estate Chennai Private Ltd.
Rep. by its Authorised Signatory
Mr. R. Sundarrajan
Floor No. 9, Tower 11, TVH Beliciaa Towers
Block No. 94, MRC Nagar
Chennai - 28
[R 10 impleaded as party respondent vide order dated 10.10.2011 made in M.P. No. 1 of 2011]

11. M/s True Value Home India Pvt. Ltd.
Rep. by its Managing Director
21 C.V. Raman Road
Alwarpet, Chennai - 18 ... Respondents
[R 11 impleaded as party respondent vide order dated 10.10.2011 made in M.P. No. 2 of 2011]

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 22.04.2008 made in W.P. No. 10255 of 2002.

Petition presented to this court to issue a writ of Mandamus to direct the respondents 1 to 3 to appoint a fit and proper person as custodian as special officer for taking immediate control and possession of all the assets and properties both movables and immovables and securities of the respondents 5 to 8 and pay the deposits due to the depositors who are members of the Petitioners Association.

For Appellant	:	Mr. S. Parthasarathy, SC for M/s P.C. Harikumar & Associates
For R1	:	Mr. R. Venkatavardhan
For R 2	:	No appearance
For R 3	:	Mr. N. Rajan
For R 4	:	Mr. S.T.S. Moorthy, GP
For R 5	:	Mr. K. Rajasekaran
For RR 6 to 9	:	Mr. V. Venkatashalam
For R 10	:	Mr. Jayaesh Dolia for M/s Aiyar & Dolia

(Judgment reserved on 06.07.2015)

JUDGMENT

PUSHPA SATHYANARAYANA, J.

The appellant – third party, claiming to be one of the shareholder of M/s Dedicated Lockers System (India) Ltd., by way of this appeal seeks to challenge the order dated 22nd April 2008 passed by the learned Single Judge wherein and by which the writ petition was disposed of with certain directions to the Administrator to bring the property involved in this issue, for public auction.

2. When this matter was taken up for hearing, we noticed that the entire matter arises from the Debt Recovery Tribunal proceedings initiated by the Central Bank of India, Industrial Finance Branch / fifth respondent herein before the Debts Recovery Tribunal in O.A. No. 1118 of 1999 wherein a decree was passed on 31.10.2001.

3. This appeal raises a very vexed and ticklish issue and, therefore, we need to now, at this stage, highlight a few facts of the matter very closely and in detail.

4. M/s Dedicated Locker System (India) Ltd., a company incorporated under the Indian Companies Act, originally the sixth respondent and transposed as the second appellant in this Appeal vide order dated 26.4.2012 in M.P. No. 1 of 2012, purchased the immovable property on 27.7.1995 from and out of the loan of Rs. 1.5 Crores availed from the Central Bank of India, Industrial Finance Branch / fifth respondent herein, on execution of equitable mortgage. Since no payment was made towards the said loan, the Bank filed a suit before the Debt Recovery Tribunal in O.A. No. 1118 of 1999 resulting in a decree dated 31.10.2001 against the Company and its guarantors, which includes the first appellant in the present appeal. In the meanwhile, Economic Offences Wing had attached the mortgaged property which is the subject matter of the Recovery Certificate. Due to the mis-management of the fifth respondent Company before the learned single Judge, viz., M/s Dedicated Lockers System (India) Ltd., the innocent depositors were not paid to the tune of Rs. 10 Crores which resulted in huge loss to them and the Controlling Authority, viz., Reserve Bank of India, also allegedly failed to protect the interest of the depositors. Hence, the Depositors' Welfare Association of JRP / KRP Benefit Fund Limited and KRP Ecofin Services Limited filed Writ Petition for issuance of Mandamus directing the respondents 2 to 4 herein, viz., Reserve Bank of India, Ministry of Law and Company Affairs and the Inspector General of Police of State of Tamil Nadu, Economic Offences Wing - II, to appoint a proper person as custodian / Special Officer for taking immediate control and possession of all the assets and properties both movables and immovables and securities of the second appellant and the respondents 7 to 9 herein, and pay the deposits due to the members.

5. The learned single Judge, on consideration of the materials, finding that the Bank has obtained a decree for recovery of the amount and has initiated public auction proceedings in respect of the property of the second appellant and the respondents 7 to 9 herein, disposed of the Writ Petition with certain directions to the Advocate / Administrator besides directing him to initiate necessary proceedings to bring the property for public auction and for distribution of the amount to the depositors on pro rata basis as one time settlement. The said order is impugned in this Writ Appeal at the instance of the guarantor in the guise of third party.

6. Heard the learned counsel appearing for the parties and perused the records.

7. Subsequent to the admission of this Writ Appeal on

29.4.2010, during March 2011, M/s Tejonidhi Estates Chennai Private Limited, claiming to be the nominee of the auction purchaser, filed M.P. No. 1 of 2011 seeking impleadment as respondent in this Writ Appeal. Simultaneously, the first appellant also filed M.P. No. 2 of 2011 for impleading the auction purchaser M/s True Value India Private Limited, as party to the proceedings and both the petitions were ordered by this Court vide order dated 10.10.2011.

8. Interestingly, one Mr. K. Natarajan, a retired District Judge was appointed initially as Administrator and subsequently, by order of this Court dated 06.8.2004, he was replaced by one Venkadasalam, who is none other than the counsel for the respondents 7 to 9 herein, viz., KRP Benefit Fund Limited, JRP Benefit Fund Limited and KRP Ecofin Services Limited.

9. It is not a matter of dispute that the lis in the present controversy was between the Central Bank of India on the one hand and M/s Dedicated Locker System (India) Limited on the other. The fact remains that pursuant to the order of the learned single Judge, the property was brought on sale by way of public auction on 15.8.2009 and it was sold to the eleventh respondent M/s True Value Home India Private Limited on 01.10.2009 for a sum of Rs. 8.25 Crores.

10. Assailing the impugned order, learned Senior Counsel appearing for the appellants submitted that it is the independent property of the company. The first and foremost contention of the learned Senior Counsel is that as the interest of the depositors is governed by the provisions of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 [for short, 'TNPID Act'], there was no necessity for the depositors to file the Writ Petition.

11. The above contention of the learned Senior Counsel is to be rejected even at the threshold for the simple reason that the said defence has not been raised in the memorandum of grounds. Even assuming that the depositors should have moved for their remedy under the TNPID Act, it cannot be denied that the first appellant, who claims to have had 33% shareholdings in the Company as well as in the property of M/s Dedicated Locker System (India) Limited, would have had the knowledge about the decree. Having deliberately allowed the proceedings to go on, the first appellant, after this length of

time, has projected the instant appeal with ulterior motive. As such, the said contention of the learned counsel cannot be countenanced.

12. Even with regard to the applicability of the TNPID Act, it is to be noted that the Management, viz., M/s Dedicated Locker System (India) Limited itself was a party to the Writ Petition. In this regard, it would be relevant to refer to the provisions of the TNPID Act. Section 3 of the TNPID Act empowers the State Government to attach the properties of the defaulting Company. If the value of the properties attached is not sufficient for the repayment of the deposits, the properties of the promotor, partner, director or Manager can also be attached by the Government. The company who was a party to the proceedings never raised any objection to the order impugned being passed.

13. Continuing further, the learned Senior Counsel submitted that the first appellant was not put on notice with regard to the issue in question. He also submitted that the Chairman of the Company,who had only one share, whether could file an affidavit consenting to the sale.

14. We are of the view that this contention may not hold good. When it is admitted that the affidavit is filed only by the Chairman representing the Company, the shareholding is immaterial. At this juncture, it is also duty of this Court to point out that the Company is represented not by the percentage of shares held by a person but in the capacity of the Chairman or Director of the Company.

15. The first appellant, who was the guarantor and was arrayed as a party before the Debt Recovery Tribunal in the capacity of Director, despite knowledge about the decree, has not chosen to challenge the same before the Debt Recovery Tribunal. Nor had he taken steps to implead himself as a party respondent in the Writ Petition. A person who had 33% shareholdings and was a guarantor for the loan, having allowed the Bank to get an ex parte decree, cannot, at this stage, come with such a plea. As such, the said proceedings had come to an end without any challenge.

16. Expatiating his arguments, the learned Senior Counsel appearing for the appellants also submitted that due to the death of the Chairman and Managing Director of the second appellant M/s

Dedicated Locker Systems (India) Ltd. during the pendency of the Writ Petition, nobody was substituted in his place to defend the interest of the company.

17. The said contention is also to be rejected. A perusal of the records would show that the Chairman of the Company Mr.Srinivasan died on 02.11.2007, nearly six years after the recovery proceedings were passed by the Debt Recovery Tribunal. Though the present writ proceedings were initiated as early as in March 2002, despite the fact that M/s Dedicated Locker System (India) Ltd. was arrayed as fifth respondent in the said Writ Petition, after expiry of the said Srinivasan, no steps were taken by the Company to defend the case.

18. The Legislature has succinctly stated that the liability of the guarantor is co-extensive with that the of the principal debtor. The Hon'ble Apex Court as well as this Court have decided on this point, time and again, in line with the intent of the Legislature. While so, when the Bank brought the property for sale, the first appellant could have challenged the same. On the other hand, he has challenged the same, by way of this Appeal after the disbursal of most of the amount. All these show the lethargic attitude of the appellants and, hence, they cannot also plead ignorance at this stage as much water had flown under the bridge since the date of issuance of Recovery Certificate by the Debt Recovery Tribunal. As such, this appeal is liable to be dismissed on the ground of delay.

19. Per contra, Mr. Jeyesh Dolia, learned counsel appearing for the tenth respondent M/s Tejonidhi Estates Chennai Private Limited, who is the nominee of the auction purchaser eleventh respondent, for execution of sale certificate, submitted that by virtue of the public auction conducted on 15.8.2009, third party interest has been created and if the said sale proceedings are set aside, the auction purchaser would be deprived of the property purchased by him in the public auction. In support of his contention, learned counsel seeks in aid of the decision of the Hon'ble Supreme Court in Sadashiv Prasad Singh vs. Harendar Singh and others [2015 (5) SCC 574].

20. As stated earlier, the entire proceedings before this Court were initiated after the Bank had obtained a decree before the Debt Recovery Tribunal and only to thwart the same, the writ petition was filed. However, the Bank who was aggrieved, preferred an appeal being W.A. No. 771 of 2008, against the order of the learned single Judge, which was subsequently withdrawn for the reasons best known to

them. Meanwhile, the property was brought for auction and sold during October 2009. It is admitted by the Bank that a sum of Rs.3,35,54,000/- had been disbursed by the Administrator towards the discharge of loan liability.

21. Regarding the auction purchaser's interest, it is an established principle of law that in a third party auction purchaser's interest, the auctioned property continues to be protected notwithstanding that the underlying decree is subsequently set aside or otherwise. There is no principle of justice whereby an innocent third party who has purchased in a valid auction held by the Court should be deprived of his property. In the instant case, the property having been sold on 01.10.2009 pursuant to the auction conducted on 15.8.2009, it cannot be set aside unless some fraud or collusion has been proved. We are satisfied that no fraud or collusion has been established by anyone. In such circumstance, the Writ Appeal is liable to be dismissed on the ground of latches especially because third party rights had emerged in the meantime. More so, because the auction purchaser was a bona fide purchaser for consideration, having purchased the property in furtherance of a duly publicized public auction, any interference by this Court is uncalled for.

22. Having slept over the matter for more more than than six years without challenging the Recovery proceedings issued by the Debt Recovery Tribunal and after the disbursement of the amount by way of auction sale, it is not open to the first appellant, who is a guarantor and also a shareholder, to raise the plea at the stage of Writ Appeal that the public auction and the confirmation of sale against M/s Dedicated Locker System (India) Limited, is not binding on its director or shareholders. Having failed to take the plea at the earliest point of time, now he cannot take such a plea that too, in the Writ Appeal introducing himself as a third party.

23. Going through the entire sequence of events and the history of the litigation and taking into consideration the fact that the orders of both the Debt Recovery Tribunal and the learned single Judge pertain to the recovery and the sale had become final as it had not been challenged by the appellants, we are of the view that no useful purpose would be served in interfering in this matter.

The Writ Appeal, being devoid of any merit, is accordingly dismissed. In the facts and circumstances of the case, we direct the parties to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Reserve Bank of India
Rajaji Salai, Chennai - 1

2. The Secretary
Ministry of Law and Company Affairs
Govt. of India
Shastri Bhavan
New Delhi

3. Inspector General of Police
State of Tamil Nadu
Economic Offences Wing II
Government Estate
Chennai - 2

+ 1 cc to Mr. N.Rajan (SCGSC) (SR 36012)
+ 1 cc to M/S.Harikumar & Associates (SR 35825)
+ 1 cc to Mr.K.Rajasekaran, Advocate (SR 35982)
+ 1 cc to Government Pleader (SR 35951)
+ 1 cc to Mr. R.Venkatavaradhan, Advocate (SR 35829)
+ 1 cc to M/S. Aiyar & Dolia (SR 36517)

W.A.No.880 of 2010

NM (CO)
YJ 24.07.15