

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 6.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. Nos.5256 and 5257 of 2015

W.P.No.5256 of 2015 :-

M/s.Bhuvaneswari Provisions
Rep. by its Partner R.Rajendran ... Petitioner

versus

- 1 City Union Bank Limited
Main Branch Kumbakonam
rep. by its Manager, Thanjavur
- 2 V.R.Chidambaram
- 3 A.Pugazhendi
- 4 S.Tamilarasan
- 5 The Registrar
Debt Recovery Appellate Tribunal 4th Floor
Indian Bank Circle Office 55 Ethiraj Salai
Chennai. ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the Debt Recovery Appellate Tribunal at Chennai made in R.A. No.73 of 2014 dated 21.11.2014 of the 5th respondent and quash the same and direct the 1st respondent bank to return all the original documents pertaining to the property mortgated with the respondent bank to the petitioner.

W.P.No.5257 of 2015 :

M/s.Bhuvaneswari Provisions ... petitioner
Rep. by its Partner R.Rajendran
13 Pudupalaya Street Kumbakonam-612 001
Residing at 178 MG Road Muthiyalpet
Pondicherry-605 003.

Vs

- 1 City Union Bank Limited
Main Branch Kumbakonam
Rep. by its Special Manager
Kumbakonam
- 2 Samsath Begum rep.by Power Agent S.Mohamed Ali
- 3 The Registrar
Debt Recovery Appellate Tribunal 4th Floor
Indian Bank Circle Office 55 Ethiraj Salai
Chennai. ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the Debt Recovery Appellate Tribunal at Chennai made in R.A. No.174 of 2012 dated 21.11.2014 of the 3rd respondent and quash the same and direct the 1st respondent bank to return all the original documents pertaining to the property mortgated with the respondent bank to the petitioner.

For petitioner : Mr.N.Chandraraj,
for M/s.Raj & Raj Associates

For Respondents : Mr.S.Sethuraman, for R-1
in both Writ Petitions
Mr.P.J.Rishikesh, for R-2
in W.P.No.5257/2015

COMMON ORDER
(made by K.K.SASIDHARAN, J.)

These Writ Petitions are directed against the order dated 21 November 2014, whereby and whereunder the Debts Recovery Appellate Tribunal, Chennai, was pleased to dismiss the appeal and confirmed the order passed by the Debts Recovery Tribunal.

2. Heard the learned counsel for the petitioner, learned Standing counsel for the first respondent and learned counsel for the 2nd respondent in W.P.No.5257 of 2015.

3. The Petitioner availed financial assistance from City Union Bank Ltd., Kumbakonam. Since the loan amount was not paid as per schedule, the Bank initiated proceedings before the Debts Recovery Tribunal (hereinafter referred to as "the Tribunal"). The application in O.A.No.115 of 2007 filed by the Bank was decreed by order dated 30 May 2008. The decree was challenged in appeal. During the currency of the appeal, the Recovery Officer

initiated action to auction the property. The second respondent in W.P.No.5257 of 2015 was declared as the auction purchaser. The auction was challenged by the petitioner invoking rule 61 of the Second Schedule to the Income Tax Act. Since the mandatory condition of deposit was not complied with by the petitioner, the challenge was negatived by the Recovery Officer. The said order was challenged before the Tribunal. The Tribunal set aside the sale held on 10 October 2011. The Bank challenged the said order before the Debts Recovery Appellate Tribunal (hereinafter referred to as the "Appellate Tribunal"). The Appellate Tribunal allowed the application primarily on the ground that the petitioner has not made the mandatory deposit as provided under Rule 61 of the Second Schedule to Income Tax Act.

4. The only question that arises for consideration is as to whether the Appellate Tribunal was correct in confirming the order passed by the Recovery Officer, dismissing the application to set aside the sale.

5. There is no dispute that within the statutory period, the petitioner filed the application before the Recovery Officer to set aside the sale. The application was preferred without depositing the sale amount as provided under Rule 61 of the Second Schedule to Income Tax Act. The order passed by the Recovery Officer shows that sufficient time was given to the petitioner to deposit the sale amount. Since there was no compliance of Rule 61 of the Act, the Recovery Officer was perfectly correct in dismissing the application filed by the petitioner challenging the sale. The related order passed by the Appellate Tribunal therefore does not call for interference.

6. The Debts Recovery Tribunal, Chennai, in its order dated 14 September 2012, observed that the application filed by the petitioner to set aside the sale was dismissed by the Recovery Officer on 11 October 2011, without waiting for the mandatory period of thirty days. The said observation was made without taking note of the actual date of order passed by the Recovery Officer. Though the application was filed on 10 October 2011, it was dismissed only on 11 November 2011. Therefore, it is very clear that the Recovery Officer waited for a period of thirty days before dismissing the application filed by the petitioner to set aside the sale. We are therefore of the view that the impugned orders are not liable to be interfered with by exercising review jurisdiction.

7. In the upshot, we dismiss the Writ Petitions. No costs. Consequently, M.P.No.1/2015 (2 Nos.) are also dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1 The Manager,
City Union Bank Limited
Main Branch Kumbakonam
Thanjavur,
- 2 The Special Officer, City Union Bank Ltd,
Main Branch, Kumbakonam
- 3 The Registrar
Debt Recovery Appellate Tribunal 4th Floor
Indian Bank Circle Office 55 Ethiraj Salai
Chennai.

+1 cc to M/S.Rajandraj Associates sr.54025 & 54026
+2 ccs to Mr.S.Sethuraman Advocate sr.54382 & 54384
+1 cc to Mr.A.Shamsudeen Raja Advocate sr.54284

सत्यमेव जयते

W.P. Nos.5256 and 5257 of 2015

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