IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.4783 of 2015
& M.P.No.1 of 2015 and C.M.P.No.3319 of 2016

The Recovery Officer,
Debt Recovery Tribunal,
Kauvery Complex, Trichy Road,
Coimbatore ... Petitioner

vs.

1. N.Sathish Kumar,
   Rep by General Power of Attorney Agent
   N.Ashok Kumar, Ootacamund
2. S.Dinesh
3. S.Umesh
4. L.Nagaraj
5. Deenadayalan
6. Bank of Inda, rep by its Branch Manager,
   Coonoor ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the issuance of witness summons to the petitioner/6th defendant dated 24.08.2015 issued by the Sub Judge of Nilgiris at Uthagamandalam.

For Petitioner : Mr.G.R.Rajagopalan,
Additional Advocate General for
Mr.B.Rabu Manohar

For Respondent-1 :Mr.V.Raghavachari

For Respondent-5 :Mr.K.V.Sajeev Kumar

For Respondent-6 :Mr.S.Sathiyanaryanan

For Respondents 2 to 4:No Appearance

ORDER

This matter stands listed today after notice of motion ordered by this Court has been served on the respondents. Respondents 2 to 4 have not chosen to enter appearance, even though they received notice. First respondent is represented by Mr.V.Raghavachari, Advocate. Fifth respondent has entered appearance through Mr.K.V.Sajeev Kumar, Advocate. Sixth respondent is represented by Mr.S.Sathyanaraynan, Advocate. Though they have chosen to enter appearance through Counsel, today there is no representation for R5 and R6. Mr.G.Rajagopalan, learned senior counsel appears on behalf of Mr.Rabu Manohar, learned counsel for the petitioner. The arguments advanced by Mr.G.Rajagopalan, learned senior counsel and by Mr.V.Raghavachari, learned counsel for the first respondent are heard.

2. Before dealing with the issue that arises for consideration in this Civil Revision petition, it shall be useful to briefly narrate the background in which the Civil Revision Petition came to be filed. The suit property was originally owned by one Srikantiah. He is said to have created an equitable mortgage in respect of the suit property for the loan advanced to one Mahadevan as he stood as a guarantor of the

said Mahadevan. Since the principal borrower did not repay the amount to the Bank of India / the fifth defendant, proceedings were initiated before the Debts Recovery Tribunal for recovery of the outstanding amount from the guarantor, namely Srikantiah and after obtaining a recovery order, the property was brought for sale by the Recovery Officer, Debt Recovery Tribunal, Cauvery Complex, Trichy Road, Coimbatore, who is the petitioner in the Revision Petition / 6th defendant in the original suit concerned in this revision. In the auction conducted, the fifth respondent Deenadayalan emerged as the successful bidder and he got a sale deed executed by the Recovery Officer on behalf of the guarantor.

3. Even before the sale of the property by the Recovery Officer based on the recovery certificate issued by the Debt Recovery Tribunal, the first respondent in the Civil Revision Petition purchased the property under a sale deed dated 17.02.2003 from the above said Sri Kandiah and his sons, who are arrayed as defendants 1 and 2 in the suit /respondents 2 and 3 in the Civil Revision Petition. When the auction purchaser made an attempt to take physical possession, the first respondent / plaintiff came to know that such an auction sale had taken place, pursuant to which, he collected materials and filed the

above said suit for a declaration that the sale deed executed in favour of the 5th respondent / Deenadayalan, pursuant to the alleged action sale conducted by the revision petitioner / 6th defendant is fraudulent and hence, null and void.

4. The suit came to be filed by the first respondent against the sons of Srikantiah, Deenadayalan (auction purchaser), Bank of India (the mortgagee) and the recovery Officer of the Debts Recovery Tribunal arraying them as defendants 1 to 5 respectively. Pending disposal of the suit, in an interlocutory application filed by the first respondent / plaintiff, an interim injunction was granted. The 4th defendant / 5th respondent filed an application under Order VII Rule 11 C.P.C for rejection of the plaint on the ground that Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides a bar for such suit. The said application was dismissed by the said Court and as against the same, he filed a Civil Revision Petition under Article 227 of the Constitution of India before this Court in C.R.P.No.2496 of 2011.

5. This Court, after hearing, dismissed the said Civil Revision Petition and the Hon'ble Supreme Court also confirmed the order of

this Court passed in the said Civil Revision Petition. Thereafter, the trial of the suit commenced and during the part heard stage, to be precise, during the course of adduction of evidence on behalf of the defendants, the 4th defendant (alleged auction purchaser) summoned the revision petitioner / Recovery Officer to bring the documents relating to the alleged auction and depose regarding the sale. After receiving the summons, the 6th defendant /Recovery Officer has approached this Court with the present Civil Revision Petition invoking the power of superintendence under Article 227 of the constitution of India to set aside the witness summons dated 24.08.2015 issued by the trial Court in O.S.No.35 of 2010.

6. From the nature of things, it is obvious that the first respondent /plaintiff and the 5th respondent / 4th defendant alone shall be interested in resisting the Civil Revision Petition and others do not evince keen interest in resisting the present Civil Revision Petition. Though the revision petitioner has prayed for setting aside the witness summons issued to the revision petitioner, learned senior counsel arguing on behalf of the revision petitioner initially contended that the suit itself is not maintainable. So far as the revision petitioner is concerned, the suit is one barred by Section 33 of the Recovery of

Debts Due to Banks and Financial Institutions Act, 1993. However, as an answer to the above said submission, Mr.V.Raghavachari, learned counsel for the first respondent, contended that the bar provided under Section 33 of the said Act will not be applicable to the case on hand since the first respondent/plaintiff has filed the suit making allegation that the alleged auction sale itself is fraudulent and fraud will negative good faith. It is also the contention of Mr.V.Raghavachari that the proceedings before the Debt Recovery Tribunal came to be initiated against a dead person since Srikantiah had died on 15th of March 2003 itself, whereas the recovery proceedings came to be initiated in 2010; that though such a recovery order came to be obtained against a dead person, before bringing the property for sale in public auction, the Recovery Officer did not verify the encumbrances by getting the encumbrance certificate; that had the Recovery Officer taken care to verify the encumbrances, he would have come across the fact that the suit property had been purchased, even before the initiation of the recovery proceedings by the first respondent / plaintiff; that the subsequent purchaser, though bound by the prior mortgage, was a necessary party to the recovery proceedings and that the failure to do so will show lack of *bona fide* and fraud on the part of the Bank and the Recovery Officer.

7. Based on the above said submission, learned counsel for the first respondent submits that the suit filed by the first respondent does not come under the mischief of the bar provided under Section 33 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The above said contention of the learned counsel for the first respondent cannot be rejected as having no substance in it. However, after hearing the above said submissions made by the learned counsel for the first respondent, the learned senior counsel appearing for the petitioner submitted that the revision petitioner is very much aggrieved by the fact that he has been asked to come and depose regarding his official acts when everything could be ascertain from the records to be produced by the Recovery Officer and that hence, this Court shall issue a direction to restrict the scope of summons for the production of documents relating to the alleged auction sale and execution of the sale deed in favour of the said Deenadayalan. Learned counsel for the first respondent/plaintiff also submits that his party may not have any objection for doing so.

8. In view of the above said submissions, the present Civil Revision Petition is disposed of by directing that the scope of witness summons dated 24.08.2015 issued to the revision petitioner shall be

restricted to the production of the documents relating to the alleged auction sale and it shall be sufficient for him to cause production of those documents or the certified copies of those documents. Since the matter is pending for long time, this Court deems it appropriate to issue a direction to the trial Court to complete the trial and dispose of the same as early as possible, in any event not later than three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition are closed.

13.04.2016

Index: Yes/No
Internet: yes/No

srn

To

The Sub Judge,
Nilgiris, Uthagamandalam.

P.R.SHIVAKUMAR.J

srn

C.R.P (PD) No.4783 of 2015
& M.P.No.1 of 2015 and
C.M.P.No.3319 of 2016

13.04.2016