

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH

and

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Revision Petition (NPD) No.1490 of 2016
and CMP.No.9933 of 2016

1.M/s.Futnani Diary Farm
Rep. By its Managing Partner
Madhusudhan Futnani
S/o.Mohanlal Futnani
No.1/115, Old Mahabalipuram Road
Semmancherry, Chennai-600 116

2.Madhusudhan Futnani
S/o.Mohanlal Futnani
No.1/115, Old Mahabalipuram Road
Semmancherry, Chennai-600 116

...Revision Petitioners

Vs.

1. M/s.New Era Urban Amenities Ltd.,
Rep. By its Managing Director
Mr.S.Thiyagaraja Chettiar
Regd.Office at No.44, Pantheon Road
Thiru Complex, Egmore
Chennai-600 008

2.S.Thiyagaraja Chettiar

3.M/s.Ind Bank Housing Ltd.,
Rep. By its Manager
480, Anna Salai, Chennai-600 002

4.The Company Secretary/Authorized officer
M/s.Ind Bank Housing Ltd.,
Rep. By its Manager
480, Anna Salai
Chennai-600 002

5.Arul Madhusudhan Futnani

..Respondents

Prayer : Civil Revision Petition filed against the order dated 06.04.2016 passed in R.A.No.1 of 2009 in S.A.No.46 of 2008 on the file of the Debts Recovery Tribunal-II, Chennai.

For Petitioner : Mr.Venkatesh Mohanraj
for Mr.G.Paul Einstein

For Respondents : Mr.Krishna Srinivas
for R3 and R4

ORDER

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Heard the learned counsel for the Revision Petitioners and the learned counsel for the respondent-Bank.

2. By order dated 11.05.2016, this Court, while taking into consideration that the Review Petitioner has been enjoying the order of status quo even during the pendency of Review Petition filed before the Debts Recovery Tribunal-II, Chennai, and also for the reason of non functioning of the Appellate Tribunal, granted an order of status quo.

3. In the Civil Revision Petition, among several grounds raised, it is contended that the Presiding Officer of the DRT-II, Chennai, in respect of the issue before it viz., as to whether the lands are "Agricultural evidence" has founded a decision, based on surmises instead of going on the documents available on record. It is further stated that the entire records available on record were including Sale deeds, Patta, Chitta and Adangal and they would go to show that the Schedule properties were agricultural in nature and therefore, the DRT-II, would not have accepted the averments of respondents 3 and 4 that the Loan itself was taken by the Borrower only for building a Housing Scheme, when the Borrower had not at all provided any housing to anyone and the lands still remain to be put to only agricultural usage.

4. The learned counsel for the Revision Petitioners vehemently argued that the document dated 23.12.1996 is tainted with material alteration, however, their prayer before the DRT-II, Chennai, to prosecute the respondents 3 and 4 was not entertained and therefore, they are before this court with the above prayer.

5. We have perused the order passed in S.A.No.46 of 2008 and R.A.No.1 of 2009. It is seen that the 1st and 2nd respondents herein as applicants and the Revision Petitioners herein as guarantors, borrowed huge amount viz., Rs.618 lakhs on 19.10.1991 as a project loan from Ind Bank Housing Ltd., (IBHL) and Rs.262.36 lakhs on 17.02.1993 as project loan from LIC Housing Finance. By the Possession Notice dated 08.05.2008, the Revision Petitioners herein as mortgagors, were called upon to repay the amount of Rs.117,17,04,329/- (Rupees One Hundred Seventeen Crores Seventeen Lakhs Four thousand three hundred twenty nine only) which is due as on 31.12.2007 within 60 days from the date of the said notice. Against which, the Revision Petitioners herein, filed S.A.No.46 of 2008 before the DRT-II, Chennai, under SARFAESI Act, seeking the relief for setting aside the impugned Possession Notice under Section 13(4) of the SARFAESI Act and also for staying the further proceedings.

6. The DRT-II, Chennai, by order dated 12 December, 2008, passed the order in Sarfaesi Application (S.A.) No.46 of 2008 and pointed out in paragraph No.16.00 (Conclusion on Point No.(d)) as under:-

“ From the above notice it is evident that the 1st and 2nd

respondents have on the strength of the power of attorney dated 27.12.1990, executed by the 2nd applicant created mortgage over the subject lands to secure the above loan of Rs.618 Lakhs from the 3rd respondent and LIC Housing Finance Ltd., and the applicants have undertaken to complete the project which was abandoned by the 1st and 2nd respondents by entering into a fresh contract with the 2nd respondent and the bank. This notice dated 16.12.1997 of the advocate confirms the fact of acknowledgement of the liability by the 1st and 2nd respondents vide their letter dated 25.06.1996 addressed to the respondent bank. The mortgage created by the 1st and 2nd respondents over the subject lands is binding on the applicants vicariously and the contract entered into by the applicants with 1st and 2nd respondents is a fact. Hence, the mortgage debt is also binding on the applicants and the applicants cannot brush aside the liability attached to the subject lands mortgaged to the respondents. However, there is no personal liability to the 1st or the 2nd applicant as the 2nd respondent cannot by his acknowledgments, (executed if any) bind him. However, the mortgage liability of the applicants cannot be ruled out. With the above observation I conclude that the action of the respondents 3 and 4 is well within the limitation."

Further, in Paragraph No.18.00, the DRT-II, has observed as under:-

"18.00. By summing up the above factual and legal positions, the SARFAESI Application in my opinion fails for want of merits and bonafides and deserves to be dismissed. Accordingly, the SA.No.46/2008 is dismissed with costs and the **status quo order subsisting till this day is discharged. The possession notice dated 08.05.2008 stands approved.**"

Subsequently, the Revision Petitioners herein filed Review Application in R.A.No.1 of 2009, in which, the DRT-II, Chennai, by order dated 06.04.2016, rejected the submission made by the review applicants in their Memo dated 10.11.2008. Aggrieved by the same, the Revision Petitioners are before this Court.

7. It is seen that the interim order of status quo has been passed by this court on 11.05.2016, which was actually discharged by the DRT-II, as early as on 12.12.2008, however, with a view to accommodate the situation i.e., non functioning of the Debts Recovery Appellate Tribunal. However, thereafter, by the Notification issued by the Government of India, Ministry of Finance, Department of Financial Service, New Delhi, dated 12th April, 2016, it was notified that the Chairperson, Debts Recovery Appellate Tribunal, Allahabad, will stand entrusted with the additional in-charge of Chairperson, DRAT, Chennai. Hence, as per the said Notification dated 12th April, 2016, the DRAT-Allahabad, is to entertain the applications filed as against the order of the Debts Recovery Tribunal.

8. In the circumstances, we are of the considered view that if the Civil Revision Petitioners are aggrieved by the order of the Debts

Recovery Tribunal-II, Chennai, they are at liberty to approach the DRAT, Allahabad, for further remedy. Accordingly, the Revision Petitioners shall approach the DRAT, Allahabad, within 3 weeks from the date of receipt of a copy of this order and it is open to them to raise all their contentions. Further we are of the considered view that not to continue the order of status quo granted on 11.05.2016, as the conduct of the Revision Petitioners is not convincing for us. Accordingly, the status quo granted on 11.05.2016 is discharged.

9. The Civil Revision Petition is disposed of with the above observation. No costs. Consequently, connected MP is closed.

(H.G.R., J.) (M.V.M., J.)

Index: Yes/No
nvsri

13.07.2016

To

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and
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