

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P. No. 38722 of 2016

and

W.M. P. No.33177 of 2016

K. Muralidharan

.. Petitioner

vs.

1. The Chief Manager
Repco Home Finance Ltd.,
No.2897 and 2898
South Mada Street
Thanjavur 613 009.

2. The Debt Recovery Tribunal -III
Rep. by Registrar
Anna Salai, Chennai-2.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records of the order dated 27.09.2016 in S.A. No.256 of 2013 passed by the 2nd respondent confirming the order of the Learned Chief Judicial Magistrate, Thanjavur at Kumbakonam dated 10.09.2013 made in CMP No.825 of 2013 under Section 14 of SARFAESI Act and quash the same as illegal, unconstitutional and against the dictum laid down by the Full Bench of this Hon'ble Court in K. Arokiaraj and others vs. Chief Judicial Magistrate, Srivilliputhur, Virthunagar and other reported in 2013 (6) MLJ 641 and pass further orders.

For Petitioner : Mr. R. Chandrasudan

For Respondents : Mr. A. Ilangovan for R1
R2 - Tribunal

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this Writ Petition is to the order dated 27.09.2016 in S.A. No.256 of 2013 passed by the 2nd respondent Debts Recovery Tribunal -III, Chennai, confirming the order

dated 10.09.2013 made in CMP No.825 of 2013 by the Chief Judicial Magistrate, Thanjavur at Kumbakonam.

2. On 08.11.2016, we have passed the following order :-

"Order dated 27.09.2016 passed by the Debts Recovery Tribunal No.III, represented by its Registrar, Anna Salai, Chennai-2, in S. A. No. 256 of 2013, is assailed on the grounds, inter alia, that when the writ petitioner/borrower in the above said appeal, has categorically challenged the order dated 10.09.2013 made in CMP No. 825 of 2013 passed by the Chief Judicial Magistrate, Thanjavur at Kumbakonam, as without jurisdiction, in the light of the well settled judicial pronouncements of this Court in K. Arokiaraj & Ors. vs. Chief Judicial Magistrate, Srivilliputhur, Viruthunagar & Other, reported in 2013(6) MLJ 641. The Tribunal without addressing the jurisdictional issue, and the procedural defect, has merely sustained the order of the learned Chief Judicial Magistrate. The above said order dated 27.09.2016 in S.A. No. 256 of 2016 is challengable by way of an appeal, in as much as, a prima facie case of a jurisdictional error has been made out, we are inclined to order notice to the Chief Manager, Repco Home Finance Ltd., Thanjavur District, the first respondent herein, returnable in two weeks. Notice through Court and privately, returnable by 22.11.2016.

2. In the meanwhile, there shall be an order of interim stay of the order dated 27.06.2016 in S.A. No.256 of 2016 on the file of the Debt Recovery Tribunal -III, Chennai.

3. Post on 22.11.2016"

3. The first respondent bank has been put on notice. Inviting the attention of this Court, to the location of the mortgaged property, at Thanjavur, which is not within the territorial jurisdiction of a Metropolitan City and the specific ground raised before the second respondent Debts Recovery Tribunal-III, Chennai in S.A. No.256 of 2013, wherein the petitioner has specifically averred that as per the decision rendered by the Hon'ble Full Bench of this Hon'ble Court (Madurai Bench) in the case of K. Arokiaraj and Ors., vs. Chief Judicial Magistrate, Srivilliputhur, Virudhunagar and Ors., reported in 2013 (6) MLJ 641, that the District Magistrate, Thanjavur alone is the competent authority to pass orders under Section 14 of the SARFAESI Act, 2002 and not the Chief Judicial Magistrate and the innocuous reply of the respondent Bank, not

touching upon the jurisdictional aspect and further inviting the attention of this Court to the decision of Hon'ble Full Bench of this Court (Madurai Bench) in the case of K. Arokiaraj and Ors., in particular, paragraph No.35 and the subsequent decision of a Hon'ble Division Bench of this Court in the case of T.C. Ramadoss & anr. vs. Chief Manager and Authorised Officer, State Bank of India, Stressed Assets Management Branch, Chennai & Ors., reported in (2015) 2 MLJ 591, rendered on identical circumstances, with reference to the legal preposition of respective over ruling, Mr. R.Chandrasudan, learned counsel for the petitioner submitted that the Debts Recovery Tribunal, Chennai has failed to consider the said preposition of law, in proper perspective.

4. Learned counsel for the petitioner further submitted that though the decision of the Hon'ble Full Bench was rendered on 27.08.2013, the Chief Judicial Magistrate, Thanjavur by exceeding his jurisdiction, has passed an order on 10.09.2013 with reference to the mortgaged property, located within the jurisdiction of the District Collector, Thanjavur. He further submitted that the respondent Bank has not explained as to how the judgment of the Hon'ble Full Bench is not applicable to the facts of the case, but, has filed a counter affidavit stating that the petition under Section 14 of the SARFAESI Act, 2002 was filed in October 2012, and that therefore the judgment cited supra, is not applicable to this case. He submitted that the Tribunal has failed to consider the above judgments in proper perspective, to the case on hand, and erroneously confirmed the order passed under Section 14 of the Act.

5. On the above said preposition of law, Mr. R. Chandrasudan, learned counsel for the bank fairly submitted that the Chief Judicial Magistrate, Thanjavur has no jurisdiction to pass an order under Section 14 of the SARFAESI Act, 2002, when the property is situated within the jurisdiction of the District Collector, Thanjavur. Though he made further submission on the merits of the case, we are not inclined to deal with the same.

6. In the light of the above decisions, we have no hesitation to set aside the order dated 27.09.2016 in S.A. No.256 of 2013 passed by the 2nd respondent and also the order of the Learned Chief Judicial Magistrate, Thanjavur at Kumbakonam dated 10.09.2013 made in CMP No.825 of 2013, under Section 14 of the SARFAESI Act, 2002. At this juncture, Mr. A. Ilangovan, learned counsel for the first respondent prayed that liberty may be given to approach the concerned. It is always open to do so.

7. The Writ Petition is allowed. Consequently, the connect M.P is closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

avr

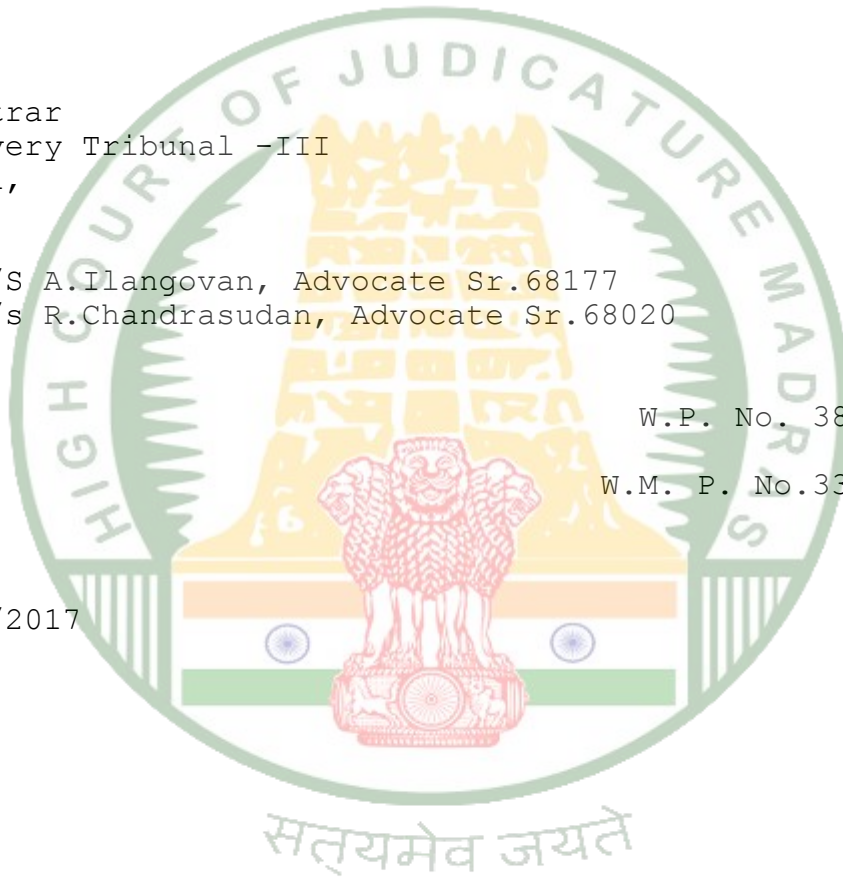
To

The Registrar
Debt Recovery Tribunal -III
Anna Salai,
Chennai-2.

+1cc to M/S A.Ilangovan, Advocate Sr.68177
+1cc to M/s R.Chandrasudan, Advocate Sr.68020

W.P. No. 38722 of 2016
and
W.M. P. No.33177 of 2016

GMI (CO)
RVR 09/01/2017



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