

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.4.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE S.VIMALA

Writ Petition No.9242 of 2017

1. Leelavathi Ammal
2. J.Shanmugham
3. J.Babu
4. J.Ramesh
5. J.Soundarajan
6. G.Ramani
7. S.Kamala
8. D.Vijaya
9. G.Uma

... Petitioners

Vs.

The State Bank of India
Guindy Branch
Mount Road Branch
Chennai 600 032.

... Respondent

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records in I.A.No.793 of 2014 in M.A.No.433 of 2010 on the file of Debts Recovery Appellate Tribunal, Chennai and quash the order dated 10.3.2017.

For Petitioners : Mr.B.R.Shankaralingam

O R D E R

(Made by Huluvadi G.Ramesh, J)

The petitioner seeks a writ of Certiorari calling for the records in I.A.No.793 of 2014 in M.A.No.433 of 2010 on the file of Debts Recovery Appellate Tribunal, Chennai and quash the order dated 10.3.2017.

2. Heard the learned counsel appearing for the petitioners.

3. The petitioners are the legal heirs of one T.Jayarathnam, who was the third defendant in the suit filed by the respondent

Bank for money. It appears that the said Jayarathnam stood as Guarantor for the loan availed by the first defendant and its Proprietors. The said suit was decreed and the Execution Petition was transferred to the Debts Recovery Tribunal, Chennai. The Tribunal ordered the same and issued Recovery Certificate. Consequently, order of attachment was issued, attaching the properties of the Guarantor. Since the Guarantor died within five months of the order of attachment, the petitioners herein, who are the legal heirs of the Guarantor, have filed an application to implead them as parties and to amend the Recovery Certificate. The Tribunal dismissed the said application and therefore, the petitioners filed another application to set aside the earlier order and to amend the Recovery Certificate. The Tribunal directed the petitioners to make pre-deposit of Rs.5.00 Lakhs within four weeks. Aggrieved by the said order, the petitioners have come up with this writ petition.

4. The learned counsel appearing for the petitioners contended that the respondent Bank has chosen to attach the properties devolved on the successors on the demise of the Guarantor, without attaching the properties of the Principal Debtor which would fetch more than one crore and realising the sale proceeds towards due payable to them on the ground that the Principal Debtors were declared insolvent, would deprive the legitimate right of the petitioners.

5. It is not in dispute that the Principal Debtors availed loan by mortgaging their properties. On their failure to repay the loan amount, the respondent Bank had initiated proceedings for recovering the dues payable to them. It is a normal procedure that when the person who availed loan commits default in repayment, the property mortgaged by him at the time of availing loan will be attached and thereafter, it will be sold and the sale proceeds will be adjusted towards the outstanding amount. But, in the instant case, the respondent Bank though initiated proceedings to recover the outstanding amount against the Principal Debtors, the Recovery Certificate was issued only against the properties of the Guarantor, but not against the properties of the Principal Debtors, since the Principal Debtors were declared insolvents. As rightly contended on behalf of the petitioners, who are the legal heirs of the deceased Guarantor, that when the property of the Principal Debtors would fetch more than one crore, without attaching the same and realising the sale proceeds towards the outstanding amount, the act of the respondent Bank in attaching the properties of the Guarantor is in violation of the principles of natural justice.

6. In view of the above, the order of attachment in respect of the properties of the petitioners, who are the legal heirs of the deceased Guarantor, is quashed. There shall be an order of

status quo for a period of four weeks. In the meanwhile, the respondent Bank shall take necessary steps first to attach the property of the Principal Debtors and to realise the outstanding amount from out of the sale proceeds, in compliance of the principles of natural justice.

7. In the result, the writ appeal is allowed. Consequently, WMP No.10195 of 2017 is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kpl

To

1.The Debts Recovery Appellate Tribunal,
Chennai.

2. The State Bank of India,
Guindy Branch,
Mount Road Branch, Chennai- 600 032.

+1cc to Mr.B.R. Shankaralingam, Advocate Sr. 22776

W.P.No.9242 of 2017.

SKV(CO)
VR(4/5/2017)

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