IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.06.2017**

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

and

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Civil Revision Petition (NPD) No.1670 of 2017
and
C.M.P.No.7828 of 2017

G.Anusuya ... Petitioner

Vs

1.The Authorised Officer,
Indian Bank,
Thanjavur Junction Branch
Ground Floor,
1087, Mission Street,
Thanjavur – 613 001.

2.Dr.T.Elangovan,
Chairman,
M/s.Abi & Abi Hospital,
No.80, Abi & Abi Towers,
Opp. Medical College,
Medical College Road,
Thanjavur – 613 004.
(Second respondent impleded
by order dt 08.06.2017
in C.M.P.No.8642 of 2017) ... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 10.04.2017 made in I.A.No.470 of 2017 in S.A.No.90 of 2017 on the file of the Debts Recovery Tribunal – III, Chennai.

For Petitioner : Mr.A.V.Arun

For R.1 : Mr.P.V.Muralidhar
For R.2 : Mr.A.Rajesh Kanna

ORDER

(Order of the Court was made by Huluvadi G.Ramesh.J.,)

This Civil Revision Petition has been filed by the petitioner against the order dated 10.04.2017 made in I.A.No.470 of 2017 in S.A.No.90 of 2017, on the file of the Debts Recovery Tribunal - III, Chennai.

2.Heard the learned counsel for the petitioner; learned counsel for the first respondent and the learned counsel for the second respondent.

3.The petitioner is a Proprietrix of M/s.MVK Nursing Home, Thanjavur. The said hospital was catering to the needs of public in and around the town of Thanjavur. In addition to the Nursing home, the petitioner also running Jayam Pharmacy and Jayam Medicals. For the purpose of improvement of the above entities, the petitioner availed Overdraft facilities from the first respondent Bank to the tune of Rs.180 lakhs. Subsequently, the petitioner also availed various term loan and other facilities from the Bank for the purpose of creation of further infrastructure to the Nursing Home to the tune of Rs.852.5 lakhs. In addition to that, the petitioner also availed home loan of Rs.168 lakhs from the first respondent Bank.

4.Initially, the petitioner was very proper in paying the principal and interest for the loans availed by her. However, due to stiff competition and financial crises, the petitioner is unable to repay the said loan dues. In view of the said irregularity committed by the petitioner, the first respondent Bank issued demand notices under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, on 19.06.2015 and 20.06.2015.

5.In this regard, the petitioner submitted a representation dated 17.07.2015 to the first respondent Bank. However, without considering the same, the first respondent Bank proceeded to secure the assets of the petitioner on 06.05.2016. In furtherance to the same, the first respondent Bank issued the impugned sale notice dated 11.01.2017 for the proposed sale of the secured assets by e-auction mode on 16.02.2017. Aggrieved by the same, the petitioner approached the Debts Recovery Tribunal – III, Chennai on 10.02.2017.

6.While the proceeding is pending before the Debts Recovery Tribunal, not satisfied with the procedure adopted by the Tribunal on 10.04.2017, the petitioner is before this Court with this Civil Revision Petition.

7.While entertaining the Civil Revision Petition, Registry has raised some doubt about the maintainability of the same. The petitioner fairly submitted that "this is not a regular appeal to be filed before the Debts Recovery Appellate Tribunal. The petitioner is questioning the validity of the procedure adopted by the Debts Recovery Tribunal".

8.During the course of trial, on 14.03.2017, the Debts Recovery Tribunal has passed an interim order directing the petitioner to comply with certain conditions and stayed all further proceedings and also directed the parties to maintain *status quo*. Subsequently, the petitioner also filed a memo regarding payments made by her on 30.03.2017. But, without extending the said interim order; without considering the subsequent payments made by the petitioner and without holding any enquiry, the Debts Recovery Tribunal had simply adjourned the matter. This according to the petitioner amounts to a procedural irregularity and hence, the said procedure adopted by the Tribunal may be interfered with by this Court.

9.At the time of admission of this Civil Revision Petition while ordering notice to the respondents, a Division Bench of this Court on 04.05.2017 has passed the following order:-

> "The condition of deposit of Rs.50 lakhs and further sum of Rs.1 crore has been complied with by the petitioner and thereafter only, the interim order of *status quo* was extended. However, subsequently, the *status quo* order has not been extended.
>
> 2.Taking note of the deposit of Rs.1.5 crores, the order of *status quo* already granted by the Tribunal is revived and is extended until further orders."

10.The learned counsel for the second respondent submitted that the second respondent is a successful bidder. The first respondent Bank has strictly followed the procedure and norms; conducted e-auction and declared the second respondent as the successful bidder. The second respondent herein has also paid the entire amount to the first respondent Bank as prescribed and thereafter, sale certificate was also issued by the first respondent Bank on 24.03.2017 and the same was registered on the file of the Joint Sub Registrar, Thanjavur – 1 on 27.03.2017.

11.According to the learned counsel for the second respondent, the interim order passed in S.A.No.90 of 2017 dated 14.03.2017, was that the petitioner herein should remit a sum of Rs.50 lakhs to the credit of the loan by today i.e., 14.03.2017 itself and further, a sum of Rs.1 crore to the credit of the loan account or or before 28.03.2017. In the event of non compliance of any one of the conditions, the interim order granted by the Tribunal shall stand automatically vacated and the liberty was also given to the first respondent Bank herein to proceed further in accordance with law including the auction sale on 15.03.2017.

12.Since, the petitioner herein has not complied with the said conditional order passed by the Tribunal within the time stipulated, the first respondent Bank proceeded with the e-auction and the second respondent herein has become the successful bidder. Hence, according to the second respondent, there is no procedural irregularity committed by the Debts Recovery Tribunal and accordingly, the same does not require any interference at the hands of this Court.

13.The learned counsel for the petitioner submitted that the conditional order passed by the Debts Recovery Tribunal has been fully complied with by the petitioner. According to him, the petitioner paid a sum of Rs.50 lakhs on 15.03.2017 and also paid Rs.1 crore on 28.03.2017 itself. Thus, according to the learned counsel, by considering the said facts, the Tribunal ought to have extended the interim order/*status quo*. Hence, according to the learned counsel, there is a procedural error on the part of the Tribunal.

14.We have considered the above submissions. At the time of admission of this Civil Revision Petition, it has not been brought to the notice of the Division Bench about the subsequent events i.e, e-auction; the second respondent herein remained successful bidder; sale certificate; registration of sale certificate, etc. At this stage, this Court cannot go into said issues. Further, what is under challenge is only the procedure adopted by the Tribunal and not the order passed by the Tribunal. Hence, this Court cannot interfere with the procedural irregularity committed by the Tribunal.

15.In view of the above, the petitioner is at liberty to challenge the order passed by the Tribunal before the Debts Recovery Appellate Tribunal, if she is so advised. In the event, any appeal is filed by the petitioner herein before the Debts Recovery Appellate Tribunal, in that proceedings, the respondents 1 and 2 herein shall be impleaded as parties.

16.With the above observations, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(H.G.R.J.,) (T.K.R.J.,)
08.06.2017

Speaking order/non speaking order
Index:Yes/No
Note : Issue order copy on 13.06.2017
jbm

To

Indian Bank,
Thanjavur Junction Branch
Ground Floor,
1087, Mission Street,
Thanjavur – 613 001.

HULUVADI G.RAMESH .J
and
RMT.TEEKAA RAMAN,J
jbm

C.R.P.(NPD) No.1670 of 2017

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