

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.11338 of 2017
and WMP Nos.12279 & 15170 of 2017

Suriyan Benefit Fund (Madras) Limited,
(Declared as Nidhi) Reg.No.18-26018,
Rep. by its Secretary - Sri.J.Radhakrishnan,
No.487, (Old No.435) Mint Street,
Chennai - 600 079. Petitioner

vs.

M/s.ICICI Bank Ltd.,
(Formerly Bank of Madura),
ICICI Towers, 2nd Floor,
East Wing, 24, South Phase,
Ambattur Industrial Estate,
Chennai - 600 058. Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records in IA No.662/2016 in Ia.568/2016 in OA No.994/2001 on the file of the Debt Recovery tribunal No.II, Chennai dt.13/01/2017 which was confirmed by order dated 03.04.2017 made in MA No.16/2017 on the file of Debt Recovery Appellate Tribunal Chennai, quash the same.

For Petitioner : Mr.B.Shankaralingam

For Respondent : Mr.Krishnasamy

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ORDER

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

Petitioner, is a tenant under the borrowers. The borrowers who are the defendants, in the Original Application had availed enhanced loan facility to a tune of Rs.35,00,000/- from Bank of Madura and executed loan documents on 28.09.1994. The borrowers committed default in repayment of the loan dues. Bank had initiated recovery proceedings in O.A.No.994 of 2001, pending the proceedings Bank of Madura got merged with ICICI Bank and the proceedings was continued by the Transferee Bank.

2. Pending recovery proceedings even before passing of final order, the borrowers had consented for sale of the secured asset towards discharge of the loan dues and the Debts Recovery Tribunal ordered sale of the secured asset. As there were no bidders the Bank itself purchased the property by quoting a higher amount than the upset price and purchased the properties and sale certificates were issued during 2005, in favour of the respondent bank.

3. The borrowers challenged the said sale and were unsuccessful before the DRT and DRAT, respectively. Thereafter, this Court was pleased to set aside the orders and sale. The Bank thereafter preferred appeal before Hon'ble Supreme Court and the order passed by this Court was set aside, and that the order of the Debts Recovery Tribunal, was restored.

4. The bank then filed application in I.A.No.568 of 2016 for appointment of an Advocate Commissioner, with the assistance of Police, to take physical possession of the secured asset.

5. The grievance of the petitioner is that he is a tenant under the borrower from 14.03.1994 much prior to the enhanced credit facility sanctioned to the borrower issued on which the Original Application was filed by the Bank. Petitioner was put on notice by the borrower with regard to the Debts Recovery Tribunal proceedings only after filing of the application by the Bank, for taking recovery of possession. Thereafter, the petitioner filed I.A.No.622/2016 to implead itself in the application filed by the Bank, since the Petitioner is a statutory tenant in occupation of the premises from 1994 and rental agreements were also filed.

7. The Debt Recovery Tribunal by order dated 13.01.2017 dismissed the impleading application on the ground that the rental agreement was not registered and appointed an Advocate Commissioner, to take physical possession of the property purchased by the Bank.

8. Aggrieved over the same, the petitioner filed appeal before DRAT in M.A.No.16 of 2017 and the same was also dismissed on the ground that borrower has set up the petitioner to delay the proceedings. As against the said order, present writ petition has been filed.

9. A Hon'ble Division Bench of this Court, vide order dated 05.05.2017 in WMP No.12279 of 2017 in W.P.No.11338 of 2017 has granted interim stay of the order impugned. Bank has filed WMP No.15117 of 2017 for vacating the stay. Subsequently, on 23.08.2017, when the matter came up for further hearing, Mr.K.Krishnaswamy, learned counsel for the bank submitted that amicable settlement between the borrower and the bank was in progress and that part payment had already been made. He further submitted that if two weeks time is granted, the entire issue would be settled.

10. Today, when the matter came up for further hearing, on the basis of an affidavit dated 03.10.2017 filed by the Manager of ICICI Bank Limited, Chennai, respondent herein, Mr.Krishnasamy, learned counsel for the bank submitted that during the pendency of the instant writ petition, as owner of the property, bank has auctioned the same by e-auction. One of the borrowers Mr.Selvaraj made a bid of Rs.1 Crore 75 Lakhs. Bank has accepted the same. Mr.Selvaraj, has made the entire sale consideration in instalments. Bank has to execute a sale deed in favour of the said borrower, which is only a formality.

11. In the affidavit dated 03.10.2017, Manager of the said bank viz. ICICI Bank Limited has also placed on record that bank would not take physical possession of the property at Door No.487 Old No.251, Mint Street, Chennai - 600 001, in which the writ petitioner claims to be a tenant.

12. Bank Manager, ICICI Bank, Chennai, in his affidavit dated 03.10.2017, has further stated that bank reserves its right to take possession of the property at Korrukupet, subject matter of order of the Debts Recovery Tribunal. Bank Manager has further stated that said property at Korrukupet, is not the subject matter of the present writ petition.

13. Ultimately, Bank Manager, ICICI Bank, has stated that inasmuch as possession of the petitioner at Door No.487 Old No.251, Mint Street, Chennai - 600 001, will not be taken, grievance of the writ petitioner, who claims himself to be a tenant does not survive. Bank Manager, ICICI Bank, has stated that writ petition be closed after recording the abovesaid submissions. Submission is placed on record. Affidavit dated 03.10.2017 is directed to be treated as part of record.

14. In the light of the above, writ petition is closed. No costs. Consequently, the interim order granted in WMP No.12279 of 2017, is vacated and vacate stay petition in WMP No.15170 of 2017, is closed.

(xerox copy of affidavit dated 03.10.2017 enclose)

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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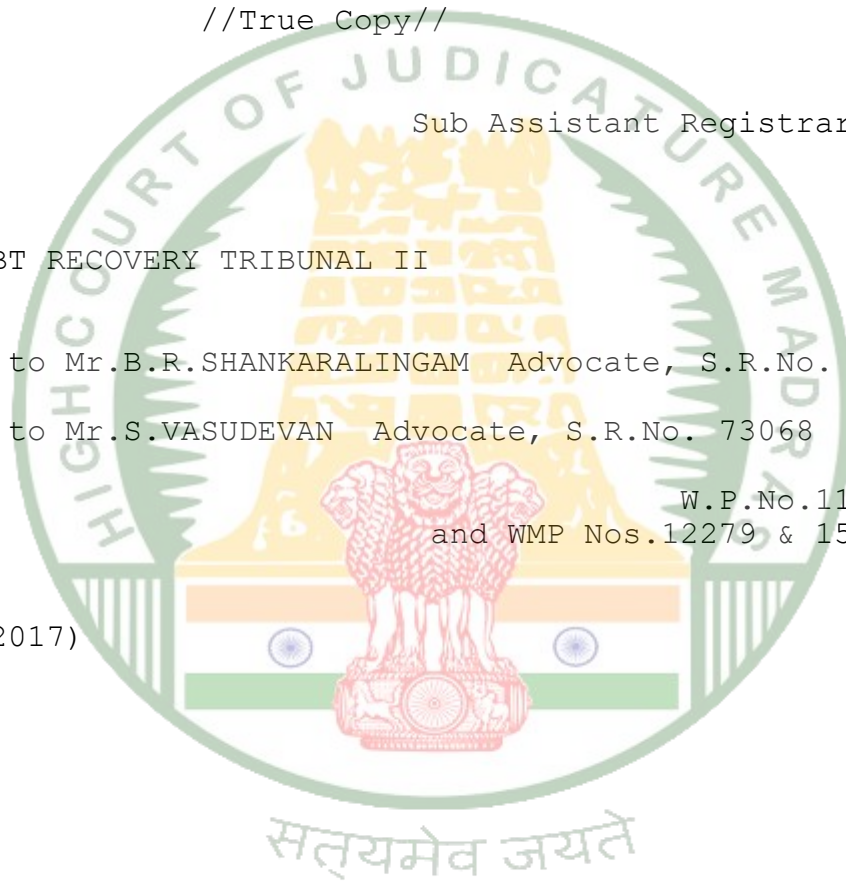
1. THE DEBT RECOVERY TRIBUNAL II
CHENNAI

+1cc to Mr.B.R.SHANKARALINGAM Advocate, S.R.No. 72943

+1cc to Mr.S.VASUDEVAN Advocate, S.R.No. 73068

W.P.No.11338 of 2017
and WMP Nos.12279 & 15170 of 2017

MI (CO)
TR(27/11/2017)



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