IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14/11/2017**

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Civil Revision Petition (PD) No.4112 of 2017

S. Elred Kumar ... Petitioner

Vs

1. M/s. City Union Bank Ltd
   rep. by its Chief Manager
   No.706 Ashok Nagar
   Chennai.

2. M/s. Esvee Card
   Proprietrix Firm
   rep. by its Proprietrix G.Sridevi
   No.54 South Usman Road
   T. Nagar
   Chennai 600 017.

3. G. Sridevi

4. D. Purushothama Naidu

5. Shanmugham (Deceased) ... Respondents

Petition filed under Article 227 of the Constitution of India, against the order dated 31/8/2017 made in M.A.No.130 of 2015 by the Debt Recovery Appellate Tribunal, Chennai, confirming the order, dated 4/8/2015 made in I.A.No.62 of 2015 in O.A.No.33 of 2014, on the file of the Debt Recovery Tribunal - II, Chennai.

For petitioners ... Mr.V. Anand

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ORDER

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

Order made in M.A.No.130 of 2015, dated 31/8/2017, on the file of the Debt Recovery Appellate Tribunal, Chennai, is impugned in the instant Civil Revision Petition, by the fifth defendant in O.A.No.33 of 2014.

2. Material on record discloses that M/s. Esvee Card, Proprietrix firm, T.Nagar, has availed credit facility, from City Union Bank Ltd., Chennai. M/s.G. Sridevi, D. Purushothama Naidu, and S.Shanmugham, have stood as guarantors, for the loan availed. As there was default, City Union Bank Ltd., has filed O.A.No.33 of 2014, on the file of the Debt Recovery Tribunal - II, Chennai, for the following reliefs:-

> (i). to pass an order against the defendants directing them jointly, severally and co-extensively to pay the debt aggregating to Rs.13,13,850/- along with pendilite and future

interest at the rate of 14.5% p.a., from the date of this Original Application till the date of payment in full and to draw the recovery certificate for the same.

(ii). To pass an order that in default of the payment of the debt, properties described in the Schedule A, mortgaged to the applicant bank may be sold under the supervision of this Hon'ble Tribunal and the not sale proceeds be appropriated towards the debts mentioned above.

(iii). To pass an order that a personal decree may be granted against all the defendants for realisation of entire application amount.

(iv). To award cost of the present application in favour of the applicant bank and against defendants.

3. Pending O.A., the writ petitioner/fifth defendant has filed I.A.No.62 of 2015, praying for a direction to reject O.A.No.33 of 2014, filed by the Bank, as not maintainable.

4. Bank has filed a counter affidavit, dated 25th May 2015.

5. After adverting to the rival submissions that on a complaint made to the Commissioner of Police, Chennai, directed to be enquired, vide order, made in W.P.No.34852/2006, as against the vendor of the writ petitioner, and the counter affidavit filed by the Bank, vide order, made in I.A.No.62 of 2015 in O.A.No.33 of 2014, dated 4th August 2015, Debt Recovery Tribunal - II, Chennai, dismissed I.A.No.62 of 2015 as hereunder:-

> "7. Heard. The petitioner stated that the reason to reject the OA is that the petitioner is the owner of the schedule mentioned property. The deceased R.5 herein created documents and mortgaged to various banks. The original title deed was deposited by him with Syndicate Bank only, not other banks. The petitioner herein paid the entire due amount to the Syndicate Bank. Hence R.5 herein obtained the original title deeds. In all other banks, forged documents were deposited. Therefore, the OA filed by the applicant bank against the schedule mentioned property is not valid. Hence OA may be rejected.
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> 8. The respondent Bank stated that the original owner of the property is R.5 herein. OA is filed on the basis of Demand Promissory Note. All the allegations stated in the petition have to

be decided only in full trial. Hence the petition may be dismissed.

9. On perusal of the petition pleadings, it reveals that schedule mentioned proper was mortgaged with R.1 bank, Syndicate Bank and also many other banks by R5 herein. The original title deeds are deposited only with the Syndicate Bank. The petitioner further stated that he purchased the entire property from R.5 herein. R.5 who in turn, promised to get the original title deeds from Syndicate Bank after payment of the due. The petitioner paid the entire due to Syndicate Bank and obtained the original title deeds. Therefore, the petitioner alleged that he is the rightful owner of the schedule mentioned property. Even if we assume it is true, it cannot be decided in the preliminary stage of the OA. All the allegations stated by the petitioner have to be discussed and decided only in full trial. Therefore, I find there is no proper reason to allow the petition.

10. In the result, IA No.62 of 2015 is dismissed. No costs."

6. Being aggrieved by the order of dismissal of I.A.No.62 of 2015, filed to reject O.A.No.33 of 2014, the petitioner has filed M.A.No.130 of 2015, on the file of the Debt Recovery Appellate

Tribunal, Chennai. Though the petitioner has reiterated the same submissions, the Debts Recovery Appellate Tribunal, by observing that the memo filed by the writ petitioner, setting out the details of the alleged fraud committed by his vendor, would at the most be a good defence, in O.A.No.33 of 2014 and that O.A cannot be disposed of or dismissed by entertaining an interim application I.A.No.62 of 2015, confirmed the decision made by the Tribunal, in I.A.No.62 of 2015 in O.A.No.33 of 2014 and accordingly, dismissed the appeal.

7. Though Mr.V.Anand, learned counsel for the petitioner once again reiterated that fraud has been committed on the writ petitioner by his vendor, and that the writ petitioner is a bonafide purchaser, not borrowed any money from the Bank, and therefore, not liable to pay any amount to the Bank, and that the Tribunal, ought to have considered the averments made in the memo filed before the Debt Recovery Tribunal, and consequently, allowed I.A.No.62 of 2015, filed for rejection of O.A, we are not inclined to accept the said contentions, for the reason that in exercise of powers conferred under sub-Section 1 and 2 of Section 36 of the Recovery of Debts Due to Bank and Financial Institutions Ordinance 1993 (25 of 1993), the

Central Government have framed Debts Recovery Tribunal (Procedure) Rules 1993. Rule 12 of the said Rules, sets out the procedure to be followed, and the same is extracted hereunder:-

> **"Filing of written statement and other documents by the defendant and by the applicant as a reply to the written statement -**
>
> (1). The defendant may, within a period of thirty days from the date of service of summons, file two complete sets of written statement including claim for set-off or counter claim, if any along with documents in a paper book form.
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> (2). A copy of the written statement filed under sub-rule (1) shall be served to the applicant.
>
> (3). If the defendant fails to file the written statement of his defence, including claim for set off or counter claim under sub-rule (1), if any, within the said period of thirty days, the Presiding Officer may in exceptional cases and special circumstances to be recorded in writing, extend the period, by such further period not exceeding fifteen days.

(4). If the defendant have filed their claim for set-off or counter claim, the applicant shall file reply statement in answer to the claim for set-off or counter claim within a period of thirty days of filing of such claims.

(5). If the applicant fails to file his reply within the period of thirty days, the Presiding Officer may, in exceptional cases and special circumstances, to be recorded in writing, extend the period, by such further period not exceeding fifteen days.

(6). The written statement of the defendant including claim for set-off or counter claim or any other pleading whatsoever by the defendant or the applicant, as the case may be, shall be supported by an affidavit sworn in by the defendant or the applicant or the witnesses, verifying all the facts and pleadings and other documents annexed and the affidavits of witnesses, to be led by defendant or the applicant shall be filed simultaneously with the written statement of the defendant or the reply of the applicant.

(7). If the defendant or the applicant as the case may be, fails to file the reply as specified above, the Tribunal may proceed forthwith to pass an order on the application as it thinks fit.

(8). Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant, to pay such amount, to the extent of the admission, by the applicant within a period of thirty days from the date of such order, failing which the Tribunal may issue a certificate in accordance with Section 19 of the Act, to the extent of amount of debt due admitted by the defendant.

(9). The Tribunal may at any time for sufficient reason order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable:

Provided that after filing of the affidavits by the respective parties where it appears to the Tribunal that either the applicant or the defendant desires the production of a witness for cross examination and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross examination, then, the affidavit shall not be taken into evidence and further that no oral evidence other than that given this proviso will be permitted.

(10). If the defendant denies his liability to pay the claim made by the applicant, the Tribunal may act upon the affidavit of the applicant who is acquainted with the facts of the case or who has on verification of the record sworn the affidavit in respect of the contents of application and the documents as evidence.

(11). The provisions contained in Section 4 of the Banker's Books Evidence Act, 1891 (18 of 1891) shall apply to a certified copy of an entry in a banker's book furnished along with the application filed under sub-section (1) of Section 19 by the applicant."

8. During the course of hearing, Mr.V.Anand, learned counsel for the petitioner submitted that written statement has not been filed, but in I.A.No.62 of 2015, permission has been sought for, to file written statement and counter proof affidavit. Statutory rules, set out the procedure to be followed by the Tribunal, in the matter of filing of written statement and counter proof affidavit.

9. As rightly observed by the Debt Recovery Tribunal – II, Chennai, in the order made in I.A.No.62 of 2015 in O.A.No.33 of 2014,

there cannot be any full adjudication of evidence, at the interim stage and all the allegations stated by the writ petitioner, have to be discussed and decided only in full trial.

10. While considering the memorandum of grounds and arguments made in M.A.N0.130 of 2015, the Debt Recovery Appellate Tribunal, Chennai, has also made observations, in favour of the writ petitioner as hereunder:-

> "9. Whatever has been averred by the appellant in Memo, at the most will be a good defence in O.A., but O.A filed for recovery of loans, as it has not been on the basis of interim application OA cannot be disposed of or dismissed. Even otherwise also stake of appellant is only Rs.15 lakhs that too on the basis of an agreement of sale, hence on the basis of his prayer made in IA in OA cannot be dismissed."

11. Going through the entire material on record, we are of the view that no manifest error is committed by both Debt Recovery Tribunal – II, Chennai and Debts Recovery Appellate Tribunal, Chennai. There are no merits in the writ petition warranting interference.

S.MANIKUMAR,J

&

R.SURESH KUMAR,J

mvs.

12. Accordingly, this **writ petition is dismissed.** No costs. Consequently, the connected Miscellaneous Petition is closed.

(S.M.K., J.) (R.S.K.J)
14th November 2017

mvs.

Index : No

Internet : Yes

To

1. The Debt Recovery Appellate Tribunal, Chennai

2. The Debt Recovery Tribunal - II, Chennai.

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