BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(PD)(MD)Nos.1104 to 1107 of 2013
and
M.P.(MD)No.1 of 2013

R.Balaji :Petitioner in all C.R.Ps.

Vs.

1.X.John Kennedy
2.The Authorized Officer,
Indian Bank,
Tallakulam Branch,
No.73, Alagar Kovil Road,
Madurai-625 020. :Respondents in all C.R.Ps.

Common Prayer in C.R.P.(PD)(MD)Nos.1104, 1106 and 1107 of 2013: Civil Revision Petitions are filed under Article 227 of the Constitution of India to call for the records of the Debts Recovery Tribunal, Madurai, pertaining to its order dated 02.05.2013 passed in I.A.Nos.288, 289 and 290 of 2013 in S.A.No.111 of 2011 respectively and set aside the same.

PRAYER in C.R.P.(PD)(MD)No.1105 of 2013: Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records of the Debts Recovery Tribunal, Madurai, pertaining to its records in S.A.No.111 of 2011 and set aside the same.

For Petitioner : Mr.M.V.Mani Babu,
For Respondent No.1 : Mr.Isaac Mohanlal, Senior Counsel, For Mr.S.Xavier Rajini
For Respondent No.2 : Mr.R.Pandivel

COMMON ORDER

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[Order of the Court was made by R.SUBBIAH, J.]

C.R.P.(PD)(MD)Nos.1104, 1106 and 1107 of 2013 have been filed as against the common order passed by the Debts Recovery Tribunal, Madurai, in I.A.Nos.288, 289 and 290 of 2013 in S.A.No.111 of 2011 respectively, dated 02.05.2013.

2. C.R.P.(PD)(MD)No.1105 of 2013 has been filed to call for the records of the Debts Recovery Tribunal, Madurai, pertaining to the application in S.A.No.111 of 2011 and set aside the same.

3. The brief facts, which are necessary to dispose of these Civil Revision Petitions, are as follows:

3.1. The petitioner herein is the auction purchaser pertaining to the property situated in Old R.S.No.5/B1, then No.9/4 Part now R.S.No.9/8A bearing Plot No.1, Madurai Hosseries Industries Industrial Estate of an extent of 1000 square metres at Velathukulam Village, Tamaraipatti Sub-Registration District, Madurai District. The said property was one of the two properties auctioned by the second respondent herein viz., the Authorized Officer, Indian Bank, Tallakulam Branch, Madurai, towards the dues owed by the first respondent to the bank. The sale notice in respect of the said properties was issued by the second respondent on 24.04.2011. On 23.05.2011, the petitioner has submitted the tender papers and paid the earnest money deposit. On 26.05.2011, the petitioner's tender was accepted and he has paid 25% of the tender amount. On 14.06.2011 the sale in favour of the petitioner was confirmed and on 24.06.2011 sale certificate was issued in his favour. On the same day, he deposited a sum of Rs.20,01,000/- towards the full balance sale price. On 03.02.2012, the District Collector took possession of the auctioned property from the first respondent. On 04.02.2012, the petitioner was put in possession of the property. On 06.02.2012, sale deed was registered in his favour and on and from 04.02.2012, the petitioner is in possession and enjoyment of the property.

3.2. While the matter stood thus, the first respondent herein has challenged the sale notice dated 24.04.2011, by filing a securitization application before the Debts Recovery Tribunal, Madurai, under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The said application was numbered as S.A.No.111 of 2011. The said application was signed and verified by the first respondent on 16.05.2011. The first respondent, by filing the said application, sought for setting aside the sale notice dated 24.04.2011 and sought for a further direction to the second respondent to receive the sum arrived at by the first respondent towards full and final settlement of loan and re-deliver the subject matter property to the first respondent. Along with the main relief, an application in I.A.No.681 of 2011 was filed seeking stay of the sale notice. The said stay petition was dismissed, by order dated 23.05.2011 by the Tribunal.

3.3. Aggrieved over the dismissal of I.A.No.681 of 2011, the first respondent preferred W.P.(MD)No.6595 of 2011. On 22.06.2011, an interim stay was granted subject to the condition that the first respondent should deposit Rs.30 Lakhs with the second respondent within three weeks. On 02.12.2011 the said Writ Petition was heard and finally, dismissed with a direction to the first respondent to approach the Debts Recovery Appellate Tribunal in the manner known to law. By that time, the property had been sold by the second respondent to the petitioner by auction sale held on 26.05.2011. On 24.06.2011 the sale certificate was also issued. The first respondent has not challenged the auction sale dated 26.05.2011 so far.

3.4. The first respondent filed an appeal against the order of dismissal made in I.A.No.681 of 2011 before the Debts Recovery Appellate Tribunal, Chennai, in AIR No.989 of 2011. The said appeal was filed with a delay of 196 days and the delay application was dismissed, against which, the first respondent preferred W.P.No.8099 of 2012 on the file of Principal Bench of this Court. The said Writ Petition was dismissed on merits, by order dated 28.08.2012. Against the same, the first respondent filed S.L.P.No.35643 of 2012 before the Hon'ble Supreme Court and the Supreme Court has also dismissed the said Special Leave Petition on 08.02.2013. The first respondent, after the dismissal of S.L.P.No.35643 of 2012, filed I.A.Nos.288 to 290 of 2013. In I.A.No.288 of 2013, the first respondent sought for impleading the petitioner as a party respondent in S.A.No.111 of 2011. In I.A.Nos.289 and 290 of 2013, the first respondent sought for extensive amendments to S.A.No.111 of 2011 including the relief prayed. It is pertinent to be noted that the amendment completely changes the nature of the petition as well as the cause of action. After S.A.No.111 of 2011 has become infructuous, I.A.Nos.288 to 290 of 2013 have been filed to revive the already dead cause of action in order to resurrect S.A.No.111 of 2011. However, without considering those aspects, the Debts Recovery Tribunal, by order dated 02.05.2013, allowed the applications for impleading and amendments. The Tribunal, without even issuing notice to the petitioner, impleaded him as respondent in S.A.No.111 of 2011. Furthermore, extensive amendments have been ordered behind the back of the petitioner and that would certainly amount to change in the entire pleadings and cause of action. Aggrieved over the same, the present Civil Revision Petitions have been filed.

4. Today, when the revisions were taken up for consideration, the learned counsel for the petitioner made a detailed submission by inviting the attention of this Court to the common order passed by the Debts Recovery Tribunal. His main submission focussed on the point is that the property has been already sold by the second respondent to the petitioner by way of auction sale held on 26.05.2011 and sale certificate was also issued on 24.06.2011. The possession was also handed over to the petitioner. Therefore, S.A.No.111 of 2011 itself has become infructuous. When that being so, without ordering notice, the Tribunal has impleaded the petitioner by allowing the application in I.A.No.288 of 2013 and also allowed the interlocutory applications in I.A.Nos.289 and 290

of 2013 filed for extensive amendments, which would amount to complete change in the entire pleadings and cause of action. Since the possession of the property itself has been handed over to the petitioner, nothing survives for adjudication in S.A.No.111 of 2011. Thus, the learned counsel prays to set aside the common order dated 02.05.2013.

5. Per contra, the learned Senior Counsel appearing for the first respondent, having adverted to the averments made in the counter-affidavit, submitted that the respondent bank, without adhering to the provisions contemplated in the SARFAESI Act, proceeded with the sale notice dated 24.04.2011. Challenging the same, the first respondent was constrained to file SARFAESI Appeal in S.A.No.111 of 2011 along with an application in I.A.No.681 of 2011 for stay of the sale notice. However, the Tribunal dismissed the stay application in I.A.No.681 of 2011, by order dated 23.05.2011. The auction was conducted on 26.05.2011 and the petitioner herein and one Rajapandi alone were the bidders for the immovable property factory premises and Kriloskar Generator respectively. The bank, without disclosing the details of the auction purchaser, informed the first respondent that his factory premises along with EB service had been sold for a sum of Rs.30 lakhs and Kriloskar Generator for a sum of Rs.2,32,000/-, vide telegram dated 13.06.2011.

6. While the matter stood thus, challenging the proceedings of the Tribunal, in S.A.No.111 of 2011, dated 23.05.2011, the first respondent filed W.P.(MD)No.6595 of 2011. Along with the Writ Petition, stay petition in M.P.(MD)No.1 of 2011 was also filed seeking to stay the further proceedings pursuant to the sale notice dated 24.04.2011. This Court, by order dated 22.06.2011, granted an order of interim stay on condition that he should deposit a sum of Rs.30 Lakhs within a period of three weeks. Immediately thereafter, the same was communicated to the bank and in compliance to the order of this Court, the first respondent remitted a sum of Rs.30 Lakhs to the bank on 12.07.2011. However, in spite of the order of this Court, the bank issued a sale certificate in favour of the petitioner on 24.06.2011 in respect of the immovable property. The first respondent was kept under dark about the issuance of sale certificate to the petitioner, despite his representation made to the bank. Therefore, it is just and necessary to implead the petitioner herein and make necessary amendment in S.A.No.111 of 2011, in view of subsequent proceedings.. Therefore, there is no illegality in amendment in S.A.No.111 of 2011, as stated by the petitioner. The Tribunal also considering the facts and circumstances of the case, allowed all the applications filed by the first respondent. However, the first respondent admitted that the common order was passed without issuing notice to the petitioner. Thus, the learned Senior Counsel for the first respondent submitted that by setting aside the orders impugned herein, the matter could be remitted back to the Debts Recovery Tribunal, for fresh consideration.

7. In reply, the learned counsel for the petitioner submits that since the sale certificate itself was issued, nothing survives for adjudication in this matter and, therefore, there is no need to remit the matter back again.

8. Considering the submissions made on either side and also considering the fact that the above Interlocutory Applications have been allowed without issuing notice to the petitioner, in the interest of justice, we are of the opinion that the common order dated 02.05.2013 in I.A.Nos.288 to 290 of 2013 in S.A.No.111 of 2011 is liable to be set aside and accordingly, is set aside. Insofar as the merit of the case is concerned, this Court, without expressing any opinion, remits the matter back to the Debts Recovery Tribunal, Madurai, with a direction to the Tribunal to re-hear the matter afresh and pass appropriate orders on merits and as per law. The petitioner can put forth all the submissions made before this Court in S.A.No.111 of 2011. The Tribunal is directed to complete the entire exercise, within a period of four weeks from the date of receipt of a copy of this order.

9. The Civil Revision Petitions are allowed as indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar.

To
The Debts Recovery Tribunal,
Madurai.

+2CC to M/S.Xavier Rajini, Advocate, SR.No. 10007,10555
+1CC to M/S.R.Pandivel, Advocate, SR.No. 9639
+4CC to M/S.M.V.Mani Babu,Advocate,SR.Nos. 10702,10701,10700,10699

Common Order made in
C.R.P.(PD)(MD)Nos.1104 to 1107 of 2013
Dated: 22.02.2017

SML
AM/CM MSA/SAR-1/06.03.2017/5P/9C