IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON: 26/8/2018

ORDERS PRONOUNCED ON: 04/09/2018

C O R A M

The Honourable Mr.Justice S.Manikumar
a n d
The Honourable Mr.Justice Subramonium Prasad

Civil Revision Petition Nos.3047 and 3258 of 20174

C.R.P.No.3047 of 2017
M/s. S.R.S.Exports
rep. By its Partner Mr.S.Rajasekara Reddy
Old No.4 New No.7
Artisan Shanmugam Street
Ayanavaram
Chennai 600 023. ...Petitioner/3rd Party

Vs

1. Karur Vysya Bank Limited
rep. By its Branch Manager
T. Nagar Branch
Chennai 600 017.

2. Dr.Mrs.Thara Ramamoorthy

3. K. Karuppan

4. K. Karthikeyan

5. The Official Liquidator
High Court
Madras. ...Respondents /Respondents

a n d

C.R.P.No.3258 of 2017

Dr.Mrs.Thara Ramamurthy ... Petitioner

Vs

1. M/s. Karur Vysya Bank Ltd
T Nagar Branch
Chennai 600 017.

2. Mr.K.Karuppan

3. Mr.K.Karthikeyan

4. M/s. SRS Exports
rep. By its Partner
Mr.S.Rajasekar Reddy
Old No.4 New No.7
Artisan Shanmugam Street
Ayanavaram
Chennai 600 023.

5. M/s. MC Sharin Pharmaceuticals Ltd
(on liquidation) Dr.K.Ramamoorthy
66/56 II Street
Secretariat Colony
Kilpauk
Chennai 600 010. ..Respondents/Respondents

Prayer in C.R.P.NPD No.3047 of 2017: Petition filed under Article 227 of the Constitution of India against the order dated 25/7/2017 made in M.A.No.188 of 2017 on the file of the Debts Recovery Appellate Tribunal, Chennai, confirming the order, dated 1/12/2006 made in M.A.No.171 of 2004 in T.A.No.145 of 1997 on the file of the Debt Recovery Tribunal No.I Chennai, to set aside the same.

Prayer in C.R.P.NPD No.3258 of 2017: Petition filed under Article 227 of the Constitution of India to set aside the order of the Hon'ble Debts Recovery Tribunal – I, Chennai, dated 1/12/2006, made in M.A.No.170 of 2004 in T.A.No.145 of 1997 as confirmed by a common order dated 25/7/2017 made in M.A.No.240 of 2007 on the file of the Debts Recovery Appellate Tribunal, Chennai.

For petitioners ... Mr.B.Kumarasamy
(in C.R.P.NPD No.3047 of 2017)
Mr.M.Balachandar
(in C.R.P.NPD No.3258 of 2017)

For respondents ... Mr.S.Udaya Kumar
(in C.R.P.NPD No.3047 of 2017) for R.1
Mr.Jayesh B.Dolia
for R.R.3 and 4.

(in C.R.P.NPD No.3258 of 2017) Mr.Jayesh B.Dolia
for R.R.2 and 3.

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COMMON JUDGMENT

(Judgment of the Court was made by Subramonium Prasad,J)

By this common judgment, revision petitions viz., C.R.P.Nos.3047 and 3258 of 2017 are disposed of, is they arise from the same set of facts.

2. Civil Revision Petition No.3047 of 2017 is filed by the lessee M/s.S.R.S.Exports. Civil Revision Petition No.3258 of 2017 is filed by the guarantor, Mrs.Thara Ramamurthy.

3. Facts leading to both the revision petitions are that:- One M.C.Sherin Pharmaceuticals Limited, Chennai, respondent No.5, in C.R.P.3258/2017 had availed a loan from Karur Vysya Bank. Mrs.Dr.Thara Ramamurthi stood as the guarantor, for the loan and she mortgaged property situated at Door No.4, Artisan Shanmugam Street, Ayanavaram, Chennai.

4. K.Ramamurthi, husband of Mrs.Thara Ramamurthy is the Managing Director of M.C.Sharin Pharmaceuticals Limited. The property was leased out to S.R.S.Exports, represented by its partner, Mr.S.Rajasekar Reddy, who is related to Dr.Thara Ramamurthy. It is submitted that the abovesaid property was given on lease, vide lease agreement, dated 5/11/1983, by receiving, lease advance amount of Rs.12,60,000/-.

5. Bank has filed C.S.No.1072 of 1992, for recovery of the amount due. During the pendency of the suit, M.C.Sharin Pharmaceutical Ltd., went, on liquidation. After the Recovery of Debts and Bankruptcy Act, 1993 came in to force, suit was transferred, to the file of the Debts Recovery Tribunal - I, Chennai, and was renumbered as T.A.No.145 of 1997. Suit was decreed, on 25/5/2000 and the Debts Recovery Tribunal held that the bank is entitled to a recovery certificate for a sum of Rs.56,45,1460.06/- with future interest at the rate of 24.75% per annum with quarterly rest.

6. S.R.S.Exports, the lessee approached the Bank for a one time settlement and offered a sum of Rs.28 lakhs towards the due. The lessee remitted a sum of Rs.1.5 lakhs, against the amount of Rs.28 lakhs. Since the lessee did not pay the said amount of Rs.28 lakhs, proceedings to execute the decree was initiated by the bank. Auction was conducted on 18.05.2004 and the property was sold at a price of Rs.22.6 lakhs against the upset price of Rs.22.5 lakhs.

7. Dr.Thara Ramamurthy, the guarantor filed applications, in M.A.Nos.170 and 171 of 2004, for setting aside the auction sale. I.A.No.3 of 2006 was filed by the lessee, offering a sum of Rs.28 lakhs and for a direction to confirm the sale in his favour. An order of Status-quo order was passed, on 18/6/2004 by the Tribunal and the lessee made a further deposit of Rs.3.75 lakhs, against the conditional order of Rs.6 lakhs made by the Tribunal.

8. Further proceedings were taken in this Court in W.P.No.3351 of 2005, by the lessee against the order of pre-

deposit. The lessee paid a further sum of Rs.14 lakhs, in compliance of the order, dated 4/3/2005 passed by this Court in W.P.No.3351 of 2005. The lessee has therefore, deposited a sum of Rs.17.75 lakhs.

9. The Debt Recovery Tribunal, considered MA 170 and MA 171 filed by the guarantor, to set aside the auction sale. It was contended that Dr.Thara Ramamurthy, the guarantor is the wife of the Managing Director of the debtor and she had offered her property, as collateral security for the loan availed by her husband as Managing Director of M.C.Sharin Pharmaceuticals Limited. The first respondent bank, without exhausting all other remedies available, brought the petitioner's property to sale which is not proper. The said property was leased out to M/s. S.R.S.Exporters, represented by its Managing Partner, Mr.S.Rajasekara Reddy for a period of 30 years, under the lease deed, dated 5/11/1993. The lessee, having got interest in the said property, had opted to settle the decree debt by availing One Time Settlement Scheme, introduced by the first respondent bank, for a sum of Rs.28.00 lakhs and thereby made a part payment of Rs.1.50 lakhs on 29/1/2002. It was stated that, though the guarantor is still within her right to challenge the said sale, on the ground of material irregularity and fraud, she has opted to file the present petition for setting aside the sale by depositing the sale consideration of Rs.23.00 lakhs along with 5% of the purchase money, which may be paid over to the auction purchaser. It was stated that she is taking steps to mobilize funds from her creditors and undertakes to deposit the same within a period of 60 days from the date of auction on or before 15/7/2004.

10. The lessee in his application contended that he was inducted into possession of the house and ground bearing Old Door No.4, New No.7, Artisan Shanmugam Street, Ayanavaram, Chennai 600 023, as lessee for a period of 30 years under the lease deed, dated 5/11/1993. The lessee stated that he arrived at a settlement with the bank to pay a sum of Rs.28.00 lakhs and he has made a part payment of Rs.1.50 lakhs on 29/1/2002. Unfortunately, due to unexpected set back in his business, he could not pay the balance agreed amount of Rs.26,50,000/- in spite of his best efforts. The lessee stated that the bank has not issued any notice to him and the proceedings of the Recovery Officer in DRC No.346/2000 is illegal. The Recovery Officer has failed to publish the interest of the lessee, in the auctioned property, for a period of 30 years. It was stated that the Recovery Officer has violated the provisions of the Act and Rules therein. The lessee is a necessary and proper party to the auction proceedings and he has got prima facie case for setting aside the sale on the ground of material irregularity in conducting the sale.

11. Bank and the auction purchaser objected to the applications for setting aside the sale. Applications were dismissed by the Debt Recovery Tribunal. The Tribunal held that the proceedings have been initiated, only to protract the litigation. It further held that the procedure laid down under the Recovery of Debts and Bankruptcy Act, 1993, and the procedure for recovery of tax given in the second schedule to the Income Tax Act which is to be followed while conducting auction for execution of the decree under the Recovery of Debts and Bankruptcy Act 1993 had been scrupulously followed and the applications were without any merit.

12. The lessee and the guarantor challenged the order of the Debts Recovery Tribunal, dismissing the applications, to set aside the sale and to confirm the sale, in favour of the lessee, before the Debts Recovery Appellate Tribunal, Chennai. Debts Recovery Appellate Tribunal, Chennai, has dismissed the appeals, which are now under challenge, in the present Civil Revision Petitions.

13. Heard the learned counsel for the parties.

14. Learned counsel appearing for the guarantor would submit that the procedure for sale as laid down under Section 29 of the Recovery of Debts and Bankruptcy Act, r/w. Part III of second schedule to the Income Tax Act, 1961 has not been followed, in as much as there has been no proclamation of sale. It was also contended that the notice of sale did not contain all the requisite information which has to be provided under clause 53 of Part-III to the second schedule of the Income Tax Act, 1961.

15. section 29 of the Recovery of Debts and Bankruptcy Act 1993, clause 50, 52, 53 and 54 contained in Part-III in the second schedule to the Income Tax Act, 1961, reads as hereunder:-

Section 29, Application of central provision of Income Tax Act:-

"The provisions of the Second and Third Schedules to the Income-Tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income-tax:

> Provided that any reference under the said provisions and the rules to be "assessee" shall be construed as a reference to the defendant under this Act.
>
> Sale and Proclamation of sale -
>
> 52. (1). The Tax Recovery Officer may direct that any immovable property which has been

attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2). Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

Contents of proclamation -

53. A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible -

(a). the property to be sold;

(b). the revenue, if any, assessed upon the property or any part thereof;

(c). the amount for the recover of which the sale is ordered

(cc). The reserve price, if any, below which the property may not be sold; and

(d). any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

Mode of making proclamation -

54 (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2). Where the Tax Recovery Officer so direct, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3). Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale

cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

16. It is the contention of the revision petitioner that the proceedings of the Recovery Officer does not show that there has been any proclamation before sale which is required to be done under Rule 52. At this juncture, it is necessary to reproduce the auction notice that was published on 28/11/2002 and 17/5/2004. They read as under:-

DRC No.346/2000 - R.O - II

Auction Sale of Immovable property, mortgaged to Bank, under Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

In the matter of the Karur Vysya Bank Ltd., T.Nagar, Chennai
Vs.
M/s. M.C.Sharin Pharmaceuticals Ltd., and 2 others

Place of Auction : Debts Recovery Tribunal - I, Chennai.

Date and Time of Auction : On 28/22/2002 @ 3.00 p.m.

Description of Property : Residential building at Old Door No.4, New No.7, Artisan Shanmugam Street, Ayanavaram, Chennai 23, with land admeasuring 2546 sq.ft., with a built up area of 1983 sq.ft., in the ground floor and 1987 sq.ft. In the first floor.

Reserve price : Rs.28,00,000/- (Rupees Twenty eight lakhs only)

For further details contact: the undersigned or the Manager, the Karur Vysya Bank Ltd., T.Nagar, Chennai 17, personally or on phone Nos.4344005/4346488.

Conditions:-

1. The property can be inspected between 11.00 a.m., and 3.00 p.m., on 27/11/2002.
2. The intending bidders should pay 10% of the upset price as E.M.D by means of a D.D drawn in favour of the Recovery Officer, Debts Recovery Tribunal - I, Chennai, payable at Chennai, before 12.00 Noon, on the date of auction.

3. The successful bidder should pay 25% of the bid amount (less the E.M.D) immediately on the sale being knocked down in his favour and the balance money within 15 days.
4. The successful bidder should bear the charges/fees payable for conveyance such as Registration fee, Stamp Duty, etc., as applicable as per law in addition to poundage fee.
5. The Recovery Officer has the absolute right to accept or reject a bid or postpone/cancel the sale.

6. Confirmation about other conditions of sale can be collected from the Branch Manager of the bank concerned or the undersigned.

R.Pandiyan
Recovery Officer - II

* * * * *

DRC.No.346/2000 R.O - II

The undermentioned property will be sold by public auction on 18/5/2004 for recovery of a sum of Rs.1,72,96,288.56 (Rupees One crore seventy two lakhs ninety six thousand two hundred and eighty eight and paise fifty six only), plus further interest and costs due from M/s.M.C.Sharin Pharmaceutical Ltd., and 2 others. The auction will be held at 3.00 p.m., at the office of the Debts Recovery Tribunal - I, Chennai. The upset price of the property shall be Rs.22,50,000/- (Rupees Twenty two lakhs fifty thousand only) below which amount the property will not be sold.

DESCRIPTION OF PROPERTY

All that piece and parcel of land with a building thereon at Old No.4, New No.7 in Artisan Shanmugam Street, Shanmughapuram, Ayanavaram, Chennai 23 in the Lay Out Application No.203/1960 measuring from East to West on the southern side 45 feet; on the Northern side 45 ft., and North to South on the Eastern side 59 ft and the Western side 60 ft measuring by admeasurement 1 ground 146 sq.ft comprised in R.S.No.18/2 and 20/1 (part) New T.S.No.56/1 and 56/2 in Block No.4 of Chinnasembarabakkam Railway Drain (R.S.No.20/2) on the East vacant Plot No.3 belonging to Shri.V.Govindarajan and West by Plot No.5 belonging to Dr.K.Ramamoorthy situate within the Registration District of Chennai North and Sub-Registration District of Sembium.

The intending bidders should pay 10% of the upset price of the property as EMD by means of a D.D drawn in favour of the Recovery Officer, Debts Recovery Tribunal - I, Chennai, payable at Chennai, before 12.00 noon on the date of auction. They can inspect the property between 11.00 a.m., and 3.00 p.m., on 17/5/2004.

For further details regarding other conditions of sale, the undersigned or The Manager, The Karur Vysya Bank Ltd., T.Nagar, Chennai 17, may be contacted personally or over Ph.Nos.24344005/24346488.

D.Dwarakanath
Recovery officer - II

17. Auction notice would show that it contains all the particulars, which are necessary to be given, at the time of proclamation. It gives out the date and time of auction, description of the property, reserve price

and the conditions of auction. The sale of property for recovery of the amount to execute the decree which has been passed under the Recovery of Debts due to the Recovery of Debts and Bankruptcy Act,1993 has to be conducted in accordance with the second schedule of the Income Tax Act. Section 29 of the Recovery of Debts and Bankruptcy Act,1993 states that the second and third schedule of the Income Tax Act shall as far as possible apply. Section 29 postulates that the 2nd and 3rd schedule to the Income Tax Act is to be applied suitably and not necessarily absolutely. Undoubtedly, proclamation of sale is not an empty formality. The purpose of proclamation is to make the owner aware of the details of the property intended for sale, valuation and reserve price. Proclamation is also to enable proposed purchasers to have details of property which would lead to submission of better offers. It was contended that the auction notice does not contain the revenue assessed on the property which is required to be given in Rule 53. The fact that the revenue assessed on the property has not been mentioned in the auction that does not vitiate the entire process undertaken to sell the property, it does not cause any prejudice to the owner of the property. No complaint has been received from the auction purchaser stating that, had he known about the revenue assessed on the property he would not have purchased the property. Since the absence of the details of the revenue assessed in the property does not cause any prejudice to the petitioner, the petitioner cannot be heard to raise a challenge to the same. The purpose of proclamation is primarily to put on notice, the person whose property is being put on auction and the general public that auction for the property would be held.

18. The second objection raised by the guarantor is that the value of the property has increased, the Bank was not justified in bringing down the reserve price. For this purpose, the petitioner would rely on the valuation certificate, dated 14/3/2002, filed by the valuer. The property was valued at Rs.30,10,000/- The later certificate, dated 11/3/2004, increased the value of the property to Rs.30.82 lakhs. It was therefore stated even though the value of the property had gone up, the reserve price was brought down from Rs.28 lakhs for the sale which was conducted on 28/11/2002 to Rs.22.5 lakhs, for the auction which was to be conducted on 18/5/2004.

19. Admittedly, when the property was put to sale, on 28/11/2002, there was no buyer for that price and necessarily the value of the reserve price had to be scaled down, in order to sell the property, to satisfy the decree. One Time Settlement entered into by the lessee, at the instance of the lender and Bank had failed. The lessee did not pay the amount due. In the circumstances, bank decided to bring down the reserve price which cannot be found fault with. It is to be noted that no ground has been taken in the M.A stating that even though the value has been increased, Bank ought not to have brought down the reserve price. In fact, this was not even argued before the Debts Recovery Tribunal. This new argument therefore cannot be entertained in the present Civil Revision Petitions. In any event, as stated above, in view of the fact that there was no bidder in the auction, Bank had taken the decision to reduce the upset price, which cannot be found fault with.

20. The tenant cannot be heard in this proceeding. The tenant cannot challenge the sale of the property. He has to locus to do so. He can only contest his eviction by filing an application under section 17 (4-A) of the SARFAESI Act. Sale has taken place way back in the year 2004 and the purchaser has not been given the possession of the property even after 13 years due to the number of proceedings initiated by the tenant and the guarantor. As stated earlier, all the requirements under part III in the Second Schedule to the Income Tax Act laying down the procedure for Recovery of Tax under Income Tax Act, have been followed.

21. In the result, Civil Revision Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

mvs.

To

1. The Branch Manager
Karur Vysya Bank Limited
T. Nagar Branch
Chennai 600 017.

2. The Official Liquidator
High Court, Madras.

+1 CC to Mr.B. Kumaraswamy, advocate sr 60824.
+1 CC to Mr.R. Prasath, Advocate sr 60735.
+1 CC to Mr.S. Udhayakumar, Advocate sr 60787.
+1 CC to M/s. Aiyar and Dolia, Advocate sr 60918.

Civil Revision Petition Nos.3047 and 3258 of 2017

NM(CO)
SP(12/09/2018)