

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.MANI KUMAR
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.21616 of 2017
and
W.M.P.Nos.22618 and 23710 of 2017

Mr.N.Maragathamani ... Petitioner
Vs.

1. The Recovery Officer
Debts Recovery Tribunal II,
4th floor, Dewa Towers,
No.770A, Annasalai,
Chennai - 600 002.
2. The Punjab National Bank
Represented by its Branch Manager,
Luz Church Road Branch,
Luz Church Road Chennai.
3. Ansari
4. M/s.Wins,
Rep by the Proprietor
No.5, Dr.Radhakrishnan Salai,
Opp. Queen Marry's South Gate,
Mylapore, Chennai - 600 004.
5. Smt.Geetha
6. Shri.Aravind
7. Smt.Sujatha
8. Smt.Deepa

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in respect of proceeding DRC.No.322/2015 (Old DRC No.178/2006) O.A.No.621/2000 DRT-II, Chennai, on the file of the 1st respondent dated 08.08.2017 and quash the same.

For Petitioner : Mr.Shankar Subbu
For V. Rajarajan
For Respondent-No.3 : Mr.A.Mohamed Ismail

Judgment

(Judgment of the Court was delivered by V.BHAVANI SUBBAROYAN,J.,)

This Writ Petition has been filed to call for the records in respect of proceeding DRC.No.322/2015 (Old DRC No.178/2006) O.A.No.621/2000 Debt Recovery Tribunal - II, Chennai, on the file of the 1st respondent dated 08.08.2017 and quash the same.

2. The brief facts of the case as per the petitioner's averments is, one C.K.Ramjee, had obtained loan from Punjab National Bank, Lux Church Road, Chennai, for his business purpose, for which, the petitioner's husband P.Narayanasamy stood as a guarantor to him and handed over the title deeds of his property bearing Survey No.35/2 at Pallavaram Village measuring an extent of 1345 Sq.fts which was purchased by the petitioner through a sale deed dated 18.09.1995 vide Document No.4660/1995 registered at Sub-Registrar Office, Pallavaram, as collateral security for the loan borrowed by C.K.Ramjee.

3. The petitioner would submit that the borrower namely C.K.Ramjee did not pay the loan amount, turned as a defaulter in payment, and subsequently died. Thereafter, the bank initiated recovery proceedings and the petitioner's husband alone was defending the case. The petitioner further would allege that her husband was not in a stable mind and due to his mental illness, he is taking treatment even on the date of filing this Writ Petition. Hence, he could not defend the case before the Debt Recovery Tribunal-I effectively.

4. The petitioner would further submit that she was not aware of the above said proceedings, since her husband alone contested the case during the pendency of the said proceedings and further he was mentally ill when the proceedings were going on before the Debt Recovery Tribunal-I. Hence, she has averred that she had no chance to know the subsequent proceedings and had no knowledge and chance to contest the above proceedings in O.A.No.621 of 2000 dated 06.03.2006, before the Debt Recovery Tribunal-I.

5. The petitioner would also submit that during the recovery proceedings, her husband's property, mortgaged as security was brought for auction on 26.02.2007 with upset price of Rs.11,25,000/-, in which the third respondent herein was the successful bidder and he purchased the same. On the date of filing this Writ petition, the property is worth more than a crore and now the bank has underestimated the value of the

property and sold it for a lesser amount. Subsequently, sale certificate was also issued on 28.07.2006 for the above said property vide Certificate No.178/2006. After she came to know about the same, the petitioner filed an application before the Debt Recovery Tribunal-II through her counsel to set aside the order dated 14.05.2007. She further alleges that due to the ineffective steps taken by her counsel, it was not properly represented before the Debt Recovery Tribunal-II. In the meanwhile, the third respondent filed a Writ petition in W.P.No.14373 of 2017 seeking police protection for eviction and the same was allowed by this Court on 12.06.2017.

6. The petitioner also contended that she is an illiterate and belongs to economically weaker section, and she is having right to livelihood and residence. Therefore, contended that she has no other efficacious remedy except approaching this Court. At the time of admission, while ordering notice to the respondents, this Court granted a stay on 10.08.2017 in W.M.P.No.22618 of 2017. The third respondent who is the successful bidder and purchased the property in the auction sale, has filed an application in W.M.P.No.23710 of 2017 to vacate the stay granted as early as 10.08.2017, for which, the petitioner has filed her counter on 30.08.2017.

7. Brief averments stated in the affidavit filed by the third respondent in support of the vacate stay petition are that the property at No.23A, Munusamy Maistry Street, Essa Pallavaram, Chennai - 600 043 was brought to public auction on 26.02.2007, in furtherance of the proceedings in O.A.No.621/2000 by the Debt Recovery Tribunal, in which the third respondent participated in the auction and was declared as the highest bidder. Accordingly, the Debt Recovery Tribunal-I, Chennai, issued a sale certificate of immovable property certifying that the third respondent, namely Mr.A.Ansari has paid a sum of Rs.11,60,000/- (Rupees Eleven Lakhs Sixty thousand) and has been declared as the purchaser in the sale by public auction on 26.02.2007 of the immovable property. In execution, a Sale Certificate No.178 of 2006 dated 28.07.2006 was issued under Section 19(22) in O.A.No.621 of 2000 forwarded by the Presiding Officer, Debts Recovery Tribunal, Chennai - 600 002. The said sale certificate was also registered by the Sub-Registrar, Pallavaram, vide Document No.2842 of 2007.

8. The Successful bidder in the auction sale, the third respondent herein, has contended that the Writ petitioner who is in possession and occupation of the said property, having suffered the said order and after completion of all the proceedings, did not choose to file an appeal against the said order and the legal proceedings attained finality. Hence, the Writ petitioner is bound to vacate the property and handover

possession to the auction purchaser. But she failed to do so, therefore, the bank initiated proceedings under Rule 39 of Income Tax (Certificate proceedings) Rules, 1962, read with Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Accordingly, notices dated 26.04.2007, 14.08.2007, and 19.12.2007 were duly served on the Writ petitioner. Despite receiving several notices, the Writ petitioner did not come forward to deliver the vacant possession of the property, which made the third respondent to approach the bank and the recovery officer, seeking assistance to take possession of the property and handover the same to the third respondent.

9. The third respondent further submitted that he took assistance of a counsel and made an application in September 2016 before the recovery officer. After which, the recovery officer once again initiated eviction proceedings by issuing fresh notice as per the Rules. Even though fresh notices were served on the Writ petitioner seeking to hand over possession of the property, there was no response from her and hence, another notice was sent to the petitioner and a copy was also affixed in the petitioner's house/premises, but the petitioner did not come forward to abide the law. Thereafter, the third respondent has filed a Writ petition in W.P.No.14373 of 2017 seeking a direction to the Jurisdictional police to provide police protection for the eviction process and this Court by an order dated 12.06.2017 allowed the Writ petition and directed the Jurisdictional police to provide adequate protection for the eviction process. Thereafter, a fresh notice was issued to the Writ petitioner on 08.08.2017 asking her to vacate the premises and handover vacant possession. The said proceedings were initiated, against which the present Writ petition has been filed by the petitioner by suppressing all the above facts.

10. The Writ petitioner had obtained an order of Interim stay on 10.08.2017. In the affidavit filed by the third respondent in support of the vacate stay petition, has sought to vacate the stay granted on 10.08.2017 in WMP.No22618 of 2017 and also sought for dismissal of the Writ petition.

11. It is seen from the typed set filed by the Writ petitioner that the impugned order dated 08.08.2017 wherein DRT-II had ordered eviction of the petitioner's premises, a copy has been marked to the petitioner, the Jurisdictional police, the bank as well as to the third respondent herein. The petitioner in the typed set has also filed a copy of the order passed in W.P.No.14373 of 2017 dated 12.06.2017 wherein, this Court has granted police protection for eviction of the petitioner's premises at No.23A, Munusamy Maistry Street, Essa Pallavaram, Chennai - 600 043.

12. The learned counsel for the petitioner would contend that the petitioner was not aware of any of the legal proceedings initiated by her husband, as he was said to be in the mental illness and undergoing treatment, even on the date of filing this Writ petition. Further it is stated by the learned counsel for the petitioner that the petitioner was not given sufficient opportunity and adequate fair chance to contest the entire proceedings initiated by the bank before the Debt Recovery Tribunal in O.A.No.621 of 2000.

13. The learned counsel for the petitioner also submitted that the property was not valued property for the purpose of auction and the upset price of Rs.11,25000/- is very much low, when compared to the present market value in August 2017, when the property is worth more than a crore. Hence, the sale certificate should be set aside. Upon hearing the learned counsel there is no strength to the submission made by the learned counsel, as the said auction was completed, as early as 26.02.2007 i.e., 10 years ago and sale certificate was issued in favour of the third respondent who is the successful bidder and been declared as the purchaser, as early as 29.03.2007 itself. The said sale certificate was also registered before the Sub-Registrar, Pallavaram in Document no.2842 of 2007. However, the petitioner is not inclined to vacate the property and continues to be in possession. The bank has also issued notices directing the petitioner to hand over possession ever since 14.08.2007. Receiving the said notices, the petitioner has not shown any interest either to hand over the possession to the auction purchaser nor has filed any application challenging the sale certificate. The third respondent had also made an application before the recovery officer DRT-II seeking assistance to deliver vacant possession of the property that was purchased by him. Pursuant to this application, the DRT-II had issued notice to the Writ Petitioner asking her to hand over possession of the property on or before 18.11.2016. Despite receiving such notice, the petitioner has not availed the opportunity to challenge any of the legal proceedings and filed the present petition, as if she had no knowledge of the proceedings initiated by the bank. The Writ petitioner after a lapse of almost 8 years from the issuance of sale certificate, has filed an application before the Debt Recovery Tribunal-II in I.A.No. Of 2017 in DRC.No.332 of 2015 (Old No.178 of 2006) in O.A.No.621 of 2000 for the following prayers, which petitioner claims that it is still pending.

(1) Stay the operation of Order dated 10.04.2017 directing the petitioner/sixth defendant to vacate and handover vacant possession of the property situated at 23A, Munusamy Maistry Street, Essa Pallavaram, Chennai - 600 043 in Pallavaram Village;

(2) Set aside the Sale Certificate executed and registered on 14.05.2007 in Document No.2842 of 2007 on the file of the Sub-Registrar Officer, Pallavaram, in favour of the seventh respondent/auction purchaser;

(3) Permitting the petitioner/sixth defendant to deposit the auction amount of Rs.11,60000/- along with interest and other charges to be fixed by the Tribunal in total discharge of the claim of the 7th respondent/auction purchaser in respect of the property No 23A, Munusamy Maistry Street, Essa Pallavaram, Chennai - 600 043 in Pallavaram Village under auction proceedings;

(4) Pass any further or other orders as the Tribunal may be pleased to pass considering the facts and circumstances of the case.

14. Meanwhile, it is also seen that the third respondent being the auction purchaser/successful bidder has sought for police protection in W.P.No.14373 of 2017. Pursuant to which, the impugned order is passed by the Recovery Officer on 08.08.2017.

15. On perusal of the entire records and averments made in the counter affidavit as well as in the vacate stay petition, this Court is of the view that the third respondent herein, who is the successful bidder, as early as in the year 2007, and received the sale certificate, registered at the office of the Sub-Registrar, Pallavaram, is not able to secure possession of the property. The Writ petitioner, despite knowing the facts that her husband stood as a Guarantor to one C.K.Ramjee (deceased), the Proprietor of M/s.Wins the borrower, given the property as a collateral security, had not taken any steps after the death of the said person C.K.Ramjee.

16. Even though it is stated by the petitioner at paragraph 7 of the counter affidavit filed by her to the vacate stay petition that she is a guarantor for one C.K.Ramjee (deceased) and that she is ready to pay the secured debt of the creditors along with necessary charges accrued during the course of litigation, this Court is of the view that the claim made by the petitioner cannot be accepted at the present stage as it has been raised after a lapse of more than 10 years from the date of auction i.e., on 26.02.2007 and issuance of sale certificate was on 29.03.2007. At this juncture, the petitioner cannot aver mental illness of her husband who stood as a guarantor and participated in the proceedings initiated by the respondent bank, at that point of time.

17. At this juncture, after receipt of eviction notice dated 08.08.2017 the petitioner, for the first time, has come forward with the present Writ petition raising various points to consider. The auction purchaser/the third respondent herein, has invested more than Rs.11,00,000/- during the year 2007 and made to run from pillar to post seeking for appropriate relief against the petitioner who has to be evicted from the property. Though the auction purchaser was issued with sale certificate, as early as on 29.03.2007 he could not take possession of the property. The recovery officer was not able to secure possession, from the petitioner lawfully till date, though the recovery officer has initiated proceedings as early as on 14.08.2007, till 08.08.2017, which is the last notice asking the Writ petitioner to hand over vacant possession.

18. This Court is of the view that the Writ petitioner has not made out any case warranting interference from this Court. The condition of the auction purchaser, is also to be seen that having invested more than a sum of Rs.11,00,000/- almost a decade ago, is not able to enjoy possession of the property purchased in the auction conducted on 26.02.2007. The conduct of the petitioner, who is squatting on the property, despite receiving several notices asking her to handover the vacant possession of the property, is condemnable.

19. On 10.08.2017, the petitioner moved this Court by way of Lunch motion and obtained Interim stay of all further proceedings pursuant to the order of Debts Recovery Officer (DRT - II) suppressing the facts. Contending inter alia that misusing the above said interim order, the Writ Petitioner has trespassed into the property, under the possession of the Recovery Officer, Debts Recovery Tribunal, broke open the seal and lock, the Bank has lodged a complaint, with the Inspector of Police, S 5 Pallavaram Police Station, Pallavaram. Besides raising other issues, the auction purchaser has filed W.M.P.No.23710 of 2017, for vacating the stay, granted by order, dated 10.08.2017, passed in W.P.M.P.No.22618 of 2017 in W.P.No.21616 of 2017. On 30.08.2017, the petitioner filed a counter affidavit alleging the Bank Officials forcibly entered the property, inspite of informing them about the Interim Stay order granted by this Court. They have to take legal action to evict the tenants and the auction purchaser cannot step into the shoes of the creditors. The petitioner has not approached this Court with clean hands.

20. Under these circumstances, this Court is of the view that the stay granted as early as 10.08.2017 in W.M.P.No.22618 of 2017 has to be vacated and further the Writ petitioner is

directed to hand over the vacant possession to the recovery officer within a period of six weeks from the date of receipt of a copy of this order.

21. Accordingly, the Writ Petition is dismissed. Stay granted as early as on 10.08.2017 in W.M.P.No.22618 of 2017 is hereby vacated and the vacate stay petition in W.M.P.No.23710 of 2017 is allowed with the above direction. No Costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Recovery Officer
Debts Recovery Tribunal II,
4th floor, Dewa Towers,
No.770A, Annasalai,
Chennai - 600 002.
2. The Branch Manager,
The Punjab National Bank,
Luz Church Road Branch,
Luz Church Road Chennai.

W.P.No.21616 of 2017
and
W.M.P.Nos.22618 and 23710 of 2017

RJ(CO)
EU(08/05/2018)

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