IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE ABDUL QUDDHOSE

W.P. No.32608 of 2017

T.Ashok Surana .. Petitioner

-vs-

1.The Presiding Officer,
Debt Recovery Tribunal-2,
4th Floor, Spencer Tower,
770A, Anna Salai, Chennai 600 002.

2.The Authorized Officer,
Indian Bank, ARMB 1 Branch,
55, Ethiraj Salai, Chennai 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that the Recovery of Debts and Bankruptcy Act, 1993 and The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 do not exist in law since 27.08.1993 and 17.12.2004 respectively, until they are suitably revived and validated in a manner known to law.

For Petitioner : Mr.T.Ashok Surana
Party-in-person

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

In this writ petition, the petitioner has sought a declaration that the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Deposit Act, 2002 do not exist in law since 27.08.1993 and 17.12.2004 respectively.

2. The petitioner submits that the aforesaid two Acts are Acts of Parliament to which sub-section (1) of Section 7 of the

General Clauses Act apply. Section 7 of the General Clauses Act reads as follows:

> "In any Central Act or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose".

3. It is submitted that there should be a specific averment in the re-enacted Acts that expressly revives the provisions of an Act/Acts repealed. According to the petitioner, there is no such averment in either of the two Acts.

4. Section 37 of the the Recovery of Debts due to Banks and Financial Institutions Act, 1993, reads as follows:-

> "37.Repeal and saving. - (1) The Recovery of Debts Due to Banks and Financial Institutions Ordinance, 1993 (Ord.25 of 1993) is hereby repealed.
> (2)Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act."

The Securitisation and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002, reads as follows:

> 42.Repeal and saving. - (1) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord.3 of 2002) is hereby repealed.
> (2)Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

5. Mr.Surana, appearing in person, submits that the Repeal and Savings provision in the two Acts are identical. The only difference pertains to the name of the Act and the Ordinance. According to the petitioner, the provisions of Section 7 of the General Clauses Act have not been complied with. Benefit has been taken of Sections 6, 8 and 24 of the General Clauses Act.

6. In support of his submission, Mr.Surana, cited the Constitution Bench judgment of the Supreme Court in Chief Inspector of Mines and another vs. Lala Karam Chand, reported in AIR 1961 SC 838 and the judgment of the Constitution Bench of the Supreme Court in Ameer-un-Nissa Begum and Ors., vs. Mahboob Begum and Ors., reported in AIR 1955 SC 352. Relying on the aforesaid judgments, Mr.Surana argued that when a repealing enactment is repealed by another statute, the repeal of the second Act reviving former Act ab initio, but this did not apply

to the last repeal, which does not revive unless the words are added reviving it. There would have to be a specific statement reviving the earlier repealed Act.

7. As held by the Supreme Court in Davinder Singh v. State of Punjab, reported in (2010) 13 SCC 88, a judgment, as is well known, is an authority for the proposition which it decides and not what can logically be deduced therefrom. The Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the Courts are not to be read as provisions of the statute and that too taken out of their context.

8. The vires of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 was upheld by the Supreme Court in Union of India and Anr., Delhi High Court Bar Association and Ors., reported in (2002) 4 SCC 275. Similarly, the vires of the Securitisation and Re-construction of Financial Assets and Enforcement of Interest Act, 2002, was upheld by the Supreme Court in Mardia Chemicals Limited vs. Union of India, reported in (2004) 4 SCC 311, which was later followed in Transcore vs. Union of India, reported in (2008) 1 SCC 125. The Supreme Court has upheld the validity of both the Acts.

9. Mr.Surana submitted that he was not questioning the vires of the aforesaid Acts. It is his contention that though the Act may otherwise have validly been enacted, by reason of non-compliance of Section 7 of the General Clauses Act, and in particular, by reason of the omission to specifically revive the earlier repealed Act, the aforesaid two Acts were not effective.

10. However, when the Supreme Court has upheld the validity of the two Acts, the Supreme Court, in effect and substance, gave a finding of enforceability of the Acts. Numerous Courts have, in effect and substance, accepted the enforceability of the Acts and accordingly, passed verdicts.

11. We cannot now go into the question of validity and/or enforceability of the Acts. We cannot now go into the question of whether the two Acts are unenforceable for non-compliance with Section 7 of the General Clauses Act. It is made clear that we have not gone into the question of whether, in fact, Section 7 has or has not been complied with. We have also not gone into the question of whether the technicality of some deviations from Section 7 would render an Act invalid or unenforceable. This is because we are of the view that when the Supreme Court has upheld the constitutionality of the two Acts in entirety, it is legally impermissible for the High Court to go into the aforesaid issue, as held by a Division Bench of this

Court in K.R.Chandrasekaran vs. Union of India, reported in 2012-3-CTC-239. The Division Bench held as follows:

> "37. But when the Supreme Court has considered the validity of the SARFAESI Act as a whole, even though no express opinion has been made by the Supreme Court about Section 14 of the SARFAESI Act, and the vires of the SARFAESI Act has been upheld, in the guise of applying the principle of sub silentio it is not possible for this Court to go into the validity of Section 14of the SARFAESI Act. As stated by Salmond on Jurisprudence, elicited above, may be in cases where a point of law involved in the decision is not perceived by the Court and the Court while deciding a particular point has made a reference about another point, the principle of sub silentio may be made applicable in respect of another point relating to which a reference has been made. But in the case on hand, when the SARFAESI Act as a whole has been upheld, in our view, the principle of sub silentio may not be of much use to the petitioner while challenging the provision of the SARFAESI Act."

As a Bench of coordinate strength, we are bound by the aforesaid judgment. The question of enforceability and/or validity can, at the highest, be re-considered by the Supreme Court and not by this Court.

The writ petition is, therefore, not entertained and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sra

To

1.The Presiding Officer,
Debt Recovery Tribunal-2,
4th Floor, Spencer Tower,
770A, Anna Salai, Chennai 600 002.

W.P.No.32608 of 2017

RRK(16/02/2018)