IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.23978 to 23981 of 2017
and
W.P.No.33739 of 2014
and
W.M.P.Nos.25287 of 2017

W.P.Nos.23978 to 23981 of 2017

R.Krishnaraj Gupta ... Petitioner
in W.P.Nos.23978 to 23981 of 2017

vs.

1.The Debt Recovery Appellate Tribunal,
Chennai-600006.

2.The Presiding Officer,
The Debt Recovery Tribunal,
Coimbatore-641045.

3.The Branch Manager,
Central Bank of India,
Agragaram Road Branch,
Salem - 636 001.

4.The Authorised Officer,
Central Bank of India,
Agragaram Road Branch,
Salem-636 001.

5.The Recovery Officer,
Debt Recovery Tribunal,
Coimbatore.

6.P.Dhanabackiam ... Respondents
in W.P.Nos.23978 to 23981 of 2017

Prayer in W.P.No.23978 of 2017: WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the inpugned order passed by the 1st respondent in M.A.No.497 of 2010 on 08.08.2017 and also records connected with the corresponding I.A.No.342 of 2008 in O.A.No.133 of

2002 on the file of the 2nd respondent and quash the impugned order dated 08.08.2017 as illegal and further direct the 2nd respondent to pass fresh orders in I.A.No.342 of 2008 in O.A.No.133 of 2002 after giving sufficient opportunity to the petitioner based on the compliance made by the petitioner on 19.05.2008 of the conditions imposed by 2nd respondent in I.A.No.342 of 2008 in O.A.No.133 of 2002 on 07.04.2008 and dispose the same within the time frame.

Prayer in W.P.No.23979 of 2017: WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records of the 1st respondent connected with the impugned order passed by the 1st respondent in M.A.No.498 of 2010 passed in his common orders in M.A.Nos.498, 499 and 500 of 2010 dated 08.08.2017 and also records connected with the corresponding I.A.No.341 of 2008 in O.A.No.133 of 2002 on the file of the 2nd respondent and quash the impugned order dated 08.08.2017 as illegal and further direct the 2nd respondent to pass fresh orders in I.A.No.341 of 2008 in O.A.No.133 of 2002 after giving sufficient opportunity to the petitioner based on the compliance made by the petitioner on 19.05.2008 of the conditions imposed by the 2nd respondent in I.A.No.342 of 2008 in O.A.No.133 of 2002 on 07.04.2008 and dispose the same within the time frame.

Prayer in W.P.No.23980 of 2017: WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the DRAT, Chennai connected in the impugned order in M.A.No.499 of 2010 passed in its common orders in M.A.Nos.498, 499 and 500 of 2010 dated 08.08.2017 in I.A.No.343 of 2008 in O.A.No.133 of 2002 on the file of DRT, Coimbatore and quash the same and further direct to allow the M.A.No.499 of 2010 pertaining to the above I.A.No.343 of 2008 and further order for hearing the matter afresh.

Prayer in W.P.No.23981 of 2017: WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the DRAT, Chennai connected in the impugned order in M.A.No.500 of 2010 passed in its common orders in M.A.Nos.498, 499 and 500 of 2010 dated 08.08.2017 in I.A.No.345 of 2008 in O.A.No.133 of 2002 on the file of DRT, Coimbatore and quash the same and further direct to allow the M.A.No.500 of 2010 pertaining to the above I.A.No.345 of 2008 and further order for hearing the matter afresh.

For Petitioner : Mr.AR.L.Sundaresan, Sr. Counsel
in W.P.Nos.23978 to 23981 of 2017
for M/s.S.Arunachalam Associates

For R3 & R4 : Mr.F.B.Benjamin George
in W.P.Nos.23978 to 23981 of 2017

For R6 : Mr.R.Jayaprakash
in W.P.Nos.23978 to 23981 of 2017

R1, R2 & R5 - Tribunal

W.P. No.33739 of 2014

P.Dhanabackiam ... Petitioner

vs.

1.The Branch Manager,
Central Bank of India,
Agraharam Road Branch,
Salem - 636 001.

2.M/s.S.V.Ramanathan,
Rep. by its Proprietor,
S.V.Ramanathan,
No.9-A, Singarapet,
Shevapet,
Salem - 636 002.

3.R.Ramachandra Gupta

4.R.Krishnaraja Gupta

5.Recovery Officer,
Debts Recovery Tribunal,
4/162, Madurai-Melur Road,
3rd & 4th Floor,
Kalayani Towers,
Uthangudi,
Madurai - 625 107. ... Respondents

(R5 impleaded as per order dated 31.08.2017 by SMKJ & VBSJ in WMP.No.23814 of 2017 in W.P.No.33739 of 2014)

Prayer: WRIT Petition filed under Article 226 of the Constitution of India, to issue a writ in the nature of writ of mandamus, directing the respondents to deliver the possession of the property of D.No.28/1140, Dr.Ramanathan Road, Maravaneri Extension, Salem.

For Petitioner : Mr.R.Jayaprakash

For R1 : Mr.F.B.Benjamin George
For R4 : AR.L.Sundaresan, SC
for Arunachalam Associates

COMMON ORDER

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

Mr.R.Krishnaraja Guptha, has filed W.P. No.29378 of 2017 for a Writ of Certiorarified Mandamus, calling for the entire records connected with the inpugned order passed by the 1st respondent in M.A.No.497 of 2010 on 08.08.2017 and also the records connected with the corresponding I.A.No.342 of 2008 in O.A.No.133 of 2002 on the file of the 2nd respondent and quash the impugned order dated 08.08.2017 as illegal and for a further direction to the 2nd respondent, to pass fresh orders in I.A.No.342 of 2008 in O.A.No.133 of 2002 after giving sufficient opportunity to the petitioner, based on the compliance made by the petitioner on 19.05.2008 of the conditions imposed by 2nd respondent in I.A.No.342 of 2008 in O.A.No.133 of 2002 on 07.04.2008 and dispose of the same within the time frame.

2. W.P. Nos.29379 to 29381 of 2017 have been filed by Mr.R.Krishnaraja Gupra, for a Writ of Certiorarified Mandamus, calling for the records of the DRAT, Chennai relating to the common order dated 08.08.2017 made in M.A.Nos.498 to 500 of 2010 in I.A.Nos.341, 343 and 345 of 2008 in O.A.No.133 of 2002 on the file of DRT, Coimbatore, to quash the same and for a further direction to allow M.A.Nos.498 to 500 of 2010 pertaining to I.A. Nos.341, 343 and 345 of 2008 and further order for hearing the matter afresh.

3. W.P. No.33739 of 2014 is filed by Mrs.P.Dhanapakkiam/auction purchaser, for a writ of mandamus directing the respondents to deliver possession of the property situated at D.No.28/1140, Dr.Ramanathan Road, Maravaneri Extension, Salem.

4. As all the writ petitions revolve around common facts and submissions, and therefore they are taken up together and disposed by a common order.

5. Facts culled out from the material on record are that petitioner's father S.V.Ramanathan, borrowed loan on cash credit basis on 19.12.1997, for a sum of Rs.6,50,000/-. Petitioner in W.P.Nos.29378 to 29381 of 2017 and his brother R.Ramachandra Gupta, stood as guarantors. Petitioner also deposited the title of his property, to Central bank of India, Salem. Due to ill health, father could not make payment.

6. Central Bank of India, Salem filed O.A. No.133 of 2002 under Section 19-A of Recovery of Debts Due to Bank and Financial Institutions Act, 1993, on the file of Debts Recovery Officer, Coimbatore.

7. On 28.08.2003, an ex-parte final order was passed against defendant No.3 in O.A. No.133 of 2002, for recovery of a sum of Rs.11,62,937/- with interest at the rate of 16% per annum.

8. S.V.Ramanathan, borrower, died on 19.11.2003. Thereafter, a recovery certificate was issued on 04.02.2004 in R.P. No.15/2004, for a sum of Rs.14,20,820/-. Family, was threatened for repayment. Therefore, the petitioner has filed a original suit in O.S. No.586 of 2007 on the file of 1st Additional District Munsif, Salem and obtained a permanent injunction on 07.07.2007, restraining Central Bank of India, Salem, the third respondent bank from alienating the property. Subsequently, when the petitioner came to know about the ex-parte final order dated 28.08.2003, when an order of attachment in R.P. No.14 of 2014 in DRC No.12 of 2004 dated 05.09.2007 was pasted in the house, for a sum of Rs.14,28,820/-A notice of proclamation of sale was issued on 16.11.2017. Petitioner and her mother sent a representation dated 03.12.2007 to the bank. Thereafter, I.A. No.342/2008 was filed in O.A. No.133 of 2002 on 11.01.2008 on the file of Debts Recovery Tribunal, praying to set aside the ex-parte final order. Thereafter, petitioner filed a memorandum dated 21.01.2008 to stop the sale proceedings. An affidavit has also been filed. Despite the request made, sale was conducted on 22.01.2008 in favour of Smt.Dhanapakkiam for a sum of Rs.19,10,000/-

9. In the meanwhile I.A. No.342/2008 filed under Section 19(25) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was taken up for hearing. Bank has filed counter affidavit denying the averments. However, taking note of the facts and circumstances of the case and observing that, it is just and necessary in the interest of justice, to give an opportunity to the petitioner herein/third defendant therein, to defend the case. DRT, Coimbatore, vide order dated 07.04.2008 in I.A. No.342/2008, allowed the petition on condition that the writ petitioner/third defendant shall remit a sum of Rs.1,50,000/-, towards liability with the bank on or before 18.05.2008. DRT, Coimbatore, has made it clear that in default of making payment, I.A. No.342 of 2008, shall stand dismissed. Tribunal further directed the Registry to post I.A. No.342 of 2008, on 19.05.2008.

10. Pursuant to the said order of the DRT, Coimbatore made in I.A. No.342 of 2008 in O.A. No.133 of 2002, writ petitioner/third defendant, has drawn two demand drafts, each for a value of Rs.75,000/- and along with a letter dated 16.04.2008 to the lawyer, remitted a sum of Rs.1,50,000/- with the bank.

11. Material on record discloses that subsequently on 20.05.2008, writ petitioner has filed a Memorandum stating that as per the directions of the Tribunal in I.A. No.342 of 2008 dated 07.04.2008, a sum of Rs.1,50,000/- has already been remitted with the bank on 16.04.2008. Along with the Memorandum, petitioner has also enclosed a letter and the copies of the demand drafts and original Registered Post acknowledgment due. When the matter stood thus,

P.Dhanapakkiam/auction purchaser of the property filed W.P. No.8472/2009 for a mandamus directing the respondents therein, to complete the proceedings in O.A. No.133 of 2002 and any other interim application pending on the file of DRT, Coimbatore and to hand over possession of the auctioned property bearing No.D.No.28/1140, Dr.Ramanathan Road, Maravaneri Extension, Salem, extension, Salem, within a period of three months.

12. Having regard to prayer sought for, Vide Order dated 30.4.2009 a Hon'ble Bench of this Court, directed the Debts Recovery Tribunal, Coimbatore, to conclude the hearing of O.A.No.133 of 2002 at an early date, after giving an opportunity of hearing to the parties, without granting unnecessary adjournments.

13. I.A.Nos.341,343 and 345 of 2008 in O.A.No.133 of 2002, have been filed for setting aside the exparte order; for granting of stay of recovery proceedings.

14. Material on record discloses that when the abovesaid order dated 11.08.2009 in W.P.No.16031 of 2009, Writ Court declined to entertain the writ petition on the ground of availability of alternative remedy of the appeal. Thereafter, the writ petitioner has filed appeal in M.A.Nos.497 to 500 of 2010 against the order in I.A.Nos.341,342,343 and 345 of 2008 respectively, on the file of the DRAT, Chennai. As per the directions, dated 18.01.2017 in I.A.No.1392 of 2009 (waiver application) in M.A.No.497 of 2010, a sum of Rs.5,82,000/- has been deposited in favour of the Registrar of DRAT, Chennai.

15. Before the DRAT, Chennai, in I.A.No.1392 of 2009 in M.A.No.497 of 2010, writ petitioner/third defendant filed written submission, stating that as per the directions of DRT in I.A.No.342 of 2008 in O.A.No.133 of 2002, dated 07.04.2008, conditional order complied with on 16.04.2008 itself the Debts Recovery Tribunal, has filed to take note of the same. M.A.Nos.497 to 500 of 2010, have been taken up for hearing and T.M.Hariharan, has represented for Central bank of India, Salem.

16. Though before the DRAT, Chennai, appellant has contended that conditional order in I.A.No.342 of 2008 in O.A.No.133 of 2002 on the file of the Debts Recovery Tribunal, has been complied with, which the Tribunal has failed to take note of, while dismissing I.A.No.342 of 2008 for non-compliance of bank counsel to oppose the appeal. Contending inter alia that the delay in approaching the Tribunal was inordinate to be precise 1640 days, since the exparte final order passed and that sale took place 9 years ago, objections were made. DRAT, Chennai by observing that the writ petitioner/third defendant had challenged the sale which took place 9 years ago, that there is no irregularity or illegality in imposing a condition of Rs.1,50,000/- for setting aside the

exparte order, and by further observing that as to whether the writ petitioner/third defendant had a good case for setting aside the exparte order, dismissed the appeals, by a common order in M.A.Nos.497 to 500 of 2010, dated 08.08.2017.

17. Being aggrieved, the instant writ petitions have been filed, on the abovesaid facts, inviting the attention of this Court, Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner submitted a sum of Rs.1,50,000/- has been paid. Evidencing the same, copy of the letter dated 16.04.2008, demand draft for Rs.75,000/- each, memorandum dated 21.01.2008 filed in DRT, were shown. Thus there is compliance of the condition imposed in I.A.No.342 of 2008 in O.A.No.133 of 2002,

18. Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner submitted that the bank had received the conditional order amount, atleast one month before the date fixed for remittance and in I.A.No.342 of 2008 was final disposed of on 23.7.2009. Bank has failed to bring to the notice of the Tribunal about the remittance. DRT-III has also mechanically dismissed in I.A.No.342 of 2008, without ascertaining the proof of payment.

19. Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner submitted that when the correctness of the order of DRT, was tested without due consideration to the grounds of challenge, being carried away by the arguments, of the bank that there was a delay of 1640 days; that the writ petitioner/third defendant therein, was habitual litigant approaching the Court, DRAT, has mechanically dismissed all the petitions, and citing irrelevant reasons and that there was a total non-application of the fact as to whether the conditional order made in I.A.No.342 of 2008 in O.A.No.133 of 2002, dated 07.04.2008 has been complied with or not.

20. Records have been called for, at the outset, Mr.F.B.Benjamin George, learned counsel for the bank, fairly submitted that the instant writ petitions, deserves to be allowed.

21. He also submitted that the conditional order made in I.A.No.342 of 2008 in O.A.No.133 of 2002, dated 07.04.2008, has been complied with. Though bank has received the said amount, the same was not reported to the DRT/DRAT.

22. Inviting the attention of this Court to the order dated 07.04.2008 in I.A.No.342 of 2008 in O.A.No.133 of 2002, dated 07.04.2008, Mr.F.B.Benjamin George, learned counsel for the bank, submitted that though DRT has directed the writ petitioner/third defendant to remit a sum of Rs.1,50,000/- towards the liability with the bank on 16.04.2008, in default with making payment, DRT, Coimbatore, further held that the petition shall stand dismissed, and though the Tribunal directed the matter to be listed on 19.05.2008, the same was

not listed on the said date.

23. According to Mr.F.B.Benjamin George, learned counsel for the bank, since interim order was complied with, bank was under the bonafide impression that I.A.No.342 of 2008, has been allowed and therefore, counter affidavits were filed in other applications in I.A.Nos.341,343 and 345 of 2008 respectively.

24. Learned counsel for the bank, further submitted that in the meanwhile, at the instance of the auction purchaser, W.P. No.33739 of 2014, was filed before the High Court for a mandamus, directing the respondents to deliver the possession of the property of D.No.28/1140, Dr.Ramanathan Road, Maravaneri Extension, Salem, and pursuant to the directions of this court, Tribunal, by observing that the original application has already been disposed of, proposed to pass orders in I.A. Nos.341, 343 and 345 of 2008, by observing that since the conditional order has not been complied with and the petition in I.A. No.342 of 2008 has already been dismissed and consequently, the other I.As.341, 343 and 345 are also dismissed.

25. Learned counsel for the bank further submitted that, on 19.05.2008, there was no sitting and hence, Tribunal posted I.A. Nos.343 and 345 of 2008 on 11.06.2008. Reiterating that the bank was under the impression that I.A. No.342 of 2008 has already been allowed and in the absence of I.A. Nos.343 and 345 of 2008 being listed on 11.06.2008, there was no occasion for the bank to make any representation on the compliance of the order made in I.A. No.342 of 2008 dated 07.04.2008. Though matter stood adjourned to 23.06.2008, it was not taken up and only after disposal of the writ petition in W.P. No.8472 of 2009 dated 30.4.2009, I.A. Nos.341, 343 and 345 of 2008, respectively, were taken up and disposed of. Mr.F.B.Benjamin George, learned counsel for the bank submitted that there was no wilful intention on the part of the bank to suppress the factum, receipt of Rs.1,50,000/-. It is also his contention that even the Debts Recovery Tribunal, which directed listing of the matter on 11.06.2008, did not include I.A. No.342 of 2008, possibly taking note of the remittance made. But, Debts Recovery Tribunal, Coimbatore, seemed to have committed an error in including, I.A. No.342 of 2008 in the hearing on 23.7.2009. According to the learned counsel for the bank, on 11.06.2008, when the learned counsel for the bank, represented the matter and on 23.7.2009 subsequent date when the liasoning officer was present, both were under the impresssion that I.A. No.342 of 2008, had already been ordered and that is why there was no representation made.

26. Heard the parties and perused the materials available on record including the files called for from the bank.

27. Placing on record, the submissions of the learned

counsel for the bank, orders impugned before us, are liable to be set aside. Accordingly, set aside. W.P. Nos.23978 to 23981 of 2017 filed by R.Krishnaraja Gupta, are allowed. W.P. No.33947 of 2014 filed by P.Dhanabackiam is dismissed. Delay condoned. DRT, Coimbatore is directed to dispose of I.A. Nos.341, 342, 343 AND 345 of 2008 in O.A. No.133 of 2002, as expeditiously as possible. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

asr/dm

To

1.The Debt Recovery Appellate Tribunal,
Chennai-600006.

2.The Presiding Officer,
The Debt Recovery Tribunal,
Coimbatore-641045.

3.The Recovery Officer,
Debt Recovery Tribunal,
Coimbatore.

4.The Recovery Officer,
Debts Recovery Tribunal,
4/162, Madurai-Melur Road,
3rd & 4th Floor,
Kalayani Towers,
Uthangudi,
Madurai - 625 107.

+1cc to Mr.T.Dharni, Advocate, S.R.No. 70780

W.P.Nos.23978 to 23981 of 2017
and W.P.No.33739 of 2014
and W.M.P.Nos.25287 & 23814 of 2017

BP(CO)
GN(28/11/2019)