

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.19057 of 2015

1.K.S.Vijayakumar

2.K.Geethapriya

.. Petitioners

v.

1.Balaji Constructions
Rep. By its Proprietor
R.Sathi Raju @ R.S.Raju
No.10, Lady Madhavan Nair Road
Chennai - 600 034

2.R.Rathi Raju @ R.S.Raju

3. Smt. Kanthammal

4. Indian Bank
No.31, Rajaji Salai
Chennai - 600 001

5.The Recovery Officer
Debt Recovery Tribunal - II
Ethiraj Collage Road, Chennai

6. Viswanathan

7.Mrs.Saraswathi Viswanathan

8.Venkat Rao

9.Krishnan

10.Mrs.Saradha Krishnan

11.Dr.K.V.Rao

12.Mrs.Girija Ganju

13.Ma.Dhanalakshmi

14.Narasimha Rao

15.Asha Devi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records and quash the same pending on the file of the Debts Recovery Tribunal No.II, Chennai in DRC No.34 of 2011 in

T.A.No.08 of 2007, dated 04.06.2015.

For Petitioners : Mr.V.Raghavachari
for Mr.J.Ramesh

For Respondents : Mr.Jayesh B. Dolia
for M/s.Aiyar & Dolia - for R4
R5 - Tribunal
No appearance - R2, R3, & R14
Not ready in notice - R1, R6 to R13 & R15

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of Certiorari to call for the records pertaining to DRC No.34 of 2011 in T.A.No.08 of 2007, dated 04.06.2015, on the file of the Debts Recovery Tribunal No.II, Chennai and to quash the same.

2.1 According to the petitioners, they entered into an agreement in the year 2011 with the respondents 2 and 3 and by abundant caution the respondents 2 and 3 have executed a Power of Attorney in favour of the petitioner's mother. According to the petitioners, they have already paid a sum of Rs.49,00,000/- (Rupees forty nine lakhs only) to the respondent-bank and the 4th respondent has also received a sum of Rs.1,30,00,000/- (Rupees one crore and thirty lakhs only) from the 12 flat owners by way of settlement deed.

2.2 The respondents 1 to 3 availed a loan from the 4th respondent-bank. Since the respondents 1 to 3 committed default in repaying the loan amount, the 4th respondent-bank initiated recovery proceedings in T.A.No.08 of 2007.

2.3 The 4th respondent-bank also obtained a warrant of eviction in in DRC No.34 of 2011 and the Debts Recovery Tribunal directed the Advocate Commissioner to execute the warrant and report the same before the Tribunal. As per the order passed in I.A.No.328 of 2011 in AIR No. 224 of 2011, dated 12.08.2011, the petitioners have paid a sum of Rs.48,97,524/- (Rupees forty eight lakhs ninety seven thousand five hundred and twenty four only).

2.4 According to the petitioners, the 4th respondent-bank illegally attached the property in addition to the properties of the 1st respondent, which were already attached. The petitioners have already filed a Civil Suit in C.S.No.237 of 2014 on the file of this Court for specific performance, which according to the petitioners is still pending.

3. From the averments stated in the affidavit filed in support of the writ petition, it could be seen that the petitioners' right has not yet been declared by the Civil Court. Even according to the petitioners, the Civil Suit in C.S.No.237 of 2014 filed for specific performance is also pending. Without getting title over the property, the petitioners have no locus standi to challenge the recovery proceedings initiated in respect of the property, which is the subject matter in C.S.No.237 of 2014.

4. Mere paying of a sum of Rs.48,97,524/- to the respondent-bank would not give any right to the petitioners to challenge the proceedings initiated by the bank before the Tribunal.

5. It is pertinent to note that the petitioners have filed the writ petition even without challenging the sale confirmation certificate issued by the Recovery Officer, Debts Recovery Tribunal No.II, Chennai, dated 15.04.2010. That apart, the petitioners have filed the writ petition without exhausting the alternative and effective remedy available to them before the Debts Recovery Tribunal under section 30 of the Recovery of Debts Due To Banks & Financial Institutions Act, 1993.

6. In these circumstances, we do not find any ground to entertain the writ petition. The Writ Petition is devoid of merits and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rj

To

1. Indian Bank
No.31, Rajaji Salai
Chennai - 600 001

2.The Recovery Officer
Debt Recovery Tribunal - II
Ethiraj Collage Road, Chennai

3.The Sub Assistant Registrar (OS)
High Court, Chennai-104

4.The Record Keeper,
Original Side Records
High Court, Madras.

W.P. No.19057 of 2015

RGN (CO)
GSP (25/09/2018)



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