

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2018

C O R A M

THE HONOURABLE MR.JUSTICE S. MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.27586 of 2012
M.P.No.1 of 2012

K.Ramesh Babu ... Petitioner

v.

1. The Bank of India,
Royapettah Branch,
Rep., by its Branch Manager,
Royapettah High Road,
Royapettah, Chennai 600 014.
2. The Debt Recovery Tribunal-II,
Anna Salai, Spenser Plaza,
Chennai 600 002.
3. R.Madhan
4. S.M.Saleem ... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the order, dated 24.09.2012 passed in S.A.No.64 of 2012, on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.M.John Kennady
For 1st Respondent : Mr.F.B.Benjamin George

For 2nd Respondent : Tribunal

For Respondents 3&4 : Mr.Elaya Rajkumar,
for M/s.Ramalingam Associates

O R D E R

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

Writ Petition is filed to quash the order, dated 24.09.2012 passed in S.A.No.64 of 2012, on the file of the Debt Recovery Tribunal-II, Chennai, 2nd respondent herein.

2. Earlier, this Court, vide order, dated 02.02.2018, has passed the following order,

"Material on record discloses that borrower has challenged the order, made in S.A.No.64 of 2012, dated 24/9/2012, on the file of the Debts Recovery Tribunal - II, Chennai. After considering the submissions of the borrower, in M.P.No.1 of 2012 in W.P.No.27586 of 2012, dated 1st November 2012, a Hon'ble Division Bench of this Court, has passed the following order:-

"4. Considering the fact that the secured asset is the residential house where the petitioner and his family are residing, there shall be an order of interim stay, on condition that the petitioner shall immediately pay a sum of Rs.5,00,000/- and the said condition has been complied with today (1/11/2012) by handing over the above two demand drafts, bearing No.637157, dated 17/9/2012 and No.246038 dated 31/10/2012, drawn on Indian Bank, Service Branch, Chennai for a sum of Rs.2,00,000/- and Rs.3,00,000/- respectively to the learned counsel appearing for the first respondent Bank.

5. Third respondent/auction purchaser-R.Madhan is present in the Court. Learned counsel for the third respondent submitted that the third respondent sold some other property to purchase the secured asset and therefore, the first respondent Bank may be directed to immediately refund Rs.27,00,000/- paid by the third and fourth respondents for purchase of the secured asset.

6. Learned counsel for the petitioner submits that the petitioner is ready to pay interest to respondents 3 and 4/auction purchasers for the said amount of Rs.27 lakhs at the rate of 18% p.a., and requests time.

Matter shall be listed on 17/12/2012."

2. On 18th December 2012, auction purchasers 3 and 4 have filed a memo of calculation in the said writ petition and the same is extracted hereunder:-

1. Interest @ 18% p.a., from 23/6/2012 to 22/7/2012 for Rs.2,70,000/- (30 days)...Rs. 4,050.00
2. Interest @ 18% p.a., from 23/7/2012 to 21/9/2012 for Rs.6,75,000/- (61 days)... Rs. 20,305.00
3. Interest @ 18% p.a., from 22/9/2012 to 16/12/2012 for Rs.27,00,000/- (86 days)...Rs.1,14,510.00

Rs.1,38,865.00

3. Subsequently, when the matter came up for further hearing, on 18th December, 2012, this Court has passed the following order:-

"The petitioner and the respondents are represented by the respective counsel. The petitioner Thiru.K.Ramesh Babu is also present in Court.

2. Mr.OM.Prakash, the learned counsel for the auction purchasers/respondents 3 and 4 has filed a memo of calculation calculating the interest amount payable at Rs.1,38,865/-. The learned counsel for the petitioner opposed the rate of interest calculated at 18% p.a., from 22/9/2012 to 16/12/2012. The learned counsel for the respondents 3 and 4/auction purchasers submitted that as against the said interest claimed at the rate of 18%, he will file a fresh calculation memo claiming interest at the rate of 12%.

3. Today, in open Court, the petitioner has paid a sum of Rs.79,000/- (Rupees Seventy Nine Thousand only) and the said amount has been received by the auction purchasers/respondents 3 and 4. In view of the earlier order dated 11th November 2012, the first respondent Bank is directed to refund the sum of Rs.27,00,000/- being the purchase money deposited by the auction purchasers 3 and 4.

4. The learned counsel for the Bank submitted that the balance amount payable by the petitioner to the Bank is Rs.4,89,163/-. The learned counsel for the petitioner submitted that the petitioner requests three months time i.e., till March 2013, for settling the entire claim of the Bank along with interest, if any.

5. Considering the request, the petitioner shall make payment of a sum of Rs.1,00,000/- on or before 30/1/2013, besides the difference of interest amount payable to the auction purchasers.

6. The matter shall be listed on 31/1/2013. On that day, the writ petitioner shall pay the difference amount payable to the auction purchasers and also report compliance of the payment of Rs.1,00,000/- to the Bank."

4. A further calculation memo, dated 28th December 2012, has been filed by the respondents 3 and 4, and the same is extracted hereunder:-

1. Interest @ 12% p.a., from 23/6/2012 to 22/7/2012 for Rs.2,70,000/- (30 days)... Rs. 2,663.00
2. Interest @ 12% p.a., from 23/7/2012 to 21/9/2012 for Rs.6,75,000/- (61 days)... Rs.13,537.00

3. Interest @ 12% p.a., from 22/9/2012 to 16/12/2012 for Rs.27,00,000/- (86 days)...	Rs.76,340.00

	Rs.92,540.00

4. Less amount paid by the petitioner on 18/12/2012	Rs.79,000.00
Balance amount	Rs.13,540.00

5. Following the above calculation, respondents 3 and 4, through their counsel, is stated to have handed over a letter, dated 25/2/2013, to Mr.J.James Advocate, for the petitioner. Perusal of the letter, dated 25/2/2013, enclosed in the typed set of papers filed by the respondents 3 and 4 indicates acknowledgement.

6. Earlier, on 3/1/2018, when the matter came up for hearing, submission is made by the learned counsel for the petitioner that the matter has been settled.

7. Today, the learned counsel appearing for Bank of India, Chennai, first respondent, submitted that the account has been settled and title deeds of the properties have been returned to the writ petitioner. However, Mr.Elaya Rajkumar for M/s. Ramalingam Associates, for the respondents 3 and 4 submitted that though the letter, dated 25/2/2013, stated supra, has been delivered to the learned counsel for the petitioner, in person, a sum of Rs.13,540/- (Rupees Thirteen thousand five hundred and forty only), has not been paid so far.

8. Mr.J.James, learned counsel for the petitioner submitted that he is unable to contact the writ petitioner. He seeks time till 6/2/2018.

9. Contents of the calculation memo, dated 28/12/2012, and the letter dated 25/2/2013, have not been disputed, by the learned counsel for the petitioner. More than five years have lapsed. It is made clear that if the above said sum of Rs.13,540/- (Rupees Thirteen thousand five hundred and forty) is not paid, on or before 6/2/2018, this Court would be constrained to pass suitable orders.

10. Post on 7/2/2018. Petitioner is directed to pay the said sum and file proof thereof."

3. Thereafter, on 08.02.2018, this Court has imposed cost, as follows:

"Mr.M.John Kennady, learned counsel, for the writ petitioner, submitted that after payment of balance debt amount, the writ petitioner, has obtained the

title deeds and appears to have sold the said property, though, informed of the orders of this Court dated 02.02.2018, has not shown interest in complying with the same.

2. Having regard to the long period of five years, since the date of passing of the order dated 18.12.2012, we have made it clear that if the sum of Rs.13,540/- is not paid to the respondent Nos.3 and 4 / auction purchasers on or before 06.02.2018, this Court would be constrained to pass suitable orders. We have also made it clear that the writ petitioner should pay the said amount and file proof thereof.

3. Today, Mr.M.John Kennedy, counsel for the writ petitioner submitted that though he has the mobile number of the writ petitioner, his residence is not known to him.

4. Considering the attitude of the writ petitioner, in disobeying the orders of this Court, despite knowledge, we are constrained, to impose cost of Rs.13,540/- to be added to the balance amount of Rs.13,540/- to be paid by the writ petitioner to respondent Nos.3 and 4 / auction purchasers.

5. Cost of Rs.13,540/- and the balance amount of Rs.13,540/-, totaling Rs.27,080/- (Rupees Twenty seven thousand and eighty only), shall be paid by the writ petitioner, to respondent Nos.3 and 4 / auction purchasers, on or before 19.02.2018, failing which, we make it clear that we will be constrained to invoke Contempt of Courts Act, 1971, for willful disobedience of the order.

6. Post on 19.02.2018."

4. Both the learned counsel appearing for the parties submitted that the above orders of this Court, have been complied with.

5. In view of the above, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

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Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Debt Recovery Tribunal-II,
Anna Salai, Spenser Plaza,
Chennai 600 002.

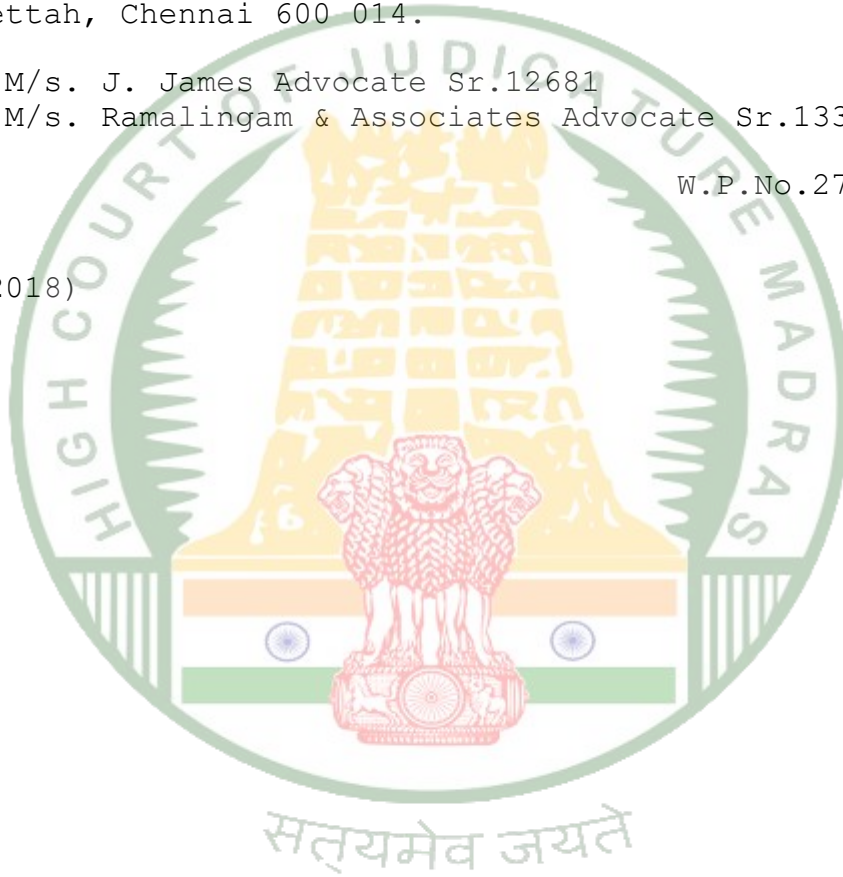
2. The Branch Manager,
Bank of India,
Royapettah Branch,
Royapettah High Road,
Royapettah, Chennai 600 014.

+ 1 cc to M/s. J. James Advocate Sr.12681

+ 1 cc to M/s. Ramalingam & Associates Advocate Sr.13335

W.P.No.27586 of 2012

(CO) KAN
EU(19/03/2018)



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