BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.03.2018
FOR CLARIFICATION: 20.07.2018
DELIVERED ON : 29.08.2018

CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P.(PD)(MD)Nos.56 to 58 of 2018
and
C.M.P.(MD)Nos.233 & 235 of 2018

1.Indian Bank,
Virudhunagar Branch,
176, Ramamoorthy Road, Viruthunagar - 626 001.

2.Indian Bank Formerly Known as
Bank of Tanjavur Ltd., and
as Succcessor of BOT,
176, Ramamoorthy Road,
Virudhunagar - 626 001. : Revision Petitioners in all CRPs

Vs.

1.M/s.P.R.K.Nadar & Co.,
a Partnership Firm rep by its
Partner, P.R.K.J.Nagarajan.

2.M/s.P.R.Karuppiah Nadar,
a Partnership Firm rep by its
Partner, P.R.K.J.Nagarajan.

3.M/s.M.A.V.R.Nadaraja Nadar & Sons,
a Partnership Firm rep by its
Partner, M.A.V.R.Nadaraja Nadar.

M.A.V.R.Nadaraja Nadar (Died)

4.R.N.Ramesh

5.R.N.Ravi,
Rep. by his Guardian, Lakshmi Ammal.

Lakshmi Ammal (Died)

6.Udaya Rani : Respondents in C.R.P.(MD)No.56 of 2018

1.M/s.M.A.V.R.Nadaraja Nadar & Sons,
A Partnership Firm rep by its
Partner, Sri R.N.Ramesh

2.R.N.Ramesh

3.M/s.P.R.K.Nadar & Co.,
A Partnership Firm rep by its
Partner,
P.R.K.J.Nagarajan. : Respondents in C.R.P.(MD)No.57 of 2018

1.M/s.P.R.K.Nadar & Co.,
A Partnership Firm rep by its
Partner, P.R.K.J.Nagarajan.

2.M/s.P.R.Karuppiah Nadar & Co.,
A Partnership Firm re p by its
Partner, P.R.K.J.Nagarajan.

3.M/s.M.A.V.R.Nadaraja Nadar & Sons,
A Partnership Firm rep by its
Partner, M.A.V.R.Nadaraja Nadar.

4.R.N.Ramesh

5.R.N.Ravi,
Rep. by his Guardian,
Lakshmi Ammal. : Respondents in C.R.P.(MD)No.58 of 2018

PRAYER in C.R.P.(MD)Nos.56 & 57 of 2018 : Civil Revision Petitions filed under Article 227 of the Constitution of India, against the orders passed in E.A.Nos.53 & 78 of 2017, respectively, in E.A.No.101 of 2004 in O.S.No.207 of 1982 dated 18.12.2017 by the 1st Additional Subordinate Judge, Madurai, in the cheque petition filed by the respective respondents 1 & 2.

PRAYER in C.R.P.(MD)No.58 of 2018 : Civil Revision Petition filed under Article 227 of the Constitution of India, directing the 1st Additional Subordinate Judge, Madurai, to pass an order in the cheque petition filed by the revision petitioners in E.A.No.176 of 2017 in E.A.No.101 of 2004 in O.S.No.207 of 1982.

For Petitioners : Mr.S.Rengasamy (In all CRPs)

C.R.P.(MD)No.56/18:
For Respondents : Mr.Rathina Asokan for R.1 & R.2
Mr.D.Nallathambi for R.3 & R.4
RR 5 & 6 - No Appearance

C.R.P.(MD)No.57/18:
For Respondents : Mr.D.Nallathambi for R.1 & R.2
Mr.Rathina Asokan for R.3

C.R.P.(MD)No.58/18:
For Respondents : Mr.Rathina Asokan for R.1 & R.2
Mr.D.Nallathambi for R.3 & R.4
R 5 - Left

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COMMON ORDER

The brief facts of the case is that the revision petitioner M/s Indian Bank is a Nationalized Bank, carrying on business activity in Virudhunagar. During the period 1979 to 1980, they had offered bill discounting facility to M/s M.A.V.R.Nadar and Sons, who were indulging in cardamom business. The revision petitioner during 1979-1980 vide Erstwhile Bank Tanjavur Limited, now Indian Bank had along with State Bank of India, Lakshmi Vilas Bank Ltd and Tamil Nadu Mercantile Bank offered bill discounting facilities to the above firm and all of the banks used to discount the bills.

2.The cardamoms were sent by M/s M.A.V.R.Nadar and Sons in different lots through railways and other transport operators to their consumers at various places. The way-bills were endorsed in the name of the bankers giving pledge rights over the goods against bill discounting. During, 1980, some of the bills discounted with the above banks were not cleared by the persons to whom cardamoms were sent by M/s M.A.V.R.Nadar and Sons. Therefore, the banks had applied pressure on M/s M.A.V.R.Nadar and Sons to clear the cardamoms and make the payment to them in respect of the discounted bills.

3.Since the pressure from the banks had not yielded desired results, the revision petitioner had taken steps to enforce the pledge rights on the cardamom goods left in the custody of transporters and started clearing and liquidating them against the credit extended by them. A few lots were cleared and liquidated by the revision petitioner and the proceeds realized into their account. M/s M.A.V.R.Nadar and Sons were allegedly not consulted of the sale and liquidation and revision petitioner had failed to rendition the accounts of sale.

4.While so, M/s P.R.K. Nadar & Co, the respondent herein who are the vendors to the said M/s M.A.V.R.Nadar and Sons had filed a recovery suit in O.S. No 433 / 1980 on the file of the Subordinate Judge, Dindigul against M/s M.A.V.R.Nadar and Sons against the cardamoms supplied by them that are part of the suit property. In that suit, the said P.R.K.Nadar, the respondent herein had filed ABJ petition and obtained an order of attachment of the uncleared lots of cardamom that were lying in the premises of the transporters. The order of attachment were for the left over stock of cardamoms left in the custody of transporters after the liquidated lots of cardamom by the revision petitioner. All the bankers above mentioned including the revision petitioner had filed claim petition before the Sub Court, Dindigul in the said suit O.S. No 433 / 1980 . In the interim, since the cardamom is perishable in nature, an advocate commissioner was appointed by the learned Judge to sell the cardamoms in question. The Advocate Commissioner had sold the attached cardamom and the sale proceeds was deposited in the Suit Account in O.S.No 433 / 1980.

5.In the meanwhile, the case in O.S.No 433 / 1980 together with the claim petitions filed by the bankers got transferred to the First Additional Sub Court, Madurai and renumbered as O.S.No 207 / 1982. Later, the entire sale proceeds came to be deposited in the suit account of O.S.No 207/1982 and invested in the bank. Another suit for recovery in O.S.No 133 / 1982 filed by the vendor M/s P.R.K. Nadar & Co against the outstanding dues amounting to Rs. 4,76,700.11P. from M/s M.A.V.R.Nadar and Sons was before the learned First Additional Sub Court, Madurai. By a common order dated 16.04.1984, the above two suits O.S.No 207 / 1982 and O.S.No 133 / 1982 were decreed in favour of M/s P.R.K. Nadar & Co with cost by the learned First Additional Sub Court, Madurai. In appeal, by order dated 19.12.2016 in A.S (MD) Nos 489 and 490 of 1992, the High Court of Madras had confirmed the judgement and decree in O.S.No 207 / 1982 and O.S.No 133 / 1982.

6.Another suit filed by the revision petitioner before the Sub Court, Srivilliputhur, in O.S.No 175/1981 was transferred as per the direction of the High Court of Madras in T.RCMP No 151/82, dated 08.02.1982, to the Principal Sub Court, Madurai, and renumbered as O.S.No 104/82 and again, as per the order passed by the High Court of Madras in CRP No 3633 / 84, the suit was transferred to the Principal District Court and renumbered as OS No 4 / 1984. The respondents objected to the suit on the ground that the revision petitioner had failed to rendition the accounts to the respondents here in of the liquidation of some of the lots of cardamom by way of clearance and sale. The above suit came to be dismissed without costs by order dated 24.03.2004 with a direction to the revision petitioner to render proper account of profits in respect of pledged cardamom liquidated by them.

7.In the interim, the learned First Additional Subordinate Judge, Madurai, without disposing off the claim petitions filed by all the banks had disposed off the Suit O.S.No 207/ 1982. On the appeal filed by all the bankers, the High Court of Madras had directed the District Court, Madurai to dispose off the claim petitions. The learned District Judge had conducted a detailed enquiry in the claim petitions filed by the banks, allowed the claim petitions on 21.12.1984 and has lifted the order of attachment of the learned Sub Court, Dindigul.

8.Aggrieved by the above said order dated 21.12.1984, M/s P.K.R.Nadar and another had preferred an appeal before the High Court of Madras in CMA Nos. 91 of 1985 to 95 of 1985 which were dismissed vide order dated 20.04.1992. The High Court of Madras had upheld the raising of the order of attachment of the District Court, Madurai, on the ground that the bankers by way of pledge had rights over the uncleared cardamoms. The said order was challenged by the said M/s P.K.R.Nadar and another before the Hon'ble Supreme Court in SLP Nos. 13330 of 1993, 13331 of 1993, 13527 of 1993 and 13528 of 1993 which came to be dismissed on 20.01.1995.

9.Upon dismissal of the SLPs, 5 banks had sat together to arrive at each other's share of their charge in the sale proceeds of the left over stock of cardamom. They had entered into a MOU on 18.12.2003 whereby, the banks authroized/ empowered State Bank of India, Virudhunagar, to file send for application of the amounts invested in the bank and also to file cheque petition to withdraw the amount. Based on the MOU, State Bank of India, Virudhunagar, had filed send for application in E.A.No 101/2004 in O.S.No 207 / 1982 on the file of the First Additional Sub Court, Madurai. The borrower M/s M.A.V.R. Nadaraja Nadar & Sons, M/s PRK Nadar & Co and another have filed their objections. Ultimately, the send for application of the SBI, Virudhunagar, was allowed and accordingly, the amounts invested in various banks were sent to the suit account of 207 / 1982 on the file of the First Additional Subordinate Judge, Madurai.

10.The State Bank of India had filed the Cheque petition on the file of the First Additional Sub Court, Madurai in E.A.No 713 / 2016 in E.A.No 101 / 2004 in O.S.No 207 / 1982 claiming a sum of Rs. 4,55,08,714/-. The learned Judge has passed an order to issue a cheque of Rs. 3,75,31,036.44. Remaining amount of Rs. 79,77,678/- was kept in the suit Account. The revision petitioner contends that the said remaining amount of Rs.79,77,678/- belonged to them and other banks.

11.Subsequently, M/s P.K.R.Nadar and Co and another had filed cheque petition in E.A.No 53 / 2017 and M/s M.A.V.R.Nataraja & Sons in E.A.No 78 / 2017 had filed cheque petition in E.A.No 78 / 2017 that were allowed by the learned Judge on 18.12.2017. An amount of Rs. 65,27,332/- was allowed in E.A.No 53 / 2017 and an amount of Rs. 14,50,140/- was allowed in E.A.No 78 / 2017.

12.In the back drop, the revision petitioner has preferred this CRP (MD) No 56 to 58 of 2018 against E.A.No 53 / 2017 and 78 / 2017 in E.A.No 101 / 2004 in O.S.No 207 / 1982.

13.The revision petitioner submits that the order of the lower court suffers from error in law, non application of principles of law, appearing on the face of the petition and is vitiated for the failure to exercise its jurisdiction vested in it. The lower court has failed to peruse the common order passed by the learned District Judge for raising the Order of attachment, Dismissal orders passed in A.S No 91/1985 to 95/1985 dated 20.04.1992 by the High Court of Madras and Orders passed by the Hon'ble Supreme Court in SLP No 13330/1993, 13331 / 1993, 13327 / 1993 dated 20.01.1995 and passed the impugned orders in gross violation of the appellate courts' orders.

14.It was submitted that all the parties in EA No 101 / 2004 were not added as parties to proceedings in EA No 53 / 2017 and EA No 78 / 2017 in EA No 101 / 2004 in OS No 207 / 1982 and failed to apply its mind while numbering the cheque petitions. It was contended that the cheque petition of the respondents are not maintainable in law and facts and is an abuse of due process of law. The lower court committed error in allowing the cheque petitions on 18.12.2017.

15.It was submitted that the respondents are not the proper persons to get the court deposits as per the common order of learned District judge in IA No 208 / 2004 to IA No 212 / 2004, the dismissal orders passed in A.S No 91/1985 to 95/1985 dated 20.04.1992 by the High Court of Madras and Orders passed by the Hon'ble Supreme Courtin SLP No 13330/1993, 13331 / 1993, 13327 / 1993 dated 20.01.1995. It was contended that by virtue of the above decisions, the banks alone are entitled for the amount deposited in the suit account OS No 207 / 1982. They also alleged that the cheque petitions of the respondents are a fraud played on the Court. It was argued that since the lower court failed to honour the entire amount of Rs. 4,55,08,714/- claimed in cheque petition in EA No 113/ 2016 filed by State Bank of India on behalf of all 5 banks, and restricted the amount to Rs. 3,75,31,036.44P, prejudice is caused to their interests and had filed Cheque petition in E.A.No 176 /2017.

16.They also alleged collusion and suppression of facts by the respondents in as much as the applications were made behind the back of the bankers and prayed to allow the Civil Revision Petitioners by setting aside the impugned orders of the lower court.

17.The respondents 1 & 2 filed a common counter. It was submitted that the revision petitioner had no locus standi or legal right to file the CRP (MD) No 56 & 57 of 2018 in as much as Indian Bank is not a party to the impugned orders viz. EA No 53 of 2017 and EA No 78 of 2017.

18.It was submitted that the respondents 1 & 2 are the Decree holders in two separate suits viz. the plaintiffs in OS No 207 & 113 of 1982 on the file of the First Additional Subordinate Court, Madurai, for recovery of money amounting to Rs. 4,15,158.13 and Rs. 4,76,711 respectively against the 3rd respondent which is a partnership firm represented by its partners (respondents 4 to 8 herein) who were defendants in the suits. The decrees got confirmed after a period of 33 years in appeal before the High Court of Madras in AS No 489 & 490 of 1992 by common order dated 16.11.2016. The cheque petition is filed consequent to the above order of the High Court.

19.It was submitted that the suit filed by the State Bank of India in OS No 149 of 1983 at Sub court, Srivilliputtur, for a sum of Rs. 94,08,948.07 against the 3rd respondent was later transferred to DRT, Chennai, and then to DRT, Madurai, and renumbered as T.A.No 173 of 2007 that was allowed and the cheque petition E.A.No 113 of 2016 was filed on the strength of the order passed by DRT, Madurai. Even though it was not a civil court decree, the learned Judge allowed the State Bank of India to draw a sum of Rs. 3,75,31,036.44 from and out of the Rs. 4,50,38,833/- lying in the credit of

O.S.No.207 of 1982.

20.It was submitted that the suit in O.S.No 4/2004 filed by the revision petitioner against the 3rd respondent herein in O.S.No 4 / 1984 was dismissed by the Principal District Court for failure to rendition of accounts sought in the counter claim. The appeal preferred by the revision petitioner was also dismissed by Order dated 19.12.2016 of the High Court of Madras in AS No 489 & 490 of 1992 and as such, Indian Bank, the revision petitioners herein have no enforceable decree against the 3rd respondent.

21.It was submitted that respondents 1 & 2 herein had filed a detailed counter to EA No 176 of 2017 on 18.12.2017 before the First Additional Subordinate court which has already seized of the matter and the same was posted to 12.02.2018 for enquiry. They argued that suppression of material facts or documents amounts to playing fraud on court and such intentional suppression or withholding vital documents like the orders in O.S.No 4 / 1984 before the Principal District Court, Madurai, and A.S No 489 & 490 of 1992 of the High Court of Madras, disqualify such litigant from obtaining any relief and relied on the decision of the High Court of Madras reported in 2015 (1) CTC 750.

22.It was submitted that the order raising the interim attachment passed in the year 1984 is not a decree to enable the Indian Bank to file the present petition without proving their claim before a Civil Court. It was argued that if Indian Bank presumed that they had the right to claim the amount based on the order dated 21.12.1984 raising interim attachment, the execution petition would have been filed in 1984 itself. The right that did not accrue in 1984 cannot accrue in 2017 by virtue of the same order and therefore even hypothetically accepting the contention, any claim now is barred by limitation. In result, it was argued that Indian Bank is a total stranger and is not a party to the impugned orders in EA No 53 & 78 of 2017 and has no locus standi to interfere with the enforceable decree held by the respondents 1 & 2 and EA No 176 of 2017 is not maintainable without any enforceable decree and accordingly CRP (MD) Nos 56 to 58 of 2018 are liable to be dismissed, in limine and prayed for grant of exemplary cost.

23.I have heard the submissions of the counsels and perused the records. There is no dispute or disagreement on the facts narrated supra among the contesting parties. The case of the revision petitioner/Indian Bank is built on the presumption that by virtue of the order dated 21.12.1984 of the Principal District Court, Madurai in the claim petitions I.A. No 208 to 212 of 1984 to raise the interim attachment and the subsequent confirmation of the same by the High Court and the Hon'ble Supreme Court, the proceeds of the attached goods belonged to the bankers. This presumption is faulty and preposterous. On a careful reading of the above said orders, it is seen that the orders do not cast absolute right of the attached goods to the banking creditors, but are a limited acknowledgement of the pledge rights of the goods to the banking creditors. The orders, by lifting the attachment, only separate the exclusive right of the plaintiff who had obtained ABJ to attach the goods in question. In other words, the orders expand the charge of the goods to enable all injurious parties to have a claim to be settled in the suit.

24.As rightly pointed out by the learned counsel for the respondents 1 & 2, if the right had accrued in 1984 by virtue of the orders of the supreme court as attempted to be argued by the revision petitioner, there would have been no impediment for the revision petitioner to file execution petition in 1984 itself. Rightly, the right that did not accrue in 1984 cannot accrue in 2017 by virtue of the same order of 1984.

25.On perusal of the case records, it is seen that the revision petitioner has no enforceable decree. OS No 4 / 1984 instituted by them were also dismissed by the learned Principal District Court vide order dated 24.03.1984 which was confirmed by the High Court of Madras in A.S.No 489 & 490 of 1992. On the other hand, the respondent 1 & 2 hold enforceable decrees in OS No 207 / 1982 and OS No 103 / 1982 by virtue of the common order dated 16.04.1984. Therefore, I am in full agreement with the view of the learned counsel for the respondents 1 & 2, that the revision petitioner is a stranger to EA No 53 & 78 of 2017 and has no locus standi to file this CRP No 56 & 57 of 2018 and therefore the revision petitions are liable to be dismissed. Similarly, EA No 176 of 2017 in OS No 207 / 1982 filed by the revision petitioner is still pending and therefore CRP No 58 of 2018 is premature and not maintainable and is liable to be dismissed.

In the result, CRP Nos.56 to 58 of 2018 are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar(CS-III)

To
The 1st Additional Subordinate Judge,
Madurai.
+1cc to Mr.D.Nallathambi, Advocate, SR.No.80784
+2cc to Mr.M.SRIDHER, Advocate, SR.No.80783

C.R.P.(PD)(MD)Nos.56 to 58 of 2018
and
C.M.P.(MD)Nos.233 & 235 of 2018
29.08.2018

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