HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.32554 of 2018

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri S.Ravi, learned Senior Counsel appearing on behalf of the petitioner, and Sri M.Srikanth Reddy, learned Standing Counsel for the State Bank of India (1st respondent herein) and, with their consent, the writ petition is disposed of at the stage of admission. The petitioner herein seeks a writ of certiorari to quash the order passed by the Debt Recovery Tribunal, Hyderabad in O.A.No.2546 of 2017 dated 12.06.2018 in so far as respondents 1 to 7-banks were held entitled to proceed against the subject property.

Initially O.A.No.1348 of 1997 was filed by respondents 1 to 7-banks herein, under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (for short "the RDB Act"), for recovery of a sum of Rs.13,12,04,156.31 ps. from respondents 8 to 11 jointly and severally with costs and current and future interest. The said O.A was later re-numbered as O.A.No.2546 of 2017. The petitioner herein filed an application in I.A.No.846 of 2006 seeking a direction to the Debt Recovery Tribunal to release the schedule property from the order of attachment dated 11.08.2006 passed in I.A.No.820 of 2005 in O.A.No.174 of 2005 (old O.A.No.1348 of 1997).

It is the petitioner's case that the subject property belonged to respondent No.10, who stood as guarantor for the loans advanced by respondents 1 to 7-banks in favour of respondents 8 and 9; the said property was not under mortgage and, therefore, respondent No.10 was entitled in law to alienate the property; and, since the alienation is prior to the decree in O.S.No.2546 of 2017 (in terms of a registered sale deed dated 15.01.2003), the consortium of banks are not entitled to proceed against the said property for recovery of the amount due from respondents 8 and 9.

Sri S.Ravi, learned Senior Counsel appearing on behalf of the petitioner, would submit that the Debt Recovery Tribunal was obligated in law to consider the petitioner's application in I.A.No.846 of 2006 and, since all the applications (which would include I.A.No.846 of 2006 also) were closed even without an adjudication of the petitioner's claim, the order of the Debt Recovery Tribunal is liable to be set aside and the Debt Recovery Tribunal should be directed to consider the petitioner's application in accordance with law.

Sri M.Srikanth Reddy, learned Standing Counsel for the State Bank of India, would, however, point out that, after a decree is passed by the Debt Recovery Tribunal, the matter is referred to the Tax Recovery Officer to recover the said amount; appointment of the Tax Recovery Officer, to recover the amounts due and payable in terms of the decree passed by the Debt Recovery Tribunal, is in accordance with the provisions of Schedule II to the Income Tax Act, 1961 (for short "the Act"); the said Schedule enables claims to be made by third parties; and since the petitioner has the remedy of filing a claim petition, before the Tax Recovery Officer, in terms of Schedule-II to the Act, they are not entitled to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Schedule-II to the Income Tax Act, 1961 prescribes the procedure for recovery of tax and, in terms of Section 29 of the RDB Act, the said procedure is applicable for recovery of the debt due under that Act. Rule 11 of Schedule-II to the Act relates to investigation by the Tax Recovery Officer. Rule 11(1) stipulates that, where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection. Under the proviso thereto, no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

As the petitioner is entitled to prefer a claim to the Tax Recovery Officer under Rule 11(1) of Schedule-II to the Act read with Section 29 of the RDB Act, we see no reason to exercise discretion, under Article 226 of the Constitution of India, to entertain this writ petition. Suffice it to make it clear that the Tax Recovery Officer shall consider the petitioner's claim on its merits uninfluenced by the fact that they had invoked the jurisdiction of the Debt Recovery Tribunal by filing I.A.No.846 of 2006, as the said I.A was not adjudicated by the Debt Recovery Tribunal.

Subject to the aforesaid observations, the Writ Petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

14th September, 2018
JSU

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.32554 of 2018

Date: 14.09.2018

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