

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.SARAVANAN

C.R.P.(PD)No.875 of 2019 and W.P.No.8320 of 2019
and
CMP.No.2068 of 2019 and WMP.Nos.8867 and 8869 of 2019

C.R.P.No.875 of 2019

Manickchand Balecha
Mrs.Kiran Kanwar (Deceased)

... Petitioner

..Vs..

Indian Bank,
Thousand Lights Branch
Kanmani Building,
611, Mount Road,
Chennai 600 006.

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 07.12.2018 made in M.A.No.153 of 2017 against M.A.No.109 of 2008 in O.A.No.938 of 1998 dated 20.07.2012 on the file of the Hon'ble DRAT, Chennai and thereby confirm the order passed by the Hon'ble DRT-I, Chennai in M.A.No.109 of 2008 in O.A.No.938 of 1998.

W.P.No.8320 of 2019

1.C.Mani
2.M.Rani

... Petitioners

..Vs..

1. Indian Bank,
Thousand Lights Branch
Kanmani Building,
611, Mount Road,
Chennai 600 006.

2. A.Subramani
3. Manickchand Balecha
4. Kiran Kanwar

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India seeking for a Writ of Certiorarified Mandamus calling for the records on the file of the Hon'ble Debts Recovery Tribunal, Chennai, pertaining to the order dated 07.12.2018 in M.A.No.17 of 2012 and that of the Hon'ble Debts Recovery Tribunal I, Chennai in M.A.No.104 of 2008 in O.A.No.938 of 1998 and quash the same and consequently allow the M.A.No.104 of 2008 in O.A.No.938 of 1998 on the file of the Hon'ble Debts Recovery Tribunal I, Chennai.

For Petitioner
(in C.R.P.No.875
of 2019)
(in W.P.No.8320
of 2019)

: Mr.M.Arun kumar
for M/s.Sampath Kumar
Associates
Mr.T.Saikrishnan

For Respondent
(in C.R.P.No.875
of 2019)
(in W.P.No.8320 of
2019)

: Mr.Jayesh B.Dolia

Mr.Jayesh B.Dolia (R1)
Mr.M.Arunkumar for (R3)
Sampath Kumar & Associates

COMMON ORDER

(Order of the Court was made by DR.VINEET KOTHARI, J.)

Civil Revision Petition as well as the Writ Petition have been filed by the petitioners who are the guarantor and purchasers of property during the pendency of proceedings of OA respectively, aggrieved by the order dated 07.12.2018 passed by the Debts Recovery Appellate Tribunal, Chennai in M.A.Nos. 153/2017 and 17/2012 respectively — by which the learned Debts Recovery Appellate Tribunal upheld the order passed by the Debts Recovery Tribunal, Chennai on 20.01.2010 by which the learned Debts Recovery Appellate Tribunal has drawn the exparte proceedings against the petitioners.

2. The learned Debts Recovery Tribunal has drawn the exparte proceedings against both these petitioners with the following observations in its order dated 20.01.2012.

"5.2. It is evidently clear that though D2 and D3 were represented in the proceedings till the order dated 12.02.2008 was passed by this tribunal allowing IA 181/07 for impleading D4 and D5, being the purchasers of the property from D2 and D3 vide two sale deeds dated 25.09.2006, apprehending some trouble through D4 and D5, the petitioners herein have withdrawn from the proceedings in the OA and thereafter this tribunal having given sufficient time for proper representation by D2 and D3, they have not appeared before this tribunal and accordingly had to be set *exparte*. **The act of petitioners herein having executed two sale deeds in favour of D4 and D5 of the schedule mentioned properties during pendency of the proceedings in the OA is certainly with an aim to defeat the interest of the creditors to recover their dues from the mortgage properties.**

5.6. Having gone through the material facts relied upon by the petitioners in both the MA and by the respondent respectively and after analyzing the averments in the petitions and in counter, this tribunal is convinced that the present proceedings have been initiated by the petitioners **only to drag on the proceedings in the recovery of public funds by the respondent/applicant bank** and allowing these petitions will certainly jeopardize the respondent/applicant bank and especially the recovery of public funds and hence both the MAs are dismissed without any order as to costs.

6. A copy of the final order be sent to both the parties by the registry in due course.

(Dictated to Smt.S.transcript revised and after necessary corrections, signed and pronounced by me in the open court on this 20th day of January, 2012.)
"

3. The learned Tribunal in its order dated 07.12.2018 has assigned the following reasons while upholding the order passed by the learned Debts Recovery Tribunal dated 20.01.2012.

*"11. In M.A.No.104/2018, it was stated that **purchaser C.Mani had undergone a Neuro surgery and was bed ridden.** Due to the above said reason, he was unable to move from the bed and instructed his Counsel to prepare a Reply Statement. Then, in the first week of June, 2008, met with his Counsel, who informed that exparte order had been passed in this matter, whereas, exparte order was passed not in first week of June, 2008, rather it was passed on 12.06.2008. No medical evidence is available on record to show that C.Mani was bed ridden. PO of DRT had appreciated the date-wise progress in the matter meticulously. On 20.03.2008, guarantors as well as subsequent purchasers represented their matter in O.A. through Counsel, thereafter, failed make any appearance on 22.04.2008. Thereafter, only on 12.06.2008, exparte final order was passed.*

12. It means notice of hearing in O.A was duly served on both Appellants and Co-Appellants and they represented the O.A. through their respective Counsels. There appears no good ground, especially in the absence of any of the Appellants/Co-Appellants on the date of hearing, i.e. 22.4.2008. Hence, PO of DRT had rightly dismissed the MAs and declined the setting aside of exparte order. Subsequent orders and events are not relevant for hearing of these Appeals. Rather, these are more relevant in proceedings under SARFAESI Act and for adjudication of rights of borrower, guarantors and auction purchasers.

13. Record reveals that R1 Bank had accepted a copy of the title deeds, may be authentic from the guarantors, and despite the exparte decree, it had not proceeded against the main borrower for recover. In such a situation, Bank should suffer the recovery in terms of rate of interest and in place of contractual rate of interest, Bank will be entitled only for recovery of interest at the rate of 10% p.a. (Simple) from the date of the impugned order, i.e. 20.1.2012. Rest of the part of the exparte order is hereby affirmed.

14. Appeals are disposed of as indicated above. Consequently, all pending IAs in both Appeals are closed and disposed of. IAs for impleadment filed by third party petitioners on 15.11.2018 in both Appeals after final arguments stand closed and dismissed. R1 Bank is directed to collect the pre-deposit amount lying with the Registrar of this Tribunal (in Appeal MA-153/2017) and to deal with it according to law."

4. Aggrieved by the same, the petitioners who are the borrower as well as the purchasers respectively have filed the above Civil Revision Petition and the Writ Petition.

5. During the course of proceedings it was brought to the notice of this Court that the aforesaid purchasers have taken the proceedings before the Hon'ble Supreme Court in **C.A.No.8745 of 2015** and the Hon'ble Supreme Court on **22.01.2018** has passed the following order:

"Heard the learned counsel for the parties.

In the course of hearing, a suggestion has been given to the parties to the parties whether they would settle the controversy if the appellant pay a sum of Rs.50,00,000/- (Rupees Fifty Lacs only) to the respondent-auction purchaser apart from the amount deposited in the bank along with the interest accrued thereon.

List on 19.02.2018.

Learned counsel for the bank shall apprise us about the amount that is lying deposited in the bank.

*(Chetan Kumar)
Court Master*

*(H.S.Parasher)
Assistant Registrar"*

6. It is also stated that the aforesaid S.L.P. is still pending before the Hon'ble Supreme Court.

7. The learned counsel for the petitioners urged before us that the exparte proceedings deserves to be set aside and the O.A. should be restored and the learned Debts Recovery Tribunal may be directed to decide the case on merits.

8. It is further submitted that though both the counsels have appeared before the learned Tribunal and the cross examination was also undertaken earlier but merely because both the parties failed to appear on **22.04.2008** the learned Tribunal could not have proceeded exparte against them. The learned counsel for the petitioners also urged before us that the petitioners

had also challenged their mortgage with the Respondent Bank in the said SARFAESI proceedings in the O.A.No.938 of 1998 filed by them.

9. The learned counsel for the respondent/bank however supported the Impugned orders.

10. Having heard the learned counsel for the parties we are of the opinion that since the issue relating to SARFAESI proceedings and the rights of the present petitioner in the present Writ Petition vis-a-vis the purchasers and others is pending before the Hon'ble Supreme Court, no useful purpose would be served by setting aside the exparte proceedings passed by Debts Recovery Tribunal which has been upheld by the learned Debts Recovery Appellate Tribunal.

11. Having perused the orders passed by both the Tribunals below, we find no good reason to interfere with the said orders as neither the party has produced the medical evidence before the Tribunal nor otherwise satisfied the Tribunal. Once the exparte proceedings were drawn way back in the year 2008, now after the belated period of 11 years, we do not find any reason for the restoration of the proceedings before the Tribunal at this stage. Even otherwise, we are of the opinion that since the parties who

have already filed SLP before the Hon'ble Supreme Court in the aforesaid Civil Appeal, not only the original borrowers, guarantors, the purchasers and bank, but the present petitioners are also parties before the Hon'ble Supreme Court, the petitioners should of course raise their contentions before the Hon'ble Supreme Court. Restoring the proceedings before the Debts Recovery Appellate Tribunal at this stage is of no use before the matter is decided by the Hon'ble Supreme Court as all lower Courts or Tribunal will be naturally bound by it. If at all, any remand of the case is done to the concerned Tribunal, the Tribunal shall decide the case in accordance with the directions of the Hon'ble Supreme Court. Therefore, we are not setting aside the order passed by the learned Debts Recovery Appellate Tribunal at this stage.

12. Hence, the present Writ Petition as well as Civil Revision Petition are dismissed, leaving the parties free to raise their contentions before the Hon'ble Supreme Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

(V.K.,J.) (C.S.N.,J.)
16.09.2019

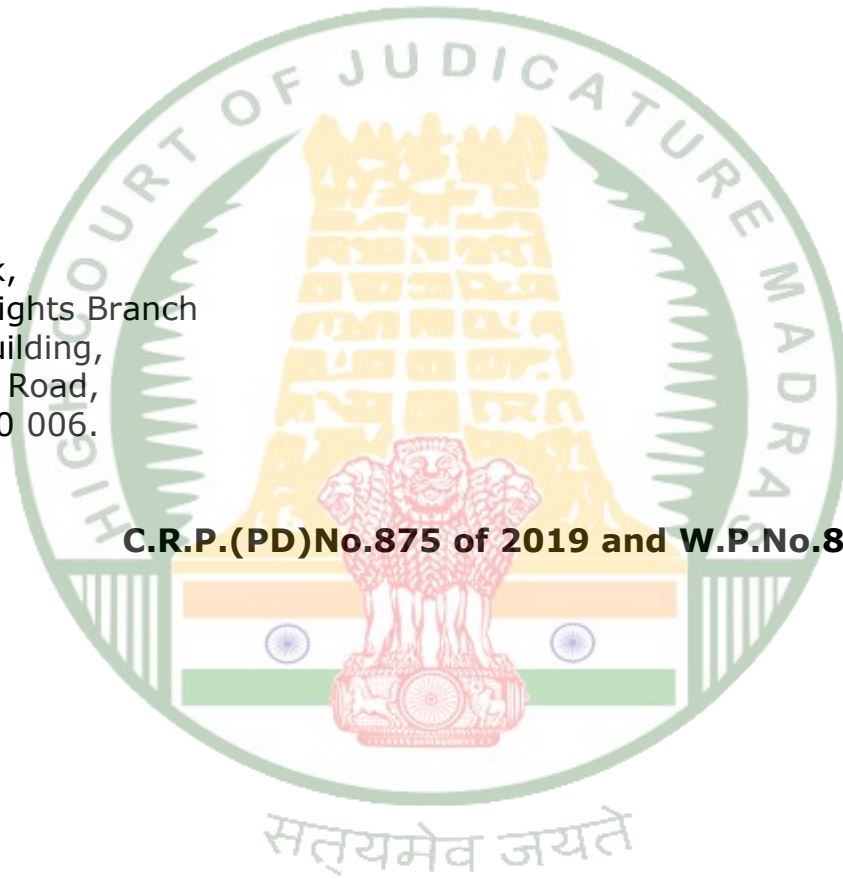
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DR. JUSTICE VINEET KOTHARI,J
and
MR. JUSTICE C.SARAVANAN,J

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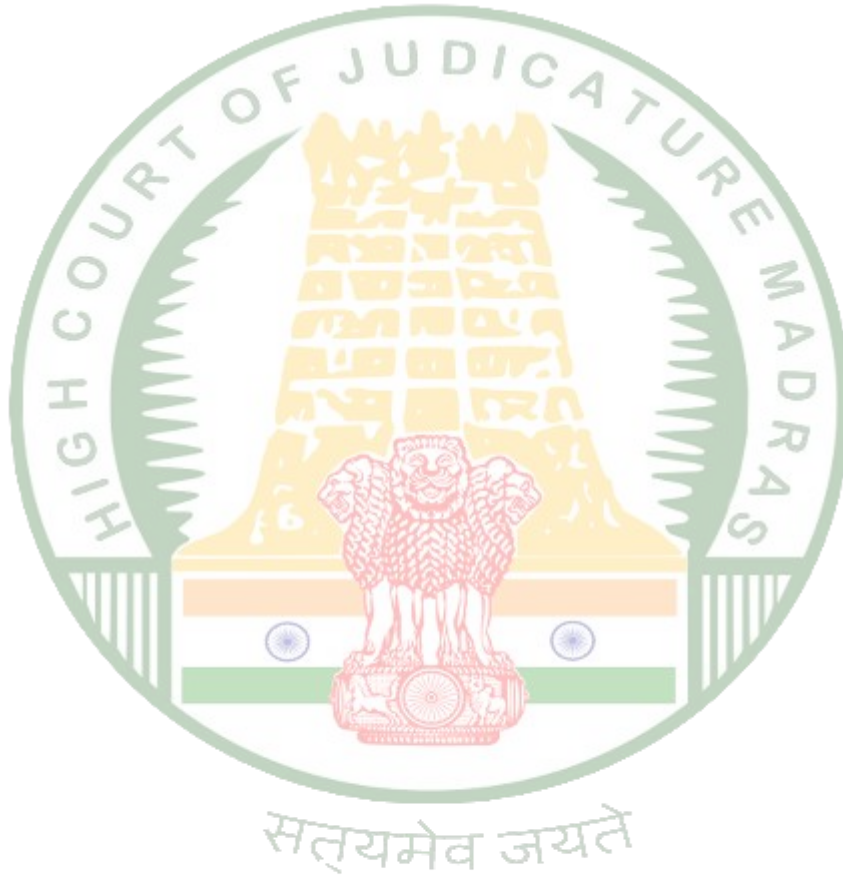
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