IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2019

DELIVERED ON : 04.07.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.20387 of 2007 and
M.P.Nos.1 and 2 of 2007

M/s. Asset Reconstruction Company (India) Ltd.,
Rep. by its Authorised Signatory,
Aircil Arms Office,
No.560 to 562, 1G, 1st Floor,
Century Plaza, Teynampet,
Chennai - 600 018.
(Cause Title amended vide court order
dated 10.08.2018 made in W.M.P.
No.20377/2018 in W.P.No.20387/2007)

.. Petitioner

v.

1 Mrs.Senthamarai Ammal (deceased)

2 M/s. Amin Timber Trading Company,
No.19, Norton Road, Mandaveli,
Chennai - 600 028.

3 Mr. S. Ganesan

4 The Debts Recovery Appellate Tribunal,
No.55, Ethiraj Salai,
Chennai - 600 008.

5 Mr. Kumar
6 Sarasu
7 Babu (deceased)
8 Usha
9 Santhi
10 Malarkodi
11 Tamil Selvi
12 Sudha
13 Ashok
14 Mrs. Banu
15 Mr.B.sankar

16 Mrs.Nathiya
[R5 to R13 substituted as LRs of the deceased R1 & R14 to R16 are substituted as LRs of the deceased R7 vide order dated 21.02.2019 made in W.M.P.Nos.26502 and 37958/2018 in W.P.No.20387 of 2007]

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorari, calling for the records pertaining to the order dated 28.09.2006 passed in R.A.No.30 of 2006 by the Debt Recovery Appellate Tribunal, Chennai and quash the same.

For Petitioner: Mr.Suresh
For M/s. Shivakumar & Suresh

For Respondents: Mr.C.A. Diwakar - for R1 (died) & R5 to R16
No Appearance - for R2 & R3
R4 - Tribunal

ORDER

VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
M. DURAISWAMY,J.,

The petitioner - Asset Reconstruction Company (India) Limited has filed the above Writ Petition to issue a Writ of Certiorari to call for the records pertaining to the order dated 28.09.2006 passed in R.A.No.30 of 2006 on the file of the Debt Recovery Appellate Tribunal, Chennai and to quash the same.

2. The 3rd respondent is the sole proprietor of the 2nd respondent company, which borrowed a sum of Rs.19,00,000/- [Rupees nineteen lakhs only] in the year 1990 on different dates. The 1st respondent stood as guarantor for the due repayment of the loan amount by executing a mortgage deed as well as by depositing the title deeds in respect of her property. Since the borrower committed default in repaying the loan amount, the Indian Bank filed O.A.No.1297 of 1999 on the file of the Debts Recovery Tribunal-I, Chennai, for recovery of a sum of Rs.86,86,680.55 [Rupees Eighty six lakhs eighty six thousand six hundred and eighty and fifty five paise only] together with interest. The respondents 1 to 3 remained ex parte before the Debts Recovery Tribunal, Chennai.

3. The Debts Recovery Tribunal, by order dated 31.07.2003, decreed the claim made by the Indian Bank.

4. Aggrieved over the order passed by the Debts Recovery Tribunal, the 1st respondent- Mrs.Senthamarai Ammal filed an appeal in R.A.No.30 of 2006 before the Debt Recovery Appellate Tribunal, Chennai.

5. The Appellate Tribunal, by order dated 28.09.2006, modified the order passed by the Debts Recovery Tribunal by restricting the liability of the 1st respondent- Mrs.Senthamarai Ammal to Rs.2,00,000/- [Rupees two lakhs only].

6. Challenging the order passed by the Debt Recovery Appellate Tribunal, originally, the Indian Bank has filed the above Writ Petition. Subsequently, since the debt was assigned in favour of the Asset Reconstruction Company (India) Limited, the cause title was amended by incorporating the Asset Reconstruction Company (India) Limited as the petitioner in the place of Indian Bank.

7. The learned counsel appearing for the petitioner-Asset Reconstruction Company (India) Limited submitted that a reading of the mortgage deed and the deposit of title deeds would make it clear that the mortgage was intended to and shall operate as a continuing security for all loans indebtedness and liabilities of the borrower and mortgagor to the bank at all times during the subsistence of the mortgage. The learned counsel also took us to Clause-7(V) and (VIII) of the mortgage deed dated 18.04.1991, which reads as follows:-

> " ... 7 V. That this mortgage is intended to and shall operate as a continuing security for all loans indebtedness and liabilities of the borrower and mortgagor to the bank at all times during the subsistence of the mortgage:-
>
> a. the existence of a credit balance of 'NIL' balance int he loan accounts at any time or any partial payment of fluctuation of accounts, or,
>
> b. any lands or any part thereof have been repaid either after demand has been made by the Bank or otherwise or has not been so repaid on demand.
>
> ...
>
> VIII This mortgage is in addition to and not in substitution of the mortgage by deposit of title deeds created or to be created by the mortgage in favour of the bank. ..."

8. The learned counsel appearing for the respondents 5 to 16, who are the legal representatives of the deceased 1st respondent- Mrs.Senthamarai Ammal, submitted that the deed of guarantee said to be executed by the deceased-1st respondent is only to the tune of Rs.2,00,000/- [Rupees two lakhs only] and therefore, the Appellate Tribunal is right in restricting the liability to the said amount. The learned counsel further submitted that the alleged mortgage deed and the documents executed for depositing the title deeds are fabricated documents and that the said Senthamarai Ammal is in no way connected with the loan transaction.

9. The contention raised by the learned counsel appearing for the respondents 5 to 16 cannot be accepted for the reason that the Bank had issued a Pre-Suit Notice dated 21.06.1995, wherein, the bank had called upon Mrs.Senthamarai Ammal to make payment of the principal and interest thereon under the loan account. The deceased-1st respondent did not send any reply to the said notice. However, she sent a telegram dated 01.07.1995 stating that the borrower would discharge the loan account in ten days time.

10. It is pertinent to note that the deceased-1st respondent did not dispute the loan liability as claimed by the bank in her telegram followed by any confirmation letter. It is also pertinent to note that the 1st respondent did not file any written statement in O.A.No.1297 of 1999.

11. If the contention raised by the deceased-1st respondent is true, then, she would not have kept quiet without even sending a reply to the Pre-Suit Notice dated 21.06.1995. If the documents are fabricated, she would have taken legal action against the wrong-doers immediately. But, for the best reasons known to her, she remained silent for several years.

12. The Appellate Tribunal, while modifying the order passed by the Debts Recovery Tribunal, relied upon the deed of guarantee to come to a conclusion that the 1st respondent's liability is only to Rs.2,00,000/-. But, on a perusal of the mortgage deed dated 22.04.1991, it is clear that the mortgage executed by the deceased-1st respondent in favour of the Bank shall operate as a continuing security for all loans indebtedness and liabilities of the borrower and mortgagor to the bank at all times during the subsistence of the mortgage.

13. Admittedly, the mortgage is in subsistence . That being the case, when the deceased-1st respondent herself submitted that the property shall operate as a continuing security for all loans indebtedness and liabilities of the

borrower and mortgagor, her liability cannot be restricted to Rs.2,00,000/-. Therefore, the property given as security by the deceased-1st respondent shall remain as a secured asset in respect of the entire loan transactions. The respondents 5 to 16 along with the borrowers are liable to discharge the entire decreed amount.

14. In view of the specific recital found in the mortgage deed dated 22.04.1991, the guarantor, viz., the deceased-Senthamarai Ammal, is liable to discharge the decree passed in O.A.No.1297 of 1999 jointly and severally with the borrowers. In these circumstances, we are of the considered view that the Debt Recovery Appellate Tribunal ought not to have restricted the liability of the guarantor to Rs.2,00,000/-. The Debts Recovery Tribunal took into consideration all aspects and decreed the O.A. as prayed for.

15. That apart, when the Bank is dealing with the public money, it cannot be allowed to go un-recovered on flimsy grounds.

16. For the reasons stated above, the order passed by the Debt Recovery Appellate Tribunal, Chennai, in R.A.No.30 of 2006 is liable to be set aside. Accordingly, the same is set aside. The order passed in O.A.No.1297 of 1999, on the file of the Debts Recovery Tribunal-I, Chennai is restored. The Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Rj

To

1 The Debt Recovery Appellate Tribunal, Chennai

2 The Debts Recovery Tribunal, Chennai

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No. 55749
+1cc to Mr.Shivakumar, and Suresh, Advocate, S.R.No. 56372

W.P. No.20387 of 2007 and
M.P.Nos.1 and 2 of 2007

PA(CO)
GN(29/07/2019)