IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.01.2019

CORAM

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

W.A.315 of 2010
W.P.No.22033 of 2016
M.P.Nos.2 & 3 of 2010, 2 of 2014
WMP.Nos. 18828, 18829 of 2016, 34181, 34182 of 2017
and CMP.No.8779 of 2016

W.A.No.315 of 2010:-

N.Vijayalakshmi Ammal ... Appellant/Petitioner

/vs/

1.The Manager
ICICI Bank Ltd.
Thirupathur Branch
No.43, Krishnagiri Road
Thirupathur,
Vellore District.

2.The Manager
ICICI Bank Ltd.
ICICI Bank Towers
No.93, Santhome High Road
Santhome, Chennai 600 028.

3.The Recovery Officer
Debts Recovery Tribunal - I
6th Floor, Spencer Towers
Anna Salai,
Chennai - 600 002. ... Respondents/Respondents

Writ Appeal filed under Section 15 of the Letters Patent against the order dated 19.12.2009 made in W.P.No.29423 of 2006.

Prayer in WP No.29423 of 2006:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in sale certificate dt. 25.11.2005 issued pertainig tothe recovery proceedings in D.R.C. No. 283 of 2003 to the 2nd respondent.

W.P.No.22033 of 2016:-

P.M.N.Mohanakrishnaa ... Petitioner

/vs/

1.The Manager
ICICI Bank Ltd.
Thirupathur Branch
No.43, Krishnagiri Road
Thirupathur,
Vellore District.

2.The Manager
ICICI Bank Ltd.
ICICI Bank Towers
No.93, Santhome High Road
Santhome, Chennai 600 028.

3.The Recovery Officer
Debts Recovery Tribunal - I
6th Floor, Spencer Towers
Anna Salai, Chennai - 600 002.

4.Vijayalakshmi ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned sale certificate issued by the third respondent in No.Nil dated 01.02.2005 issued pertaining to recovery proceedings in DRC.No.283 of 2003 and the subsequent proceedings issued by the third respondent in I.A.No.1368 of 2015 in DRC.No.283 of 2003 dated 04.05.2016 and to quash the same and consequently forbearing the respondents from interfering the rights of the petitioner over the property 'Sangeeth Theatre' comprised in Old T.S.No.606, Ward.F, Block 13, T.S.No.2/2 D.No.2/A, C.N.Anna Durai Road, Thirumanjolaipudur, Vaniyambadi Town, Vellore District.

For Appellant in W.A. and 4th respondent in W.P. : Mr.S.Sadasharam

For Petitioner in W.P. : Mr.P.Wilson, Senior counsel for Mr.G.Sankaran

For Respondents 1 & 2 in both W.A. and W.P. : Mr.Sathish Parasaran Senior Counsel for Mr.K.Krishnaswamy

COMMON JUDGMENT

(Judgment of the Court was delivered
by V.BHAVANI SUBBAROYAN,J.)

W.A.315 of 2010 is filed against the order passed in W.P.No.29423 of 2006, dated 19.12.2009.

2. The brief facts as averred by the appellant in W.P.No.29423 of 2006 are that the appellant claimed that her husband was a partner in M/s.Maruthi Leathers, which is a partnership concern along with the appellant and her son P.M.N.Mohanakrishnaa. The appellant claims that the said M/s.Maruthi Leathers, a partnership concern, availed facility of Open Cash Credit with the then Bank of Madura (now merged with ICICI Bank) upto a limit of Rs.50,00,000/-, for which the appellant stood as a guarantor, by giving her property namely 'Sangeeth Theatre' as security. However, the said partnership firm could not repay the amount and became sick. Thereafter, proceedings before BIFR for reconstruction of firm was also initiated and subsequently, the appellant offered to pay a sum of Rs.15,30,199/- as One Time Settlement to the Bank. The Bank did not accept the One Time Settlement and filed an application in O.A.No.740 of 1999 before the Debt Recovery Tribunal No.1 for recovery of a sum of Rs.68,03,988.48 paise.

3. The said O.A was decreed ex-parte on 30.09.2003, in which, the appellant filed I.A.No.286 of 2003 before the Tribunal for setting aside the ex-parte decree, dated 30.09.2003. Pending I.A.No.286 of 2003, the Recovery Officer issued recovery certificate in D.R.C.No.283 of 2003, dated 08.12.2003 which was challenged by the appellant in M.A.No.312 of 2003. The appellant claims that despite the pendency of I.A.No.286 of 2003 and M.A.No.312 of 2003, the Recovery Officer announced the sale of scheduled property and auction was to be held on 19.05.2004, which was stayed by an order dated 14.05.2004 in M.A.No.143 of 2004. However, subsequently, at the instance of the Bank, an order was passed on 21.09.2004 to sell the mortgaged property, which was auctioned on 22.11.2004. Since there was no bidder, the same was postponed to 22.12.2004, on which date, the second respondent was declared as the successful bidder for a sum of Rs.52,10,000/-. On the same day, Rs.13,02,500/- was paid to the Bank towards part payment of the sale consideration.

4. Thereafter, on completion of entire payment, sale certificate was issued on 01.02.2005 pursuant to the public auction held on 22.12.2004. Challenging the irregularities committed by the Bank, the appellant filed W.P.No.29423 of 2006. This Writ Petition came up for final disposal. Upon

recording the statement of the respondents to the effect that the sale certificate has been issued, possession taken and the property itself was sold to a third party, which were not disputed by the appellant, a learned Single Judge found no reason to entertain the Writ Petition and accordingly, dismissed the Writ Petition. As against which, W.A.No.315 of 2010 is filed.

5. Initially, at the time of admission on 27.04.2010, interim stay was granted on condition that the appellant pays to the Bank a sum of Rs.50,00,000/- in two instalments, in which the first instalment of Rs.25,00,000/- was to be paid within six weeks from the date of receipt of copy of the order and a balance sum of Rs.25,00,000/- within six weeks thereafter, failing which, stay being automatically vacated.

6. The interim application was listed once again on 15.06.2012 and it was reported that the interim order granted on 27.04.2010 was not complied with and the petition was closed subject to the compliance of the condition. The appellant filed M.P.No.1 of 2014 in W.A.No.315 of 2010 praying to grant an interim injunction restraining the respondents from creating any encumbrance on the Theatre pending disposal of the Writ Appeal. This Court by an order, dated 25.06.2014 recording the earlier conditional order not being complied with by the appellant, passed an order any encumbrance or alienation is subject to the result of the pending Writ Appeal and M.P.No.2 of 2010 in W.A.No.315 of 2010 filed by the first and second respondents herein, seeking for a direction to direct the appellant to forthwith handover the possession of the property sold under the sale certificate.

7. It is also seen from the records that P.M.N.MohanakKrishnaa, son of the appellant, has also filed an impleading petition to implead himself as a party respondent and also prayed to remove the lock and seal of 'Sangeeth Theatre' in Vaniyambadi Town, Vellore. As far as W.P.No.22033 of 2016 is concerned filed by P.M.N.Mohanakrishnaa, he is none other than the son of the appellant in W.A.No.315 of 2010.

8. In the affidavit filed in support of the said Writ Petition, the Writ Petitioner claims that his father ie., husband of the appellant in W.A.No.315 of 2010, while he was alive, acquired properties with his own funds in the name of family members inasmuch as no separate income or capacity to acquire any property by the appellant. The petitioner's father purchased 'Sangeeth Theatre' comprised in Old T.S.No.606, Ward F, Block 13, T.S.No.2/2, Door No.2/A, C.N.Annadurai Road, Thirumanjolaipudhur, Vaniyambadi Town, through a release deed, dated 31.03.1983, pursuant to an earlier partnership deed

entered with the erstwhile vendor in the year 1980. Thus, the cinema Theatre was purchased in the name of his mother, the appellant in W.A.No.315 of 2010 and the fourth respondent in the Writ Petition.

9. The petitioner further claims that his father was running the Theatre till 19.08.1998 and thereafter, handed over possession of the theatre to the petitioner and thus, the petitioner is running the Theatre as a sole proprietor and managing the same ever since 1998. The petitioner further claims that his father died in a road accident on 24.06.2012 and the Theatre was allotted to him even when his father was alive and continued to manage the same even after his father's demise and thereby conducting all the incidental statutory requirements for running of the theatre.

10. The petitioner further claims that in view of certain misunderstanding in the family, his mother, the appellant in W.A.No.315 of 2010, started to give disturbance to the petitioner's right over the cinema Theatre and stood as a guarantor without his knowledge by hypothecating 'Sangeeth Theatre', as security for the loan availed by M/s.Maruthi Leathers, as the property stood in her name and in fact during the year 2004, his mother also made an objection for renewal of 'B' Form licence to the Theatre, which forced the petitioner to file O.S.No.100 of 2014 before the Sub Court, Thirupathur, wherein, an order of injunction was granted in I.A.No.250 of 2014 in O.S.No.100 of 2014 on 12.08.2014, in which the respondent Bank was also made as a party by impleading them. The petitioner further submits that his mother failed to repay the loan amount availed from ICICI Bank in the name of M/s.Maruthi Leathers and therefore, the Bank initiated recovery proceedings and finally sale certificate was issued in favour of the Bank on 01.02.2005. His mother challenged the sale certificate in W.P.No.29423 of 2006 which was dismissed and thereafter, the present W.A.No.315 of 2010 came to be filed against the dismissal of the Writ Petition, wherein, an interim order was granted by this Court and the condition was not complied with by the petitioner's mother.

11. The petitioner further submits that the respondent Bank filed I.A.No.1368 of 2015 in D.R.C.No.283 of 2003 before the DRT, Chennai, based on the recovery certificate, dated 29.10.2015 issued by the Recovery Officer. The petitioner claims that the said notice was served on the cinema Theatre by affixure and the petitioner came to know about the distraint auction through that notice only.

12. The petitioner further submits that he sent a reply to the Recovery Officer stating that he is the proprietor of the

cinema Theatre from 1998 and he has developed a single Theatre into two theatres with all modernized equipments by incurring huge expenditure and the alienation in favour of the ICICI Bank would definitely cause serious prejudice to his interest over the property. However, the Recovery Officer proceeded to issue an order, dated 15.03.2016 and thereafter, the Recovery Officer appointed an Advocate Commissioner for the purpose of taking possession of the property, on the basis of an order passed by the Recovery Officer, dated 04.05.2016. Challenging the original sale certificate issued by the third respondent, dated 01.02.2005 and the subsequent proceedings issued by the third respondent, dated 04.05.2016, the petitioner has filed the writ petition. It would be appropriate to bring on record the counter-affidavit filed by the Bank, the first and second respondents, in both the Writ Appeal, as well as in the Writ Petition.

13. As far as the counter-affidavit filed by the Bank in W.A.No.315 of 2010 is concerned, it is stated by the Bank that the Writ Petition filed by the appellant herein itself is not maintainable, as when the Writ Petition was filed, the sale certificate issued by the Recovery Officer had already been issued and questioning the sale certificate, there is an alternative remedy available under the RDDBFI Act, 1993, and the appellant, being the partner of the partnership firm M/s.Maruthi Leather, who had offered by way of security and mortgaged 'Sangeeth Theatre' and thereafter, committed wilful default and the Bank had no other option, but to file a recovery proceedings before the DRT. In the proceedings before the DRT, the defendants therein adopted all possible dilatory tactics to remain ex-parte deliberately. Though the recovery application was filed in the year 1999, ex-parte order was passed only in the year 2003. An interim application was filed by the defendants therein to stall the proceedings and thus, gained further time. However, when decree has been passed in favour of the Bank, there was no legal impediment to the Bank to proceed for further course of action in accordance with the Recovery of Debts due to Bank and Finacial Institutions Act, 1993.

14. The Bank further submits that by an order dated 30.09.2003, the Tribunal passed a final order in O.A.No.740 of 1999 in favour of the Bank, ordering recovery of the amount due to the Bank. Thereafter, proceeding was initiated and in the sale, the Bank was declared as the highest bidder and purchased the property for a sum of Rs.55,10,000/- in the public auction that was held on 22.12.2004 and sale certificate was issued on 25.11.2005, which was subsequently registered with the Sub-Registrar, Vaniyambadi on 30.11.2005 and thus, the respondent Bank has become the absolute owner of the property and the appellant cannot challenge the auction initiated by the Bank in

the writ proceedings, as the appellant should have taken recourse only under the Recovery of Debts due to Bank and Financial Registration Act, 1993 and the Writ Petition itself ought not to have been entertained.

15. In the counter-affidavit, it is further stated that when the Writ Petition was heard on 19.12.2009, by observing that all the proceedings under the RDDBFI Act have attained finality and that the property has been sold to the third party, a learned single Judge has dismissed the writ petition. If the appellant is aggrieved by the action of the Bank, there is an alternative remedy under the Act by filing an appropriate appeal before the DRAT.

16. In the counter-affidavit filed by the Bank in response to the affidavit filed by the petitioner in support of the Writ Petition in W.P.No.22033 of 2016, the Bank has denied the allegation of the petitioner that the Theatre was purchased in the name of the fourth respondent by her husband late P.M.M.Nandha Gopal. As such, the fourth respondent is the absolute owner of the said property, who had deposited the title deeds as security for availing credit facility from the Bank. The mortgage by deposit of title deeds was created on 24.03.1994 and the petitioner is neither a party to the money borrower nor to the mortgage. However, referring to O.A filed by the Bank in O.A.No.740 of 1999, the petitioner was not made as a defendant in the proceedings being a partner in M/s.Maruthi Leathers, a borrower from the Bank. In O.A proceedings, the Tribunal passed a final order, dated 30.09.2003 in which the defendants therein were jointly and severally liable to pay a sum of Rs.68,03,988.48p with simple interest at 11% p.a., from the date of claim till the date of realisation. The recovery certificate was issued, vide D.R.C.No.283 of 2003 for a sum of Rs.1,01,11,997/- (Rupees One Crore one lakh eleven thousand nine hundred and ninety seven only). Thereafter, the mortgaged property, 'Sangeeth Theatre' was brought for sale after following the procedures contemplated under the Act. The date of auction was initially fixed on 19.05.2004. There was a stay and thereafter, by order dated 21.09.2004, the DRT permitted the Bank to proceed with the recovery.

17. The Bank fixed the auction date as 22.11.2004 on which date, there was no bidder. Auction was subsequently adjourned to 22.12.2004 and the Bank proceeded to bid for Rs.52,10,000/-, which was higher than the upset price and the sale was confirmed by issuing necessary certificate to the Bank. The sale certificate, dated 25.11.2005 which was duly registered came to be challenged by the petitioner's mother in W.P.No.29423 of 2006 which came to be dismissed, and the present appeal was filed wherein the petitioner's mother obtained an interim order on

condition. The said condition was not complied with by the petitioner's mother and stay granted was closed on 15.06.2012 for want of compliance of the condition.

18. In view of the stay being vacated, the Bank had sought and obtained an delivery order, dated 04.05.2006 from DRT - III, Chennai in recovery certificate in D.R.C.No.283 of 2003. Physical possession was delivered to the respondent Bank by the Advocate Commissioner on 01.06.2016 and as such, the Bank has now posted a security to safe-guard the premises. By virtue of sale certificate, dated 25.11.2005, the Bank as the absolute owner is under the possession of the Theatre and the petitioner cannot question the possession belatedly and the Writ Petition cannot be maintained as there is an alternative remedy available to the petitioner.

19. The appellant in W.A.No.315 of 2010 and the fourth respondent in W.P.No.22033 of 2016 has filed a counter affidavit to the writ petition filed by her son. In her counter affidavit to the writ petition, the mother has stated that her son has not come with clean hands to the Court as he has sworn to a false affidavit and the writ petition has to be dismissed on this score. Mother of the petitioner and the fourth respondent, has stated that she is the absolute owner of the property and the Theatre, by name 'Sangeeth Theatre' was acquired by virtue of a release deed, dated 31.03.1983 bearing Document No.922 of 1983, which the fourth respondent claims that it is the self-acquired property, to which neither her husband nor any of the members of the family has got any right or anything to do with the property in question. The fourth respondent further states that as a matter of fact Theatre was acquired by her own funds and resources and nobody contributed, for acquiring the same. There is no proceedings or arrangement among the family that the petitioner was allotted the Theatre, by her deceased husband. Moreover, the appellant states that when the property stands in her name, as the absolute owner of the property, her husband had no right to bequeath the Theatre to her son. The fourth respondent further contends that she has filed a civil suit in O.S.No.99 of 2015 on the file of the District Munsif Court, Vaniyambadi and obtained an order of interim injunction against her son, the petitioner in the Writ Petition, from interfering with the enjoyment of the Theatre in question and the interim order granted is still in force. Apart from that, the fourth respondent has also contended that the petitioner was found involved in a murder case in Crime No.89 of 2014 registered for an offence under Section 302 I.P.C and a final report has already been filed on an alleged murder of her elder son Saravanan. Under these circumstances, the fourth respondent has also contended that the following factors are very relevant for being considered namely:-

"a) She is the owner of the property in question.
b) She is the owner of the theatre in question.
c) 'C' Form license stands in her own name to run the theatre.
d) Loan transaction is only between the bank and herself.
e) She has given her property namely the theatre and immovable property as a collateral security for the due repayment of the loan availed by Maruthi Leathers.
f) Injunction obtained by the petitioner against the District Collector has been vacated.
g) The petitioner is facing murder charge in Crime No.89 of 2014 in which her eldest son by name Saravanan is alleged to have been murdered by her second son, namely the petitioner herein.
h) The sale certificate dated 01.02.2005 stands cancelled.
i) The Sale certificate dated 22.11.2015 is under challenge in her writ petition and the writ appeal.
j) The writ petition is not maintainable for the simple reason that the sale certificate dated 01.02.2005 stands cancelled has been challenged.

k) The writ petitioner has got no locus standi to get involved in this matter.
l) The petitioner is not a party to the loan transaction.
m) The petitioner is not a purchaser of Maruthi Leathers."

20.Mr.S.Sadasharam, learned counsel appearing for the appellant in W.A.No.315 of 2010 and appearing for the fourth respondent in W.P.No.22033 of 2016 vehemently contended that the auction sale of the property in question which was originally fixed on 22.11.2004 and on which date, since there was no bidder, the same was adjourned to 22.12.2004. On which date, the second respondent, who is none other than the Bank itself had participated in the auction and declared as the successful bidder in the auction, that too, when the value of the property is more than a crore, sale was confirmed in favour of the second respondent for just Rs.52,10,000/- when the upset price was Rs.52,00,000/- only. Bank paid Rs.10,000 extra, and taken the property.

21. The learned counsel also contended that the sale is void and the learned Single Judge ought to have considered the same and set aside the sale certificate, dated 25.11.2005 issued pertaining to recovery proceedings in D.R.C.No.283 of 2003. The learned counsel also contended that the writ petitioner has no locus-standi to file the writ petition, as he is neither the owner nor has any relationship with the Bank and the entire Theatre is purchased in and out of the appellant's source of income and nobody can claim any right over the property, and the lis is between the appellant and the Bank.

22. Apart from that, the learned counsel also highlighted that the writ petitioner, who is none other than the appellant's son, is facing a criminal charge of murder of her own elder son, namely Saravanan. On this background, the learned counsel prayed to set aside the order of the learned Single Judge, consequently, set aside the sale certificate, dated 25.11.2005.

23. On the other hand, Mr.P.Wilson, learned Senior Counsel appearing for the writ petitioner in W.P.No.22033 of 2016 contended that the property in question ie., 'Sangeeth Theatre' has been in petitioner's possession ever since 1998 prior to his father's death on 24.06.2012 and continues to be in his possession and even today, it was the appellant, who mismanaged the property thereby mortgaging the property with the Bank. Without permission of anybody in the family, especially when his father was alive, the appellant taking advantage of the fact that the property stands in her name has created an encumbrance with the Bank with an ulterior motive to defeat the rightful claim of the petitioner.

24. The learned Senior Counsel also contended that it was the writ petitioner, who had invested more than one crore in mordernising the Theatre, which was a single Theatre and developed into two cinema Theatres with ultra modern infrastructure facilities. As far as the claim of the petitioner is concerned, the learned Senior Counsel also stated that in the suit filed by the petitioner in O.S.No.100 of 2014, he has obtained an interim injunction in I.A.No.250 of 2014 in which the respondent Bank was also impleaded as a party. The learned Senior Counsel further contended that the petitioner has filed an impleading petition in W.A.No.315 of 2010, in which notice was ordered to the respondent, and in the meanwhile, the recovery certificate, dated 04.05.2016, was issued and the property is locked and sealed, pursuant to the sale certificate, dated 01.02.2005, the writ petitioner has every right to question the proceedings of the third respondent as illegal, as the third respondent has issued an order of sale certificate, in favour of the Bank is illegal. The Bank has surreptitiously conducted the auction sale, in which nobody has participated and the Bank had managed to buy the property for a pittance compared to the real value of the property.

25. The learned Senior Counsel also drew our attention to the mandatory requirement of obtaining permission for purchase of the property, in the name of a Bank and highlighted its gross violation in purchasing the property. The learned Senior Counsel also contended that since there is a civil Court order in his favour, in which the Bank is also a party, a sale certificate issued by the respondent Bank dated 01.02.2005 and consequent

proceedings issued by the recovery officer in I.A.No.1368 of 2015 in D.R.C.No.283 of 2003, dated 04.05.2016 have to be quashed.

26. Mr.Sathish Parasaran, learned Senior Counsel appearing for Mr.K.Krishnaswamy defending the Bank submitted that the appellant having availed Rs.50,00,000/- of loan and she being a partner in the partnership concerned, namely M/s.Maruthi Leathers, failed in repaying the same and necessarily the Bank have initiated appropriate proceedings in O.A.No.740 of 1999 which was initiated. Subsequently on 30.09.2003, the said O.A was decreed for a sum of Rs.68,03,988.48p with interest and costs. The Recovery Officer has followed all the procedures in bringing the property for auction which was stalled at every stage, by the appellant and finally when DRT passed an order on 21.09.2004 granting liberty to sell the mortgaged property, as per the procedures contemplated under RDDBFI Act, the same was followed scrupulously and thereafter, the Bank purchased the property in the auction conducted on 22.12.2004 and sale certificate was issued on 25.11.2005. Thereafter, the same was registered with SRO Vaniyambadi on 30.11.2005. Subsequent to that, there was stay in W.A.No.315 of 2010, in which an interim order was passed on condition that the appellant deposits Rs.50,00,000/- in two instalments and in default of the condition the stay would automatically vacated. After the default committed by the appellant, stay was vacated and the Bank obtained delivery order from DRT and thereafter, physical possession was also delivered to the Bank on 01.06.2016.

27. The learned Senior Counsel further contended that by virtue of the sale certificate dated 25.11.2005, Bank had become the absolute owner of the property. That apart, the learned Senior Counsel would also contend that there being a statutory remedy available to the appellant under Sections 60 and 61 of Rules and Second Schedule to the Income Tax Rules, 1961 and Section 20 of RDDBFI Act, 1993, appeal has to be dismissed.

28. The learned Senior Counsel relied on the Judgment of the Apex Court in ICICI Bank Limited (Earlier Bank of Madura) Vs. M/s.Aburubam and Company and others reported in 2016 SCC Online SC 1392, to emphasis that it does not impose any restriction upon the Bank from participating in the bid or auction. He submitted that there is no merit in the case of the appellant and he prayed for dismissal of the Writ Appeal.

29. With regard to the writ petition, the learned Senior Counsel would contend that the petitioner has no locus standi to question the proceedings as the property stands in the name of N.Vijayalakshmi Ammal, who is the absolute owner of the property

and N.Vijayalakshmi Ammal being the partner of M/s.Maruthi Leathers had offered the property in question as mortgaged security for the purpose of securing a loan. He submitted that the writ petitioner has no locus standi to question the proceedings of the Bank, as he is neither a party nor an aggrieved person under the statute.

30. Heard all the learned counsel appearing on either side and perused the records available.

31. It is not in dispute that the appellant in W.A.No.315 of 2010-N.Vijayalkshmi Ammal and her late.husband P.M.N.Nanda Gopal were partners in M/s.Maruthi Leathers, a partnership concern, who had availed open cash credit facility with the Bank of Madura, which is now merged with ICICI Bank, to an extent of Rs.50,00,000/- as loan. It is also not disputed by the appellant as well as the writ petitioner, that the property, namely 'Sangeeth Theatre' situated at Vaniyampadi Town Municipal T/1, Division 2 Ward, Govindapuram, Old T.S.No.606, New Survey Ward F, Block 13, T.S.No.2/2, Door No.2/A, C.N.Annadurai Road, Thirumanjolaipudhur, Vaniyambadi Town was mortgaged with the respondent Bank for the loan availed by M/s.Maruthi Leathers, dealing in business of manufacturing and exporting of finished leather in the year 1994 and thereby the appellant has created a equitable mortgage of the said property on 24.03.1994 by deposit of title deeds relating to the property.

32. The loan was sanctioned on 06.03.1995. On perusal of the records, it could be seen that M/s.Maruthi Leathers registered partnership firm was not operating the account regularly, for which the respondent Bank has issued notice to the debtors and the debtors have not come forward to repay the loan amount advanced.

33. It is seen from the material on record that the Bank initiated O.A.No.740 of 1999 under the RDDBFI Act, for recovery of a sum of Rs.68,03,988.48p together with 21% interest p.a., with quarterly rests and interest tax at 2% p.a., from the date of application till the date of realisation. In the above O.A., the respondent therein filed a reply statement stating that the O.A is not maintainable and the reasons which made them not to repay the loan amount in time, especially stating that the leather Industry throughout India became sick due to the strict enforcement of pollution control orders and that partnership was not an exception, which ultimately became a sick unit.

34. It is seen from the material on record that though the appellant has filed a reply to the original application filed by the Bank seeking recovery, the appellant thereafter, did not participate in the proceedings. The Tribunal, by order dated

30.09.2003 allowed the original application, thereby entitling the Bank for a recovery certificate against the appellant and other partners for a sum of Rs.68,03,988.48p with 11% interest p.a., from the date of application till the date of realisation with costs. The Tribunal further declared that in case of default of payment by the defendants therein, the Bank is at liberty to sell the scheduled properties and to adjust the sale proceeds towards the amount due and if the sale proceeds are not found sufficient, the defendants 1 and 5 therein were jointly and severally liable to pay the amount of such deficiency with interest.

35. It is also seen that proceedings were initiated by the appellant, by filing I.A.No.286 of 2003 to set aside the exparte order passed by the Tribunal in O.A.No.740 of 1999 dated 30.09.2003. However, pursuant to the order passed by DRT, the Recovery Officer, the third respondent in the appeal, had issued recovery certificate in D.R.C.No.283 of 2003 dated 08.12.2003 which also came to be stalled by filing M.A.No.312 of 2003. The appellant was initially successful in securing stay as against the auction, dated 19.05.2004. However, it is categorically clear from the records that the Tribunal by order dated 21.09.2004 permitted the Bank to proceed with the recovery from the mortgaged property ie., 'Sangeeth Theatre'. Thereafter, the Recovery Officer has made paper publication for the public auction on 22.11.2004, for recovery of a sum of Rs.1,01,11,997/- and fixed the upset price for the property as Rs.52,00,000/-. However, on 22.11.2004 since there was no bidder, the same was rescheduled to 22.12.2004, by issuing a fresh auction sale notice by the Recovery Officer.

36. It is seen from the records furnished by the Bank that the 2nd respondent-Bank has participated in the auction held on 22.12.2004 and was issued with the sale certificate dated 25.11.2005, which the appellant has questioned in W.P.No.29423 of 2006. Sale certificate has been registered in the Office of Sub-Registrar, Vaniyambadi, as Document No.4139 of 2005 on 30.11.2005. Only after registration, sale certificate has been questioned. Thereafter, when the writ petition was heard on 19.12.2009, the learned Single Judge, holding that sale certificate has already been issued, possession has been taken by the Bank and the property itself has been sold to the third party, was not disputed by the appellant and accordingly, dismissed the writ petition.

37. We are unable to accept the arguments putforth by Mr.S.Sadasharam, learned Senior Counsel appearing for the appellant that the second respondent herein in whose favour the sale certificate has been issued is none other than the Bank, who had sanctioned the amount to the appellant as loan and that

the Bank being the vendor cannot participate in its own auction. We are afraid to accept the contention of the learned Senior Counsel, as rightly pointed out by Mr.Sathish Parasuran learned Senior Counsel appearing for the respondent Bank relying on the Judgment in ICICI Bank Limited (Earlier Bank of Madura) Vs. M/s.Aburubam and Company and others reported in 2016 SCC Online SC 1392 and it would be appropriate to reproduce paragraph Nos.10 and 11 of the said Judgment:-

> "10. We have considered the matter, particularly, the grounds which have prevailed upon the High Court to interfere with the orders passed by the DRT and the DRAT. A consideration of the materials on record would go to show that the offset price was fixed on the basis of a report of the valuation officer and in the fixation of the said price the respondents were associated being party to the proceedings before the DRT. That apart, the said grievance of the respondents-borrowers had persistently failed either to liquidate the dues or to bring a willing purchaser who could offer a reasonable price for the mortgaged properties.
>
> 11. Insofar as the Second Schedule of Income Tax Rules, 1961 are concerned, nothing has been brought to our notice which can be construed as imposing a restriction on the Bank from participating in the bid/auction once the invitation to bid did not result in any response from any interested bidder. Rule 17 of the Second Schedule of Income Tax Rules, 1961 to which reference has been made by the High Court, in our considered view, does not impose such a restriction inasmuch as it is the Recovery Officer on whom such an embargo has been placed. In this regard, the provisions of Rule 59 of the Second Schedule of Income Tax Rules, which permit the Assessing Officer to take part in the auction would be of a particular significance. In the light of the above, the conclusion of the High Court that the auction sale in favour of the Bank is vitiated on account of violation of the Rule 17 of the Second Schedule of Income Tax Rules, 1961, cannot be accepted."

38. The only ground raised by Mr.S.Sadasharam, learned Senior Counsel appearing for the appellant is countenanced by Mr.Sathish Parasuram, learned Senior Counsel appearing for the respondent Bank, by relying on the above referred Judgment. On the same lines as decided by the Honourable Supreme Court, we do not find any infirmity that the Bank had participated in the

auction sale and being the successful bidder, sale certificate has been issued in favour of the Bank.

39. With regard to the above arguments of Mr.S.Sadasharam, learned Senior Counsel appearing for the appellant, we are not convinced for the reason that the very maintainability of the writ petition is questioned on the grounds that sale certificate has already been issued in favour of the second respondent. When the Bank has initiated proceedings for recovery under RDDBFI Act, appropriate remedy is available under the statute. Section 20 provides the statutory appeal remedy as against any order passed by DRT to DRAT having jurisdiction in the matter. That apart, we are in agreement with the arguments putforth by the learned Senior Counsel Mr.Sathish Parasuran, with reference to Sections 60 and 61 of the Rules under the Second Schedule of the Income Tax Act, 1961, which provides the manner in which an application to set aside the sale of immovable property, in execution of a certificate has to be made. Sections 60 and 61 of Rules under Second Schedule of the Income Tax Act, 1961 are as follows:-

> 60. Application to set aside sale of immovable property on deposit.
>
> (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing
>
> (a) ...the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of fifteen per cent per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and
>
> (b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.
>
> (2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.
>
> Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

61. Where immovable property has been sold in execution of a certificate, such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that—

(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

40. The above provision enables the defaulter or any person whose interest is affected by the sale may file an application within 30 days from the date of sale to the Tax Recovery Officer to set aside the sale. However, the statutory appeal provided under Section 30 of the Recovery of Debts due to Bank and Financial Institution Act, 1993 and Sections 60 and 61 of Rules under Second Schedule of the Income Tax Act, 1961, is not exhausted by the appellant herein. When the statute provides the forum to which an appeal has to be filed, interference Article 226 of the Constitution of India cannot be invoked unless the party proves satisfactorily that he has made out a strong case or that there exists good ground to invoke the extra-ordinary jurisdiction under Article 226 of the Constitution of India.

41. In this case, both the appellant and the writ petitioner have not made out any such case for interference of this Court under Article 226 of the Constitution of India. Under these circumstances, writ appeal has to fail for two reasons that the appellant has not made out any extra-ordinary circumstances for approaching this Court under Article 226 of the Constitution of India. Apart from that, the appellant, partner of M/s.Maruthi Leathers had mortgaged the property in question by depositing her title deed which stood in her name as

on the date of mortgaging the property. The impleaded fourth respondent ie.,son of the appellant, is neither a party to the bank loan or in the proceedings before the Tribunal. Mere statement that the property was given to him orally, is not sufficient. There is no documentary proof. As on date of depositing the title deed, the appellant was the absolute owner. She committed default in payment of the loan secured by her and her late husband. The Bank has every right to proceed under the statute and the sale certificate issued in favour of the Bank can only be questioned before the appropriate Appellate Authority by the borrower.

42. As far as W.P.No.22033 of 2016 is concerned, we are unable to accept the arguments purtforth by Mr.P.Wilson, learned Senior Counsel appearing for the petitioner for the reasons that merely because the petitioner was in possession of the security asset, he cannot be termed as an interested person, to invoke the jurisdiction of this Court. He has no valid title over the secured asset. No doubt, he was in possession of the secured asset prior to 01.02.2016. However, the physical possession of the secured asset has been delivered by the Advocate Commissioner appointed by the DRT to the respondent Bank on 01.06.2016. Thereafter, it is not in dispute by the petitioner that the property is locked and the key is with the respondent Bank. The petitioner in the writ petition cannot have any better title than the appellant in W.A.No.315 of 2010, by virtue of the release deed executed by K.S.Abdul Hameed Sahib, dated 31.03.1983 registered as Document No.922 of 1983 on retirement of the said Abdul Hameed Sahib from the partnership. The secured property was released in favour of the appellant-Vijayalakshmi Ammal. Ever since the said release, the appellant has claimed that she was in continuous possession and enjoyment as an absolute owner till the property was brought for sale. Mere averment of the petitioner that his father allotted the secured property, namely 'Sangeeth Theatre' to his share cannot be taken into consideration, as the petitioner's father himself had no title to transfer the secured property to the petitioner.

43. The argument of Mr.P.Wilson, learned Senior Counsel appearing for the petitioner that the petitioner had developed the property also cannot be taken into account, as the alleged investment made by him. During the period, when the said Theatre had already been mortgaged with the Bank for the loan availed by the appellant. The learned Senior Counsel's contention that the petitioner is ready and willing to pay the auction is objected by the petitioner's mother and submission has been made that her son has no title, and therefore should not be accepted. The learned Senior Counsel for the respondent Bank submitted that the property is still maintained by the Bank and is in

possession of the Bank.

44. In view of the above discussion, the prayer to quash the sale certificate issued in favour of the Bank cannot be granted and the Writ Petition deserves to be dismissed. The appellant in the writ appeal, who initially secured an interim order from this Court on condition to deposit Rs.50,00,000/- has also not made any such deposits as compliance to the interim order. Accordingly, the interim application is also dismissed. In the above stated facts, we find no merit in the Writ Appeal as well in the Writ Petition and both deserves to be dismissed and accordingly, the same are dismissed. No costs. Consequently, connected other Miscellaneous Petitions are dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ps
To

1.The Manager
ICICI Bank Ltd.
Thirupathur Branch
No.43, Krishnagiri Road
Thirupathur,
Vellore District.

2.The Manager
ICICI Bank Ltd.
ICICI Bank Towers
No.93, Santhome High Road
Santhome, Chennai 600 028.

3.The Recovery Officer
Debts Recovery Tribunal - I
6th Floor, Spencer Towers
Anna Salai, Chennai - 600 002.

+2 cc to M/s.S.Sadasharam, Advocate Sr.Nos.3539,3540
+1 cc to M/s.G.Sankaran, Advocate Sr.No.3642
+1 cc to M/s.S.Vasudevan, Advocate Sr.No.3305

W.A.315 of 2010
and W.P.No.22033 of 2016

SJ(CO)
CSL/20.02.2019