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.No.4777 of 2011

S.N.Varadarajan ... Petitioner

vs

1. Indian Bank
Clock Tower Branch,
Royapettah, Chennai-600 014.

2. India Housing Finance &
Development Ltd.,
No.9 & 10, Sir Thyagaraya Road,
T.Nagar, Chennai-600 017

3. R.Marimuthu
4. Krishna Reddy
5. R.Gopal
6.Vedavalli
7.G.Rajeswari
8.Kamalavalli
9.Yasodhamma
10.R.C.Balakrishnan
11.R.C.Varadharajulu
12.Krishna Prasad ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India seeking direction to the first respondent Bank to take recovery action against the immovable properties of the Respondents 2 to 12 without having recourse to the petitioner's property flat No.C2, 3rd Floor, IHFD Nagar, Pallavaram, Chennai- 600 043 M.A.No.320 of 2004 on the file of the DRT-I, Chennai together with proportionate undivided share of land thereof.

For Petitioner : Mr.K.Anandhasayanan
for Mr.P.L.Narayanan

For Respondents : Mr.Jayesh B.Dolia
for Aiyar & Dolia (R1)
No appearance (R2 to R10)
R11, R12 - No appearance

O R D E R

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

This Civil Revision Petition has been filed by the petitioner seeking for a direction to the first respondent Bank to take recovery action against the immovable properties of the Respondents 2 to 12 without having recourse to the petitioner's property flat No.C2, 3rd Floor, IHFD Nagar, Pallavaram, Chennai-600 043 M.A.No.320 of 2004 on the file of the DRT-I, Chennai together with proportionate undivided share of land thereof.

2. The petitioner is the 3rd party purchaser of the property and is aggrieved by the order passed by the DRT-I in M.A.No.320 of 2004 in M.A.No.182 of 2003 in O.A.No.234 of 1998.

3. The said O.A.No.234 of 1998 was filed by the 1st respondent bank to recover an amount of Rs.1,17,03,671/- from 2nd to 12th respondents together with interest thereon at the rate of 20.75% per annum with quarterly rests in respect of Medium Term Land Sanction on 05.01.1990and to order sale of Schedule “A” properties.

4. The respondents 2 to 12 had earlier created equitable mortgage by deposit of title deeds on 06.01.1990 at the 1st respondent Bank at Clock Tower Branch in respect of the immovable properties belonging to them situated at Zamin and Issa Pallavaram, Saidapet Taluk comprised in Survey Nos.373/1 (part), 373/2, 373/3, 373/4 and 373/5 more fully described in Schedule-A (item 1 to 7) thereunder as collateral securities for the loan facility availed by the 2nd respondent.

5. O.A.No.234 of 1998 was allowed on 14.06.1999 and thereafter recovery certificate was issued on 22.11.1999 vide DRC.No.343/1999.

6. From a perusal of the entire material it is noted that on 22.11.2003, a joint memo of compromise was filed by both the parties before the Lok Adalat in Lok Adalat Case No.1716/03. Relevant portion of the joint memo of compromise reads as follows:-

> "O.A.234/98
> When the matter was taken up parties agree to pay in the following terms and conditions.
>
> The total amount of Claim - Rs.117.04 lakhs
> The amount of settlement - Rs.82.85 lakhs
>
> The defendant agrees to pay 25% of the compromised amount by 31.12.2003 and the balance 75% with PLR

interest from 1.1.2004 before 30th June, 2004.

In case of any default by the defendant, the Bank is at liberty to claim as per their claim in the OA.

Court fee is ordered to be refunded u/s 21(1) of L.s.A.Act".

Following the above mentioned compromise recorded before the Lok Adalat, the Tribunal on 22.11.2003 has passed an order, which reads as follows:

ORDER

1. This case is taken up today on the basis of joint memo of compromise presented by both the parties before DRT-1, Lok Adalat (11th Lok Adalat held on 22.11.2003). The Lok Adalat Panel has reported settlement and has passed the Award as per the terms and conditions contained in the Memo of Compromise recorded before the Lok Adalat. As per the Award, both the parties have arrived at for settlement of this case for Rs.82,85,000/- (Rupees Eighty two lakhs eighty five thousand only).

2. The above stated memo of settlement is duly approved and recommended by the Panel of Lok Adalat consisting of Presiding Judge, Shri, A.Sathah Khan (Retd.) Member, CAT, Chennai and Members Shri K.Jaishankar, Ret. DGM, SBI and Smt.B.Sujatha Advocate under their signatures. The orders passed/observation made by the Lok Adalat (panelists) is reproduced here below:

When the matter was taken up parties agree to pay in the following terms and conditions.

The total amount of Claim - Rs.117.04 lakhs

The amount of settlement - Rs.82.85 lakhs

The defendant agrees to pay 25% of the compromised amount by 31.12.2003 and the balance 75% with PLR interest from 01.01.2004 before 30th June, 2004.

In case of any default by the defendant, the Bank is at liberty to claim as per their claim in the OA.

Court fee is ordered to be refunded u/s 21(1) of L.S.A. Act"

3. The memo of compromise and Award passed by the Lok Adalat appears to be legally in order and therefore is accepted and taken on record. Consequently, the final order passed dated 14.6.1999 and Recovery Certificate issued is modified to the extent of and in terms of the memo of compromise and award passed by the Lok Adalat.

4. Lok Adalat award shall form part of this final order and of Recovery Certificate if it is required to be issued and the Recovery Certificate be prepared strictly in term of the Lok Adalat Award and be issued.

5. Inform all the parties concerned. Ordered accordingly" (underlined for emphasis)

7. M.A.No.182 of 2003 in O.A.No.234 of 1998 was filed by the various 3rd party purchasers including the petitioner who was arrayed as 21st petitioner to declare the decree passed in O.A.No.234 of 1998 as not executable against the petitioners.

8. M.A.No.320 of 2004 in M.A.No.182 of 2003 in O.a.No.234 of 1998 was filed by the N.Subramaniam and 24 others to direct the 1st respondent bank to take recovery action against the movable and immovable properties of the respondents No.2 to 12 whether secured with the 1st respondent bank or otherwise without disturbing the properties purchased by the petitioner as detailed in the Annexure.

9. M.A.No.320 of 2004 was disposed by an order dated 10.09.2007. The operative portion of the order passed is quoted below for ready reference:

"In the result, it is ordered, as follows:-

i) In the light of the Lok Adalat memo of compromise dated 22.11.03 and also order passed on 22.11.03, the follow up appropriate order in accordance with law is to be passed in this manner.

ii) Consequently, the DRC No.343/99 dated 22.11.99 issued earlier shall stand withdrawn.

iii) The learned Recovery Officer is directed to issue appropriate consequential formal orders regarding the earlier DRC No.343/99 dated 22.11.99.

iv) On the principle of natural justice, fairness and reasonableness, notice is ordered to defendants, returnable by 22.10.07, regarding the averments made by the applicant bank that the defendants have failed to comply with the payments, as per the terms and conditions of the joint memo of compromise filed in Lok Adalat on 22.11.2003.

v)The Registry is directed to inform the concerned Recovery Officer at once.

vi)The applications are disposed of accordingly and also without prejudice to the lawful rights of both the parties."

10. Copy of the Order be communicated to the Counsel for both the parties immediately by the Registry.

(Dictated to the Stenographer SN, transcribed by him and after necessary corrections, signed and pronounced by me in the Open Court on this 10th Day of September, 2007.)

(V.S.RAVI, B.A., B.L.,)
PRESIDING OFFICER
DRT-1, CHENNAI"

10. The Respondent/Bank informed that in terms of the Compromise dated 22.11.2003, the borrower has failed to repay the amount in question.

11. It was stated that the petitioner is the owner of the undivided share in the land along with several other persons and on the said they had obtained permission to put up a construction. It was stated that the 2nd respondent herein namely IHFD Construction Limited had advertised for sale pursuant to which the several persons including the petitioner purchased an undivided share in the land to put up construction of the apartment which was alloted to them.

12. O.A. already been disposed of in terms of the compromise dated 22.11.2003. An aggrieved person is entitled to file application under Section 17 before the Debts Recovery Appellate Tribunal, in view of the alternate remedy being available to the present petitioner, we are not inclined to interfere in the present case. The petitioner therefore has alternate remedy before the DRAT.

13. We therefore liberty is given to the petitioner to file fresh M.A.before the learned Debts Recovery Tribunal with reference to O.A.No.234/1998 and the learned Debts Recovery Tribunal shall decide the said M.A.in accordance with law, after giving opportunity of hearing to the concerned parties, within a period of six months from today.

14. While relegating the matter to the Debts Recovery Tribunal, we direct the Debts Recovery Tribunal to consider the objections of the petitioner with regard to the direct purchase of the property by him which was offered as a security to the 1st respondent bank by R2 to R12.

15. With the aforesaid liberty to the petitioner, this Writ Petition is disposed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

arr/kkd

To

1. Indian Bank
Clock Tower Branch,
Royapettah,
Chennai-600 014.

2. India Housing Finance &
Development Ltd.,
No.9 & 10, Sir Thyagaraya Road,
T.Nagar,
Chennai-600 017

+1cc to Mr.PL.Narayanan, Advocate, S.R.No. 79757
+1cc to Mr.Aiyar & Dolia, Advocate, S.R.No. 79642

C.R.P.No.4777 of 2011

PM(CO)
GN(31/10/2019)