

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.1485 of 2019

and C.M.P.No.9708 of 2019

and W.P.No.5224 of 2019

C.R.P.(NPD).No.1485 of 2019:

1.M/s.R.A.Samy Trading Pvt. Ltd.,
(Shanmuga Store)
rep by its Director R.Arumugasamy
No.21, Ranganathan Street,
Chennai - 600 017.

2.R.Arumugasamy

... Petitioners

1.The Authorized Officer,
United Bank of India,
Southern Region, 184/132,
Ramakrishna Mutt Road,
Mandaveli,
Chennai - 600 028.

2.R.M.Ramanathan

... Respondents

Petition filed under Article 227 of the Constitution of India against the order dated 02.04.2019 made in AIR (SA).No.4 of 2019 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.Mukunth
for M/s.Sarvabhauman Associates
For Respondents : Mr.P.S.Ganesh (R1)
Mr.K.J.Parthasarathy (R2)

W.P.No.5224 of 2019:

R.M.Ramanathan

.. Petitioner

Vs.

1.The Authorized Officer,
United Bank of India,
Southern Region, 184/132,
Ramakrishna Mutt Road,
Mandaveli,
Chennai - 600 028.

2.M/s.R.A.Samy Trading Pvt. Ltd.,
(Shanmuga Store)
rep by its Director R.Arumugasamy
No.21, Ranganathan Street,
Chennai - 600 017.

3.R.Arumugasamy .. Respondents
(R2 & R3 are impleaded vide order dated 25.03.2019 made in
W.M.P.No.9218 of 2019 in W.P.No.5224 of 2019)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus directing the respondent herein to execute and forthwith register a Sale Deed in favour of the petitioner with respect to the property bearing Door No.2/799 under Survey No.72/2, New S.No.72/2A1A land measuring 6720 sq.ft. with building thereon, Kazura Gardens, East Coast Road, Neelankarai Village, Tambaram Taluk, Kancheepuram District.

For Petitioner : Mr. K.J.Parthasarathy

For Respondents : Mr.P.S.Ganesh (R1)

Mr.Mukunth
for M/s.Sarvabhauman Associates (R2)

COMMON ORDER

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The borrower has filed the Civil Revision Petition in C.R.P.(NPD).No.1485 of 2019 challenging the order passed in AIR (SA).No.4 of 2019 on the file of the Debt Recovery Appellate Tribunal, Chennai. The auction purchaser has filed the Writ Petition in W.P.No.5224 of 2019 to issue a Writ of mandamus directing the respondent to execute and register a Sale Deed in favour of the petitioner with respect to the property bearing Door No.2/799 under Survey No.72/2, New S.No.72/2A1A measuring an extent of 6720 sq.ft. with superstructure thereon at Kazura Gardens, East Coast Road, Neelankarai Village, Tambaram Taluk, Kancheepuram District.

2.The petitioners filed SARFAESI Appeal in S.A.No.183 of 2017 challenging the Sale Notice dated 15.09.2014. The Debts Recovery Tribunal, by order dated 01.11.2018, allowed the SARFAESI Appeal. As against the order passed by the Debts Recovery Tribunal, the petitioners preferred an appeal in AIR (SA).No.4 of 2019 on the file of the Debt Recovery Appellate

Tribunal, Chennai. In the said Appeal, the petitioners filed an application in I.A.No.61 of 2019 for waiver of pre-deposit. By order dated 05.03.2019, the Appellate Tribunal, taking into consideration the case of both the parties, directed the petitioners to make a pre-deposit of Rs.5,15,00,000/- (Rupees five crores and fifteen lakhs only) with the Registrar of the Tribunal within a period of four weeks and posted the matter to 02.04.2019 for confirmation of making of pre-deposit. The petitioners have not challenged the original order dated 05.03.2019, instead, they have only challenged the consequential order passed on 02.04.2019 dismissing the appeal for non-compliance. It is settled position that the borrowers, who are the petitioners herein, are liable to make the pre-deposit as per Section 18 of the SARFAESI Act. Admittedly, the petitioners have not challenged the original order passed on 05.03.2019.

3.The learned counsel appearing for the petitioners submitted that since the petitioners have already deposited a sum of Rs.6,00,00,000/- (Rupees six crores only), there is no necessity for making the pre-deposit.

4.The learned counsel appearing for the respondent - Bank submitted that subsequent to the order dated 05.03.2019 passed by the Debt Recovery Appellate Tribunal, the petitioners have mortgaged the property in dispute

with Fed Bank Financial Services Limited on 23.04.2019 and therefore, the conduct of the petitioners would establish that their only aim is to defraud the respondent - Bank. The learned counsel also produced the copy of the Deposit of Title Deeds dated 23.04.2019 executed between the petitioners and Fed Bank Financial Services Limited.

5. On a perusal of the Mortgage Deed dated 23.04.2019, it could be seen that the petitioners have stated that the original Title Deed dated 23.07.1994, the Sale Deed dated 24.02.1994 and the xerox copies of other documents were handed over to Fed Bank Financial Services Limited. When admittedly, the original Sale Deeds dated 23.07.1994 and 24.02.1994 are with the respondent - Bank, the statement made in the Mortgage Deed dated 23.04.2019 can only be a false statement. That being the case, the petitioners could not have handed over the Sale Deeds to Fed Bank Financial Services Limited for creating the mortgage. The petitioners have mortgaged the property on 23.04.2019 in favour of Fed Bank Financial Services Limited without the knowledge of the respondent - Bank and the auction purchaser. In spite of the property being sold to the petitioner in W.P.No.5224 of 2019 and the petitioners having not paid the amounts to the respondent - Bank, no indulgence can be shown to the petitioners. Only to defraud the respondent- Bank, the petitioners have created a mortgage in

favour of Fed Bank Financial Services Limited. When the conduct of the petitioners is not genuine, we are not inclined to interfere with the order passed by the Debt Recovery Appellate Tribunal. The Debt Recovery Appellate Tribunal has rightly directed the petitioners to make a pre-deposit. We find no error or irregularity in the order passed by the Debt Recovery Appellate Tribunal. The Civil Revision Petition is liable to be dismissed.

6. So far as the Writ Petition in W.P.No.5224 of 2019 is concerned, the petitioner, who was the auction purchaser, had purchased the property in the e-auction held on 20.10.2014. Thereafter, the sale was confirmed in favour of the petitioner and the Sale Certificate was also issued. Now, the petitioner has filed the Writ Petition to issue a direction to the respondent to register the Sale Certificate issued in his favour.

7. Since the petitioner has obtained the Sale Certificate on 23.01.2015 itself, the 1st respondent is bound to get the Sale Certificate registered in favour of the petitioner unless the sale made in favour of the petitioner in the Writ Petition is set aside by the Tribunal or the Court. In these circumstances, we direct the 1st respondent in W.P.No.5224 of 2019 to

register the Sale Certificate issued in favour of the petitioner within a period of four weeks from the date of receipt of a copy of this order.

8. With these observations, the Writ Petition is disposed of. The Civil Revision Petition in C.R.P.(NPD).No.1485 of 2019 is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No

Internet : Yes

Speaking / Non Speaking Order
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(V.K.T., C.J.)

(M.D., J.)

13.06.2019

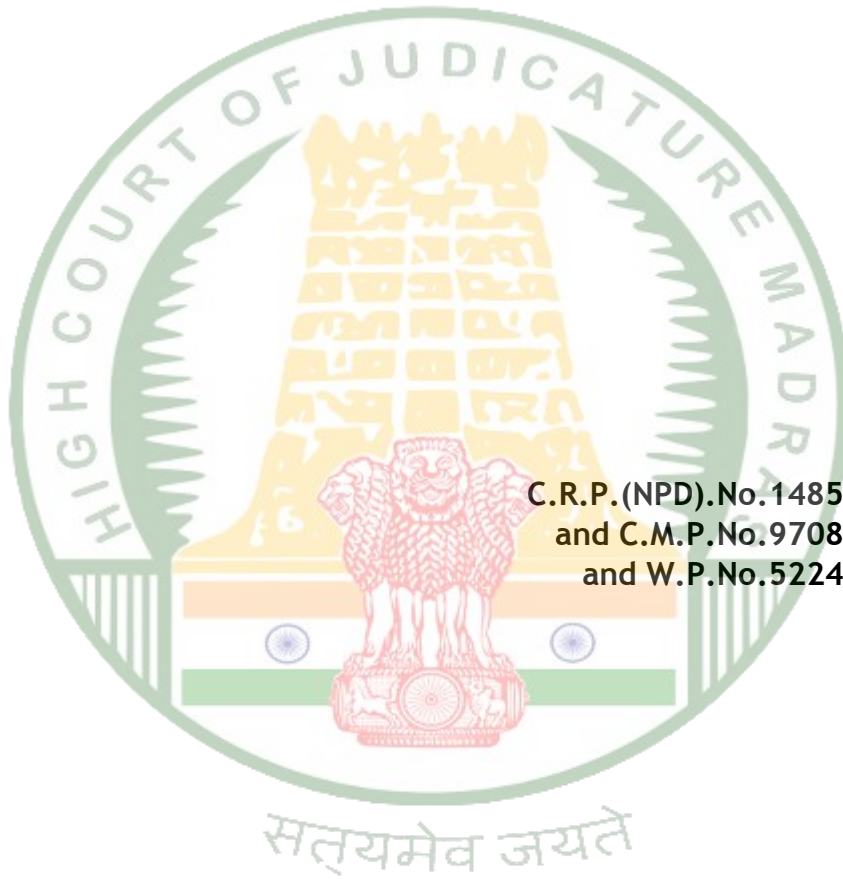
To

1. The Authorized Officer,
United Bank of India,
Southern Region, 184/132,
Ramakrishna Mutt Road,
Mandaveli,
Chennai - 600 028.

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THE HON'BLE CHIEF JUSTICE
AND
M. DURAISWAMY, J.

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