

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2019
DELIVERED ON : 06.09.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.11522 of 2019 and
W.M.P.No. 11783 of 2019

Associated Trading Corp. Pvt. Ltd.
Rep. By its Directors,
C/o. M/s. Rukimini Mills Ltd.
Silaiman,
Madurai - 625 201.
Petitioner

..

vs.

- 1 State Bank of India
Rep. by its Assistant General Manager,
Stressed Assets Management Branch,
No.1112, Rajaaplaza, 1st Floor,
Avinasi Road
Coimbatore - 641 037.
- 2 M/S. Rukmini Mills Ltd,
Rep. by its Directors,
Silaiman,
Madurai - 625 201.
- 3 S.Balasubramaniam
- 4 S.Kumarappan
- 5 S.Valliappan
- 6 S.Palaniappan
- 7 S.Thiagarajan
- 8 Industrial investment Bank of India Ltd.,
Southern Zonal Office,
Spencer Plaza,
769, Anna Salai
Chennai-600 002
- 9 The Cotton Corporation of India Ltd.,
Air India Building, 12th Floor,
Nariman Point,
Mumbai - 400 021.

10 A.R.Sridharan
11 A.R.Kannan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, calling for the rerecords on files of DRAT Chennai for order dated 29.03.2019 in M.A.No.90 of 2018 and quash the same.

For Petitioner: Mr. M.S.Krishnan, Senior Counsel
for Mr.M.S.Shanmuga Sundaram
for M/s. Aiyar & Dolia

For Respondents: Mr.S.Sethuraman - for R1
Mr.Uma Shankar - for R10
Memo dated 30.7.2019 filed to
given up the Respondents 2 to 9 & 11

O R D E R

MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

and

M.DURAISWAMY

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records on the file of the Debt Recovery Appellate Tribunal, Chennai in respect of the order dated 29.03.2019 in M.A.No.90 of 2018 and to quash the same.

2. The brief facts necessary for the disposal of the Writ Petition are as follows:-

(i) The 2nd respondent Company availed credit facilities from the 1st respondent-Bank. According to the petitioner, the 2nd respondent is under the control of the respondents 3 and 4 and was initially promoted by the father of the respondents 3 to 7. The respondents 5, 6 and 7 are not the Directors of the 2nd respondent Company. Similarly, the respondents 3 and 4 are not the Directors of the petitioner Company. The father of the respondents 3 to 7 promoted the 2nd respondent Company and had offered the property standing in the name of the petitioner Company situated at Alandur as security for repayment of the said loan.

(ii) Since the 2nd respondent/borrower committed default in repaying the loan amount, the 1st respondent-Bank filed an Original Application in O.A.No.11 of 2008 before the Debts Recovery Tribunal, Madurai wherein the petitioner was arrayed as the 4th defendant. The 1st respondent-Bank also issued a notice dated 13.05.2008 under Section 13(2) of the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which was also addressed to the petitioner. The petitioner sent a reply on 08.08.2008 to the said notice. Subsequently, the Bank took symbolic possession of the mortgaged property on 15.10.2008.

(iii) The petitioner filed Securitization Appeal in S.A.No.225 of 2008 before the Debts Recovery Tribunal, Madurai, challenging the possession notice dated 10.02.2011, issued under section 13(4) of the SARFAESI Act.

(iv) The Debts Recovery Tribunal, Madurai, dismissed the Securitization Appeal and while dismissing the same, came to the conclusion that the petitioner Company can be represented only by the Directors, viz., respondents 5 to 7 and not by the respondents 3 and 4. Further, the Debts Recovery Tribunal observed that the respondents 3 and 4 are strangers to the Company.

(v) According to the petitioner Company, it was only the respondents 3 and 4 who have signed every alleged extension of mortgage and the documents were not signed by the actual Directors, viz., respondents 5 to 7. The 7th respondent, without prejudice to his contentions, was willing to give Rs.350.12 lakhs to settle the dues of the Bank and get the charge released on the Company's property as mortgage was not extended for enhanced credit facilities after 12.08.1984 and the total amount payable was only Rs.350.12 lakhs even according to the Bank.

(vi) As against the order passed by the Debts Recovery Tribunal, Madurai, an appeal was filed before the Debt Recovery Appellate Tribunal, Chennai and the said appeal was dismissed for want of pre-deposit.

(vii) Subsequently, during the years 2004-17, the 1st respondent-Bank issued series of sale notices in respect of Alandur property of the petitioner. On 28.02.2017, the property was sold by the 1st respondent- Bank to M/s. Tripower Enterprises Private Limited for a sum of Rs.60,25,00,000/-.

(viii) The respondent-Bank issued the sale certificate dated 28.04.2017 and on 11.05.2017, filed a memo of part satisfaction in O.A.No.11 of 2008 before the Debts Recovery Tribunal, Madurai. The original documents were filed as Exs.A110 to A114 in O.A.No.11 of 2008. The 1st respondent-Bank sought for return of the original documents, by filing an application in I.A.No.995 of 2017 in O.A.No.11 of 2008. The petitioner Company filed their counter to the said application, opposing the return of the documents, stating that the documents should

not be returned pending the final adjudication in O.A.No.11 of 2008.

(ix) By order dated 09.11.2018, the application filed by the Bank was dismissed by the Debts Recovery Tribunal, Madurai. Aggrieved over the said order of dismissal, the 1st respondent-Bank filed an appeal in M.A.No.90 of 2018 before the Debt Recovery Appellate Tribunal, Chennai. The Appellate Tribunal, by order dated 29.03.2019, set aside the order of the Debts Recovery Tribunal, dated 09.11.2018, made in I.A.No.995 of 2017 and allowed the appeal.

(x) Aggrieved over the order dated 29.03.2019, passed by the Debt Recovery Appellate Tribunal, Chennai the petitioner Company has filed the above Writ Petition.

3. It is pertinent to note that along with I.A.No.995 of 2017, the 1st respondent-Bank also filed an application to delete the petitioner Company's Schedule 'B' property from the schedule of property by amending the relief sought for in the Original Application in O.A.No.11 of 2008, for the reason that the schedule 'B' property has already been sold in the auction. However, no order has been passed in the said application.

4. According to the petitioner Company, the 1st respondent-Bank did not choose to argue the said application and had this I.A. been allowed, return of documents would have been merely academic.

5. The 1st respondent-Bank filed a counter affidavit, wherein it has been stated that when the SARFAESI proceedings attained finality and sale certificate has been issued to the bona fide purchaser, it is the duty of the Debts Recovery Tribunal to return the documents deposited with it to the Bank, which got the properties sold to the auction purchaser under the SARFAESI proceedings. Further, the 1st respondent has contended that the equity is in favour of the bona fide purchaser and his valuable right to have the original title deeds cannot be defeated in any manner.

6.1 The 10th respondent in his counter has stated that he and his brother, the 11th respondent were impleaded by the 1st respondent-Bank in the Original Application and that they have filed the reply statement as early as in the year 2008 and also the counter proof affidavit along with the documents even the year 2011. Further, they have stated that their father is the absolute owner of 1.80 acres in Pymash No.722/4 and further the 10th respondent has stated that the petitioner Company has made a false claim over the property, hence, their father has filed a

Civil Suit as early as 1967. After the death of their father, the respondents 10 and 11 continued the litigation against the petitioner Company and the Trial Court decreed the suit in their favour holding that the extent of 1.80 acres absolutely belong to them. Further, the Trial Court observed that the petitioner Company's property lies on the North to an extent of 1.80 acres belonging to the respondents 10 and 11. Further, according to the 10th respondent, since the competent Civil Court has granted a decree in their favour declaring that the respondents 10 and 11 are the absolute owners of an extent of 1.80 acres, the mortgage created in respect of their property is illegal.

6.2 Further, the 10th respondent has stated that out of the extent of 1.80 acres, the Government had already acquired an extent of 1.40 acres of land for Thillai Ganga Nagar Subway and part of compensation was also received by them and out of the remaining extent of 40 cents, some extent of properties were sold to third parties and therefore, 1.80 acres of land in Pymash No.722/4 could not have been sold by the 1st respondent-Bank.

7. Mr. M.S.Krishnan, learned Senior Counsel, appearing for the petitioner submitted that the sale of the property took place on 28.02.2017, whereas, the 1st respondent has filed the application in I.A.No.995 of 2017 on 11.11.2016 itself, i.e., even prior to the date of sale of the property. The learned Senior Counsel further submitted that the order of the Debt Recovery Appellate Tribunal setting aside the order passed by the Debts Recovery Tribunal, directing the Debts Recovery Tribunal to return the documents to the Bank for further proceedings is erroneous for the reason that the Original Application in O.A.No.11 of 2008 was ripe for trial and the same could have been directed to be disposed of at the earliest.

8.1. Mr.S.Sethuraman, learned counsel appearing for the 1st respondent-Bank submitted that the order passed by the Debt Recovery Appellate Tribunal is proper for the reason that the auction conducted in respect of the property has become final. In support of his contentions, the learned counsel relied upon an unreported judgment of the Hon'ble Supreme Court made in Civil Appeal No.5012 of 2019 [Abdul Kuddus v. Union of India and others] wherein the Hon'ble Supreme Court held as follows:

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"... 17. Referring to the above amended provisions, it is urged on behalf of the appellants that an order of the Foreigners Tribunal is an executive order which renders an opinion and therefore, it cannot be equated with a judgment. Summary opinion of the Foreigners

Tribunal, it is submitted, is not a detailed order and hence, is not a decision or judgment. Based on the said submission, it is argued that the opinion formed by the Foreigners Tribunal is not an order of the Competent Authority for the purposes of sub-para (2) to paragraph 3 of the Schedule to the 2003 Rules. Further, the opinion formed by the Foreigners Tribunal being an executive order would not operate as res judicata. It is highlighted that in some cases, persons who have been declared to be a foreigner under the Foreigners Act have been included in the draft National Register of Citizens for the State of Assam, while in others siblings and close blood relations of such persons have been named in the draft National Register of Citizens. It is averred that in these cases of contradictions, an aggrieved person should be entitled to take recourse to paragraph 8 of the Schedule to the 2003 Rules.

19. The procedure prescribed by the post 2012 amendment under the 1964 Order mandates compliance with the principles of natural justice. All the allegations and grounds are required to be served by the Tribunal in the form of a show cause notice to the person who is alleged to be a foreigner [see paragraph 60 in Sarbananda Sonowal (II) (supra)]. Thereupon, the person has to be given a reasonable opportunity to file representation and also produce evidence. The Tribunal has been authorised to consider and allow prayer for production and examination of the witnesses which can be refused if found to be vexatious, or made with the intent to cause delay, etc. The evidence produced by the Superintendent of Police can also be recorded. The person concerned has to be heard before the Tribunal gives its opinion. The person concerned may appear in person or can be represented by a legal practitioner or an authorised representative. Opinion is to be given within a period of sixty days after the reference from the competent authority. No doubt, the Rules do not prescribe and require an opinion of the Tribunal to be a detailed judgment, nevertheless, it is obvious that the opinion rendered must state the facts and reasons for drawing the conclusions. It is a decision and an order. Fixing time limits and recording of an order rather than detailed judgment is to ensure that these cases are

disposed of expeditiously and in a time bound manner. The opinion by the Foreigners Tribunal is a quasi-judicial order and not an administrative order. The expression 'quasi-judicial order' means a verdict in writing which determines and decides contesting issues and question by a forum other than a court. The determination has civil consequences. Explaining the meaning of quasi-judicial body in Indian National Congress (I) vs. Institute of Social Welfare & Ors.3, it was held that when any body of persons has a legal authority to determine questions affecting the rights of subjects and a duty to act judicially, such body of persons constitute a quasi-judicial body and decision given by them is a quasi-judicial decision. It would also be a quasi-judicial order if the statute empowers an authority to decide the lis not between the two contesting parties but also when the decision prejudicially affects the subject as against the authority, provided that the authority is required by the statute to act judicially. Further, what differentiates an administrative act from the quasi-judicial act is that a quasi-judicial body is required to make an enquiry before arriving at a conclusion. In addition, an administrative authority is the one which is dictated by policy and expediency whereas a quasi-judicial authority is required to act according to the rules. ..."

8.2 The learned counsel for the 1st respondent-Bank further submitted that the Bank had already filed an application in O.A.No.11 of 2008 before the Debt Recovery Appellate Tribunal to amend the Original Application by deleting Schedule 'B' in the Schedule of properties.

9. Mr.Uma Shankar, learned counsel appearing for the 10th respondent also reiterated the stand taken by the 10th respondent in the counter affidavit.

10. On a careful consideration of the materials available on record, the judgment relied upon by the learned counsel appearing for the 1st respondent and the submissions made by the learned counsel on either side, it could be seen that O.A.No.11 of 2008 was filed by the 1st respondent-Bank for recovery of a sum of Rs.25,49,19,820.41 together with future interest. Schedule 'B' in the Schedule of properties mentioned in O.A.No.11 of 2008 was sold in e-auction on 28.02.2017 for a

sale consideration of Rs. 60,25,00,000/- under the SARFAESI proceedings to the auction purchaser, viz., M/s. Tripower Enterprises Private Limited and the sale certificate was also issued in their favour. However, the auction purchaser, is not a party either in the Original Application or in this Writ Petition. The 1st respondent also filed a memo for recording part satisfaction.

11. It is also not in dispute that the sale made in favour of M/s. Tripower Enterprises Private Limited by the 1st respondent-Bank has not been challenged by the petitioner Company, who claimed title to the property. The petitioner has challenged the possession notice dated 10.02.2011 in S.A.No.225 of 2008 and the same was dismissed by the Debts Recovery Tribunal. However, the Tribunal did not go into the other issues relating to the subsequent extension of the mortgage done by the persons, since the proceedings under Section 17 of the SARFAESI Act is summary proceedings.

12. The petitioner contended that there is no valid creation of mortgage or extension of mortgage over the Schedule 'B' property. The respondents 10 and 11 claimed that the property originally belonged to their father and by virtue of the decree granted by a competent Civil Court, declaring them as absolute owners of an extent of 1.80 acres, they became the absolute owners. Further, the 10th respondent has stated that out of the extent of 1.80 acres, an extent of 1.40 acres was acquired by the Government for Thillai Ganga Nagar Subway and in the remaining 40 cents, some extent of properties were sold to third parties and therefore, the petitioner could not have mortgaged an extent of 1.80 acres with the 1st respondent-Bank. The petitioner also contended that there was no valid mortgage in respect of Schedule 'B' property mentioned in O.A.No.11 of 2008 and the mortgage was created by an incompetent person on behalf of the petitioner Company by fabricating false records.

13. The case put up by the respective parties is a matter for evidence and the same can be decided only after the conclusion of the trial in the Original Application pending before the Debts Recovery Tribunal. The original documents were marked as Exs.A110 to A114 in O.A.No.11 of 2008. The Debts Recovery Tribunal, while disposing of the application, observed that the Original Application has reached the stage of inquiry and therefore, the Tribunal was of the view that the issue as to whether there was valid creation of equitable mortgage over the Schedule 'B' property mentioned in the O.A.No.11 of 2008 has to be decided only in the Original Application, along with the issue as to whether the 1st respondent-Bank is entitled for recovery of the amount with future interest.

14. That apart, when the documents were marked as Exs.A110 to A114 before the Debts Recovery Tribunal the documents cannot be allowed to be returned even before the disposal of the Original Application. The Debt Recovery Appellate Tribunal without considering the case of the parties had set aside the order of the Debts Recovery Tribunal finding that the sale made in favour of the auction purchaser has become final. When the core issue is with regard to creation of mortgage, the same can be decided only in the Original Application, the order passed by the Debt Recovery Appellate Tribunal without considering the same cannot stand. If the Debts Recovery Tribunal, after trial, ultimately comes to the conclusion that there was no valid mortgage in respect of the Schedule 'B' property mentioned in O.A.No.11 of 2008, in that case, it would further complicate the dispute. The Appellate Tribunal, instead of setting aside the order passed by the Debts Recovery Tribunal, should have directed the Debts Recovery Tribunal to dispose of the appeal, within a time frame and further directed the Debts Recovery Tribunal to consider the application in I.A.No.995 of 2017 along with the Original Application.

15. In these circumstances, we are of the considered view that in the interest of justice, the Debts Recovery Tribunal should retain the documents marked as Exs.A110 to A114 till the disposal of O.A.No.11 of 2008 and a direction can be given to the Debts Recovery Tribunal to dispose of the Original Application within a time frame.

16. For the reasons stated above, the orders passed by the Tribunals below are set side and the application in I.A.No.995 of 2017 in O.A.No.11of 2008 is remitted back to the Debts Recovery Tribunal, Madurai for deciding the matter afresh. The Debts Recovery Tribunal, Madurai, is directed to dispose of the Original Application in O.A.No.11 of 2008 along with I.A.No.995 of 2017, on merits and in accordance with law, independently, uninfluenced by any of the observations made in this Writ Petition or by the Debt Recovery Appellate Tribunal or by the Debts Recovery Tribunal, within a period of four months from the date of receipt of a copy of this order.

With these observations, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

Rj

To

- 1 The Assistant General Manager,
State Bank of India
Stressed Assets Management Branch,
No.1112, Rajaaplaza, 1st Floor,
Avinasi Road
Coimbatore - 641 037.
 - 2 Industrial investment Bank of India Ltd.,
Southern Zonal Office,
Spencer Plaza,
769, Anna Salai
Chennai-600 002
 - 3.The Registrar
The Debts Recovery Tribunal
Madurai.
 - 4.The Registrar
The Debts Recovery Tribunal
Chennai .
- +1 CC to M/s. Aiyar and Dolia, Advocate sr 77793.
+1 CC to Mr.S.Sethuraman, Advocate sr 77348.
+1 Cc to Mr.C. Uma Shankar, Advocate sr 77765.

W.P.No.11522 of 2019 and
W.M.P.No. 11783 of 2019

RR(CO)
SP(23/09/2019)