IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.06.2019

CORAM

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

W.P.Nos.31295 and 31296 of 2017
and
W.P.Nos.1829 and 1830 of 2018
and
WMP No.34377 of 2017

W.P.Nos.31295 and 31296 of 2017

M/s.Raj Bai Anusuya Devi Gulacha
Memorial Charitable Trust
represented by its Managing Trustee
Mr.Nalin Gulechha
.. Petitioner in both WPs.

Versus

1. The Registrar
Debts Recovery Appellate Tribunal
Chennai.

2. Housing and Urban Development
Corporation Limited
5th Floor, CMDA Tower – 1
Gandhi Irwin Road, Egmore
Chennai – 600 008.

3. Shri Krishna Trust
No.8, Ponni Amman Koil Street
Hastinapuram
Chennai – 600 064.
represented by its Trustee
Mr.N.Rajit .. Respondents in both WPs.

Writ Petition Nos.31295 and 31296 of 2017 have been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order dated 03.07.2017 passed in MA.No.7 of 2017 and order dated 11.09.2017 passed in I.A.No.1253 of 2017 in M.A.No.7 of 2017 on the file of the first respondent and quash the same.

For Petitioner in both WPs. : Mr.Anil Relwani

For Respondent-2 in both WPs.: Mr.K.S.Sunder

For Respondent-3 in both WPs.: Mr.Jayesh B.Dolia
for
M/s.Aiyar and Dolia

W.P.Nos. 1829 and 1830 of 2018

Shri Krishna Trust
represented by its Trustee
Mr.N.Rajit

.. Petitioner in both WPs.

Versus

1. First respondent was deleted as per the order of this Court dated 05.03.2018 made in W.P.Nos.1829 and 1830 of 2018.

2. M/s.Housing and Urban Development Corporation Limited
5th Floor, CMDA Tower – 1
Gandhi Irwin Road, Egmore
Chennai – 600 008.

3. M/s.Raj Bai Anusuya Devi Gulacha
Memorial Charitable Trust
No.33/2, Gangai Street
Kalakshetra Colony
Besant Nagar Extension
Chennai – 600 090.

.. Respondents in both WPs.

Writ Petition No.1829 of 2018 has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order dated 03.07.2017 passed in MA.No.7 of 2017 on the file of the first respondent and quash the same insofar as granting conditional right of redemption to the third respondent and consequently, confirm the sale in favour of the petitioner relating to the property situated at abadi S.No.1/134 at Brookshabad Village, Port Blair Tehsil and Andaman District, Andaman and Nicobar Islands to the petitioner.

Writ Petition No.1830 of 2018 has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order dated

03.07.2017 passed in MA.No.138 of 2015 on the file of the first respondent and quash the same.

For Petitioner in both WPs. : Mr.Jayesh B.Dolia
for
M/s.Aiyar and Dolia

For Respondent-2 in both WPs.: Mr.K.S.Sundar

For Respondent-3 in both WPs.: Mr.Anil Relwani

COMMON ORDER

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

M/s.Raj Bai Anusaya Devi Gulacha Memorial Charitable Trust, represented by its Managing Trustee, has filed the Writ Petition in W.P.No.31295 of 2017 calling for the records on the file of the first respondent in M.A.No.7 of 2017, dated 03.07.2017 and to quash the same.

2. The petitioner in W.P.No.31295 of 2017 has also filed W.P.No.31296 of 2017 challenging the order dated 11.09.2017 passed in I.A.No.1253 of 2017 in M.A.No.7 of 2017 passed by the first respondent.

3. The petitioner claims that it is a charitable Trust, which was granted a perpetual licence of the land under Clause 2 of Section 146 of Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966, in Survey No.1/134, measuring 8 hectares situated in Brookshabad under Port Blair on 16.09.2002 by the Deputy Commissioner (A) Andaman and Nicobar Islands for the purpose of construction and running of a residential School.

4. The petitioner further submits that the Trust approached the Housing and Urban Development Corporation Limited, Chennai, the second respondent herein for loan facility to construct a residential School upon the land, for which, the licence by the Government of Andaman and Nicobar Islands was issued in the year 2002. After due diligence, the second respondent sanctioned the loan facility to the petitioner's Trust on 16.03.2004 and advanced a sum of Rs.2.5 crores initially and subsequently, Rs.1.92 crores on condition to mortgage the land with the second respondent, to which, the petitioner complied with, by depositing the original licence deed, dated 16.09.2002 and original permission accorded by the Government of Andaman and Nicobar Islands to create a mortgage with the second respondent.

5. It is further stated by the petitioner Trust that they constructed a residential School, namely "Blair International School" upon the said 20 acres of land and 1,25,000 sq.ft. building with 300 students from K.G class to 12th standard, whereby providing direct and indirect employment and parting education to the students from Nicobar Tribal area. The petitioner claims that when T-sunami struck the islands in the year 2004, most of the children left the School, due to which, they found very difficult to repay the loan and their financial situation depleted and thereafter, the petitioner Trust account was classified as 'Non-Performing Asset'. The petitioner further claims that the second respondent filed a claim petition in O.A.No.208 of 2010 under Section 19 of RDDB & FI Act before the Debt Recovery Tribunal-I, which later on came to be allowed on 28.08.2012 and consequently, a Recovery Certificate bearing D.R.C.No.37/2012/ SHWCS/NTC was issued by the Recovery Officer.

6. Thereafter, the Recovery Officer published an e-auction sale notice, dated 21.08.2014 to bring the land and constructions thereon for auction by fixing the reserved price as Rs.7.5 crores. The e-auction notice was challenged by the petitioner Trust in W.P.No.25924 of 2014 before this Court and this Court by its order, dated 20.01.2015, had dismissed the writ petition. The petitioner Trust approached the Honourable Supreme Court in S.L.P.No.16555 of 2015 against the order made in the writ petition in W.P.No.25924 of 2014, dated 20.01.2015. The Honourable Supreme Court by its interim order, dated 21.09.2015, directed the petitioner Trust to deposit Rs.8 crores within two weeks for onward transaction to the third respondent. However, the petitioner did not comply with the condition and finally the Honourable Supreme Court by its order, dated 12.10.2015 dismissed the S.L.P. Thereafter, the Recovery Officer by order, dated 13.05.2015 passed an order of confirmation of sale of immovable property in favour of the third respondent herein, which is another Trust by name 'Sri Krishna Trust', who is the petitioner in W.P.Nos.1829 and 1830 of 2018. The petitioner Trust challenging the order of confirmation of sale, filed an appeal under Section 30 of RDDB & FI Act before the Debt Recovery Appellate Tribunal in Appeal No.5 of 2015 in D.R.C.No.37 of 2012 in O.A.No.208 of 2010. However, the said appeal was preferred with a delay of 109 days. Hence, the petitioner Trust filed M.A.No.49 of 2015 to condone the delay of 109 days. The Appellate Tribunal by its order, dated 30.10.2015 allowed the condone delay application, on condition to deposit Rs.8 crores on or before 11.11.2015, failing which M.A.No.49 of 2015 shall stands automatically dismissed and also ordered that if the petitioner deposits the same on or before 11.11.2015, the Recovery Officer shall keep the same in a fixed deposit in a Nationalised Bank and also ordered extending status-quo till 12.11.2015. The petitioner Trust, in compliance of the order

passed by the Debt Recovery Tribunal, deposited the amount within such time and thereafter, the appeal was numbered as Appeal No.5 of 2015.

7. It was further contended by the petitioner Trust that the appeal, after hearing all the parties, finally had been decided in favour of the petitioner Trust by order, dated 18.12.2015, thereby setting aside the sale and confirmation of sale. In the same order, the Tribunal held that the amount deposited by the petitioner before the Recovery Tribunal shall be adjusted to the loan account and Rs.7.51 crores deposited by the third respondent herein in the auction purchase is ordered to be returned with 6% simple interest. The petitioner further contended that the third respondent Trust/auction purchaser herein filed W.P.No.40989 of 2015 praying to quash the order, dated 18.12.2015 made in Appeal No.5 of 2015 by the Debt Recovery Tribunal, in which writ petition, by an order dated 29.12.2015, an interim order of stay was granted. However, after the pleading was completed in the above writ petition, third respondent herein withdrew the writ petition on 13.04.2017. Accordingly, the said writ petition was dismissed as withdrawn.

8. Thereafter, the third respondent herein filed M.A.No.7 of 2017 before the Debt Recovery Appellate Tribunal, Chennai, challenging the order, dated 18.12.2015 passed in Appeal No.5 of 2015 by the Debt Recovery Tribunal, Chennai and finally in the appeal filed by the third respondent in M.A.No.7 of 2017, by order dated 03.07.2017, the Appellate Tribunal modified the order of Debt Recovery Tribunal dated 18.12.2015 made in Appeal No.5 of 2015, to the effect that the petitioner shall deposit Rs.9.60 crores in place of Rs.8 crores within four weeks, failing which, the third respondent will be entitled to possession of the property; and the third respondent herein will receive the amount of Rs.7.51 crores with interest at 10% p.a. instead of 6% p.a. The petitioner has filed W.P.No.31295 and 31296 of 2017 challenging the order of Debt Recovery Appellate Tribunal, dated 03.07.2017, modifying the order, dated 18.12.2015 passed by the Debt Recovery Tribunal-I and the order dated 11.09.2017 passed in Review Application I.A.No.1253 of 2017 in M.A.No.7 of 2017 by the first respondent/Debt Recovery Appellate Tribunal.

9. The second and third respondents have filed counters in the above said writ petitions.

10. The second respondent factually admits most of the contentions raised by the petitioner Trust. Apart from that, the second respondent states that the petitioner was fully aware that the auction under SARFAESI Act was held and reserve price

was fixed at Rs.10,17,15,000/- and Rs.9,16,20,000/- to which, no bid was received and hence, the property could not be sold. That apart, the second respondent also contends that the petitioner having not elected to challenge the sale auction and the sale proceedings before the Recovery Officer within the stipulated time, cannot have any locus standi to question the same after a lapse of time on the ground that the petitioner did not possess knowledge about non-valuation of the land. The second respondent also contends that the order modified by the Appellate Tribunal directing the petitioner to deposit Rs.9.6 crores along with 10% simple interest was not complied with by the petitioner, wherein, the petitioner deposited only Rs.9.6 crores and interest amount was not deposited by the petitioner and as the petitioner did not deposit the entire due amount as arrived at by the Debt Recovery Appellate Tribunal, the petitioner cannot challenge the same after failed to comply with such order. Despite there being a deposit of Rs.7.51 crores by the third respondent as sale proceeds and Rs.9.6 crores deposited by the petitioner are lying with the Recovery Officer, the second respondent is not able to recover any amount and the second respondent submits that the entire proceedings was dragged on for the last seven years, debarring the second respondent from getting back the loan sanctioned by it to the petitioner and prays for dismissal of the Writ Petition.

11. The third respondent has filed a common counter in W.P.Nos.31295 and 31296 of 2017, in which, the third respondent would contend that they participated in the auction held on 30.09.2014, which was held pursuant to the e-auction notice, dated 21.08.2014, the bid was confirmed in their favour for a sum of Rs.7.51 crores, as against the reserved price of Rs.7.50 crores. The third respondent remitted a sum of Rs.75 lakhs being the earnest money deposit on 26.09.2014 and after confirming the sale, the third respondent remitted 25% of bid amount on 30.09.2014 and the balance amount of 75% together with one percentage of poundage was deposited on 14.10.2014 within the stipulated period of 15 days.

12. The third respondent further contends that they were not made as a party/respondent in the writ petition filed by the petitioner in W.P.No.25924 of 2014, hence, M.P.No.3 of 2014 was filed by the third respondent Trust to implead them. In tandem with the other contention raised by the petitioner, the third respondent states that as they withdrew W.P.No.40989 of 2015 consequent to the appointment of a chair person to the first respondent/Appellate Tribunal, with liberty to prosecute the appeal, challenging the order, dated 18.12.2015 passed by the Debt Recovery Tribunal-I in Appeal No.5 of 2015. Thereafter, the appeal in M.A.No.7 of 2017 came up before the first respondent and on merits, the first respondent passed an order dated

03.07.2017, wherein, the first respondent affirmed the auction sale and confirmation of sale, however, with the conditional right of redemption to the third respondent by directing the petitioner to further make a deposit of Rs.1.6 crores, upon which deposit, the third respondent will be entitled to receive back the amount of Rs.7.5 crores with 10% interest, which the petitioner is directed to be deposited within four weeks from the date of receipt of the order. The third respondent further contends that the petitioner made a representation to the Recovery Officer, dated 02.08.2017 for providing a calculation to the effect that it had complied with the order passed by the first respondent, dated 03.07.2017. However, the third respondent states that he filed an objection to the representation, dated 02.08.2017, made by the petitioner.

13. The Recovery Officer, after hearing both the parties, held that the petitioner has failed to follow the direction issued in M.A.No.7 of 2017 on 03.07.2017, subsequently modified on 11.09.2017 and eventually the order, dated 03.07.2017 was not complied with and the auction purchaser, the third respondent herein is entitled to get possession of the property by virtue of the order, dated 03.07.2017. The third respondent further contends that the petitioner without challenging the above order passed by the Recovery Officer, but had only challenged the order, dated 03.07.2017, which according to the third respondent, is not maintainable. According to the third respondent, in the deposit made by the petitioner, there was a short-fall in payment and as on today, the order passed by the Appellate Tribunal has not been complied with and submits that the writ petitions filed by the petitioner have to be dismissed.

14. Apart from the above two Writ Petitions filed by the petitioner, there are two other writ petitions in W.P.No.1829 and 1830 of 2018 filed by the third respondent herein/auction purchaser challenging the order, dated 03.07.2017 passed in M.A.No.7 of 2017 and order, dated 03.07.2017 passed in M.A.No.138 of 2015 by the first respondent. The petitioner in W.P.No.1829 and 1830 of 2018 is the third respondent in W.P.No.31295 and 31296 of 2017, hereinafter referred to as the auction purchaser.

15. The auction purchaser has stated in the affidavits filed in support of the writ petitions that on 30.09.2014 when the second respondent/Bank conducted an auction, the auction purchaser participated in the said auction and submitted their bid. Their bid being the highest bid for about Rs.7.51 crores, they were declared as successful bidder and they remitted Rs.1.15 crores being 25% of the sale price and was called upon to pay the remaining 75% of the bid amount on or before 14.10.2014. However, the auction purchaser has stated that he

has remitted the remaining 75% on 13.10.2014 itself along 1% poundage.

16. The auction purchaser further states that after all the legal proceedings which ended in dismissal of S.L.P.No.16555 of 2015 filed by the writ petitioner Trust on 12.10.2015, when the Debt Recovery Tribunal-I by order, dated 18.12.2015, had set aside the auction sale in Appeal No.5 of 2015 filed by the petitioner, the auction purchaser, namely Krishna Trust, challenging the order, dated 18.12.2015, filed W.P.No.40989 of 2015, as there was no chair person in the Debt Recovery Appellate Tribunal, at that point of time. This Court on 29.12.2015 while ordering notice in the writ petition, granted an order of interim stay, however, the chair person was appointed for the Debt Recovery Appellate Tribunal, which made the auction purchaser to withdraw the said Writ Petition in W.P.No.40989 of 2015 in pursuance of the appeal remedy.

17. The auction purchaser further states that they had filed an appeal in M.A.No.138 of 2015 challenging the order of the Debt Recovery Tribunal-I, dated 30.10.2015 by which, the Debt Recovery Tribunal-I, had condoned the delay of 109 days delay in filing the appeal filed by the writ petitioner/Raj Bai Anusuya Devi Gulacha Memorial Charitable Trust. At the same time, the auction purchaser filed an appeal in M.A.No.7 of 2017 challenging the order, dated 18.12.2015 made in Appeal No.5 of 2015, on the ground that the appeal filed by the writ petitioner Trust challenging confirmation of sale, dated 13.05.2015 in favour of the auction purchaser is not maintainable, without compliance of Rules 60 and 61 of the second schedule of Income Tax Act, 1961. Since Rules 60/61 and 62 of the said Act were not complied with within the specified time and in the absence of any provision in law to extend the period, the appeal itself is not maintainable. The auction purchaser would further contend that DRT-I ought not to have condoned the delay of 109 days, as the same was not valid under Section 5 of the Limitation Act which explicitly bars condonation of delay in the case of any application made under Order 21 C.P.C. The auction purchaser further contends that the order passed in W.P.No.25924 of 2014, which later came to be confirmed by the Honourable Supreme Court in S.L.P.No.16555 of 2015, is not a meritorious order and the relief granted by the DRT-I was beyond the scope of the relief sought for by the writ petitioner Trust. The order passed by the Appellate Tribunal, is without having any regard to the legal issues and the legal issues agitated by the auction purchaser was not considered at all by the Appellate Tribunal while directing the second respondent/Bank to refund the amount deposited together with simple interest at the rate of 10% p.a. to the auction purchaser.

18. Furthermore, the auction purchaser contends that the writ petitioner Trust has lost the right of redemption of the property, by virtue of provision to Section 60 of Transfer of Property Act, 1882, as the property mortgaged by the writ petitioner Trust was put into action in a suit for foreclosure of the sale and a sale certificate was issued in favour of the auction purchaser. As such, the auction purchaser had become the absolute owner in title by virtue of the issuance of order of confirmation of sale.

19. The writ petitioner Trust in W.P.Nos.31295 and 31296 of 2017 has filed their counter to the writ petition filed by the auction purchaser in W.P.No.1829 and 1830 of 2018, in which, they has assailed the common factors as stated in the affidavit filed in support of their writ petitions, except to state that the counter filed by the second respondent is contrary to the counter filed in W.P.No.25924 of 2014 and the counter filed in S.L.P.No.16555 of 2015 with regard to the valuation of land. The writ petitioner Trust states that on coming to know from the counter of the second respondent in S.L.P.No.16555 of 2015 that the Recovery Officer has not valued the land, the writ petitioner has immediately challenged the order by way of appeal under Section 30 of RDDB & FI Act before the Debt Recovery Tribunal in Appeal No.5 of 2015 in D.R.C.No.37 of 2012 in O.A.No.208 of 2010 on the ground that the Recovery Officer has not valued the land for sale and as such, the sale is hit by Section 64 of Transfer of Property Act, 1882.

20. The writ petitioner Trust further contends that Rule 60 of Schedule II of Income Tax Act, 1961 deals with setting aside the sale and Rule 61 deals with application to set aside the sale. However, Section 54 defines the sale and only when a sale happens as defined under Section 64, one has to approach under Rules 60 and 61 of the Income Tax Rules and since the sale is not completed, Rules 60 and 61 will not be applicable. The writ petitioner Trust further contends that the second respondent himself has not challenged the order passed by the Debt Recovery Tribunal in Appeal No.5 of 2015 nor the order of the first respondent in M.A.No.7 of 2017 and I.A.No.1253 of 2017. Thus, the writ petitioner seeks to dismiss the writ petitions filed by the auction purchaser.

21. The second respondent has filed a common counter affidavit to the writ petitions filed by the auction purchaser wherein which the second respondent contends that the auction purchaser was well aware of the fact that the land was not valued, as the same was stated by the writ petitioner Trust before the Honourable Supreme Court in the S.L.P filed by the same writ petitioner. The writ petitioner Trust had knowledge that the land was not valued right from the issuance of recovery

certificate and attachment of the mortgaged property; settlement of sale of proclamation and issuance of sale notice and the writ petitioner Trust did not object to the same in any of the proceedings and the Trust has given an undertaking to repay, but actually failed to honour the undertaking and neglected to make payments and having not raised any objection to the upset price fixed at the time of proclamation, the writ petitioner Trust is estopped from raising the said objection at a later point of time in the present writ petitions. Apart from that, the second respondent had also stated that the writ petitioner Trust, having not challenged the sale auction notice and the sale proceedings before the Recovery Officer within the stipulated time, is estopped from raising any objection after a lapse of time, on the ground that the writ petitioner Trust did not possess knowledge that the land was not valued.

22. In fact, the writ petitioner Trust who has lost the writ petition in W.P.No.25924 of 2014, which later on, came to be confirmed by the Honourable Supreme Court while dismissing S.L.P.No.16555 of 2015 filed by the writ petitioner Trust, as there was no stay for the e-auction held pursuant to e-sale notice No.21 of 2014, dated 21.04.2014 and inspite of several opportunities being given to the writ petitioner Trust, which had failed and neglected to repay the said amount and finally the sale was made in favour of the auction purchaser, by confirmation of sale by Recovery Officer by his order, dated 13.05.2015.

23. The second respondent further submits that as far as the order passed by the DRT-I directing the writ petitioner Trust to deposit Rs.9.60 crores and modified interest rate from 6% to 10% p.a to be paid by the writ petitioner Trust, as there was a factual error regarding the payment, the second respondent filed I.A.No.1253 of 2017 and prayed for review of the order, dated 03.07.2017 by which DRAT modified the order, dated 18.12.2015 passed by the DRT-I, Chennai and in the review petition by order, dated 11.09.2017, the DRAT clarified that the petitioner should make the deposit and in case of default, the possession of the mortgaged property should be delivered to the auction purchaser and since there was default by the writ petitioner Trust, the Recovery Officer by its order, dated 17.11.2017 recorded that there was a default by the writ petitioner Trust in complying the order passed by the DRAT as the payment made by the writ petitioner Trust was short fall and held that the auction purchaser is entitled to get possession. The second respondent further holds that the recovery proceedings have been dragged on for more than seven years and there is no recovery and no repayment till date and in support of the auction purchaser, the second respondent seeks dismissal of the writ petition filed by the writ petitioner Trust.

24. Heard all the learned counsels appearing on either side and perused the materials available on record.

25. The writ petitions filed by the petitioner Trust before this Court in W.P.Nos.31295 and 31296 of 2017 and the Writ Petitions filed by the auction purchaser 'Sree Krishna Trust' in W.P.No.1829 and 1830 of 2018 revolve around two impugned orders, dated 03.07.2017 passed in M.A.No.7 of 2017 by the Debt Recovery Appellate Tribunal, Chennai and the order, dated 11.09.2017, which is also an order passed by the DRAT, Chennai, in the review petition I.A.No.1253 of 2017 modifying the order, dated 03.07.2017.

26. Mr.Anil Relwani, learned counsel appearing for the petitioner in W.P.Nos.31295 and 31296 of 2017 vehemently argued that the second respondent filed O.A.No.208 of 2010 before the Debt Recovery Tribunal-I, Chennai, which was allowed on 28.06.2012 itself and the said order is an exparte order, uncontested by the petitioner Trust and subsequently, e-auction sale notice, dated 21.08.2014 to bring the land and constructed building thereupon for which reserve price was initially fixed as Rs.7.50 crores as against Rs.7.75 crores which is much below the outstanding. Though the petitioner has challenged the same in W.P.No.25924 of 2014, on the ground that the property was under-valued initially, an interim order was granted in favour of the petitioner to the effect that the sale was to proceed, but confirmation was subject to the final order passed by this Court.

27. The learned counsel for the petitioner also contended that the third respondent in W.P.Nos.31295 and 31296 of 2017 is the writ petitioner in W.P.Nos.1829 and 1830 of 2018, who has been a successful bidder for his bid for Rs.7.51 crores, cannot absolutely have the right as a successful bidder as the entire sale proceed which is the sequel of the order passed in O.A.No.208 of 2010 came to be set aside in Appeal No.5 of 2015.

28. The learned counsel for the petitioner further contended that though the Honourable Supreme Court dismissed S.L.P.No.16555 of 2015, which has been filed against the order, dated 20.01.2015 passed in W.P.No.25924 of 2014 and thereafter, the petitioner filed M.A.No.49 of 2015 to condone the delay of 109 days in filing the appeal against the order, dated 13.05.2015 confirming the sale of the immovable property in favour of the third respondent and the writ petitioner in W.P.Nos.1829 and 1830 of 2018.

29. The learned counsel further submitted that for the application filed with 109 days delay, the Tribunal had ample power to condone the delay in filing the Appeal. The order

passed in M.A.No.49 of 2015 was not challenged by the third respondent/Ms.Sri Krishna Trust, having not challenged the order passed to condone the delay and subsequently, on compliance, the deposit made by the petitioner for Rs.8 crores as a condition imposed to allow the condonation of delay petition, was scrupulously adhered by the petitioner. Thereafter, the Debt Recovery Tribunal by its order, dated 18.12.2015 set aside the confirmation of sale and by allowing the appeal on condition that the petitioner should deposit the amount of Rs.7.51 crores with simple interest at 6% from 30.09.2014, after deducting the already deposited amount of Rs.8 crores by the petitioner in compliance to the order passed in M.A.No.49 of 2017, and a direction was also issued to the Recovery Officer to return the amount of Rs.7.51 crores with simple interest at 6% to the third respondent/auction purchaser on deposit of the amount by the petitioner and the sale price which was deposited by the auction purchaser has to be adjusted towards the loan account of the petitioner by the second respondent herein.

30. The learned counsel for the petitioner would further contend that the writ petition in W.P.No.40989 of 2015 filed by the auction purchaser, challenging the order, dated 18.12.2015 was also withdrawn, in view of the endorsement made by the auction purchaser's counsel. It is seen that only an appeal in M.A.No.7 of 2017 was filed by the auction purchaser as against the order passed in Appeal No.5 of 2015, dated 18.12.2015. The Debt Recovery Appellate Tribunal, by order, dated 03.07.2017 had modified the order passed by the Debt Recovery Tribunal, thereby modifying the interest rate from 6% to 10% and the petitioner was directed to deposit Rs.9.6 crores in the place of Rs.8 crores.

31. The learned counsel for the petitioner would further contend that the petitioner Trust was given a land on licence by the Government of Andaman and Nicobar Islands under Clause (ii) of Section 146 of Andaman and Nicobar Islands Revenue and Land Reforms Regulations, 1966. The learned counsel for the petitioner would also contend that the value of the land was not at all considered by the second respondent while bringing the property for auction and only the building was taken into account, which is patently illegal and arbitrary. The learned counsel would further contend that the sale itself is hit by Section 54 of Transfer of Property Act and the interest modified from 6% to 10% simple interest per annum, by the Debt Recovery Appellate Tribunal, by its order, dated 03.07.2017 is per se illegal. As such, the learned counsel would further contend that the third respondent/auction purchaser is not entitled for any compensation as awarded by the DRAT and the order passed by the DRAT, dated 03.07.2017 and subsequent revision by its order, dated 11.09.2017 are per se illegal and have to be set aside.

32. The learned counsel for the petitioner relied upon the Judgment reported in 2015 (4) CTC 807 (A.R.Venugopal ..vs.. Jotheeswaran and others) to support his claim that Debt Recovery Appellate Tribunal had the power to condone the delay. A decision reported in Manu/WB/0568/10 in Sri Gyanshyam Agarawal Vs. the Secretary (Revenue) and others, was relied upon by the learned counsel for the petitioner to support that prior permission from the Deputy Commissioner as mentioned in Regulation 159(9) of Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966, is not required. In a decision reported in 2016(4) SCC 406 : Manu/SC/0208/2016 (Collector of Land Acquisition and others ..vs.. Andaman Timber Industries and others), it is contended that no interest need to be paid to the third respondent/auction purchaser.

33. To counter the said arguments putforth by the learned counsel appearing for the petitioner Trust, Mr.Jayesh B Dolia, learned counsel appearing for the auction purchaser contended that he having been the auction purchaser, obtained an order of confirmation of sale as early as on 13.05.2015 from the Recovery Officer, Debt Recovery Tribunal-I and the Recovery Officer has given an order of confirmation of sale under Rule 63(1) of the second Schedule of the Income Tax Act, 1961 confirming that the sale was absolute with effect from 30.09.2015, as there was no application filed by the petitioner Trust under Rules 60/61 or 62 of the second schedule to Income Tax Act, for setting aside the sale. The learned counsel appearing for the auction purchaser further contended that the sale is made absolute and ought not to have been interfered by the DRT-I, that too, after a delay of 109 days in filing the appeal to set aside the auction sale.

34. The learned counsel further contended that the delay of 109 days is not meagre and DRT-I ought not to have condoned the delay itself when the petitioner Trust has not proved its bonafide when the Honourable Apex Court granted time to deposit a sum of Rs.8 crores within two weeks on 21.09.2015. Since the order of the Honourable Supreme Court was not complied with by the petitioner Trust, taking note of the attitude of the petitioner Trust, the Hon'ble Supreme Court by its order, dated 12.10.2015 dismissed the S.L.P filed by the petitioner Trust against the order passed in W.P.No.25924 of 2014. Further, the learned counsel would contend that despite condoning 109 days of delay in filing the appeal, the Debt Recovery Tribunal-I in Appeal No.5 of 2015, by order, dated 18.12.2015 set aside the auction sale, dated 30.09.2014, by which, the third respondent/auction purchaser accorded right over the schedule property. This order was once again challenged by the auction purchaser in W.P.No.40984 of 2015 as there was no Presiding Officer in Debt Recovery Appellate Tribunal, wherein this Court

granted an order of stay of operation of the order, dated 18.12.2015 passed by the Debt Recovery Tribunal-I in Appeal No.5 of 2015, however, the same was withdrawn, with liberty to prosecute the appeal before Debt Recovery Appellate Tribunal.

35. Subsequently, an appeal was filed in M.A.No.7 of 2017 before Debt Recovery Appellate Tribunal, on the ground that the Debt Recovery Tribunal had no authority to grant a conditional right of redemption to the petitioner. However, the Debt Recovery Appellate Tribunal, by order dated 03.07.2017 allowed the appeal in part and modified the order impugned therein dated 18.12.2015, by directing the petitioner Trust to make further deposit of Rs.1.60 crores, apart from modifying the order as far as the interest from 6% to 10% p.a. The learned counsel for the petitioner submitted that the order passed by the Debt Recovery Appellate Tribunal, dated 03.07.2017 modifying the order of DRT passed in Appeal No.5 of 2015 is per se illegal, that too much of concession has been shown to the petitioner Trust, despite the petitioner Trust has failed to show its bonafide when the Honourable Supreme Court has directed the petitioner Trust to deposit a sum of Rs.8 crores, which ought to have been deposited by the petitioner Trust prior to the filing of an appeal in compliance to the order under Rules 60 and 61 of the Income Tax Act.

36. Apart from the above arguments, the learned counsel appearing for the auction purchaser further contended that the petitioner Trust, who had filed a calculation memo before the Recovery Officer, Debt Recovery Tribunal-I, to which the auction purchaser had filed their objection. As the petitioner Trust did not comply with the order, dated 03.07.2017, the objection raised by the auction purchaser was considered and the Recovery Officer by order dated 17.11.2017 held that the direction issued by the Debt Recovery Appellate Tribunal was not complied with. Instead of challenging the order of the Recovery Officer, dated 17.11.2017, the petitioner Trust has challenged only the order, dated 03.07.2017 passed in M.A.No.7 of 2017 by the Debt Recovery Appellate Tribunal. In fact, the learned counsel emphasis that there being a direction of the Recovery Officer that the auction purchaser is entitled to get the possession of the property for the reason that the petitioner Trust has not complied with the order passed, which is a conditional order passed by Debt Recovery Appellate Tribunal and the petitioner having failed to comply with the order in entirety, automatically, the auction purchaser is entitled to get the possession of the property.

37. In support of his argument, the learned counsel for the auction purchaser has relied on the following Judgments reported in

(i) 2009 (2) LW 108 (Janatha Textiles and others ..vs.. Tax Recovery Officer and another) to emphasis the right of the bonafide purchaser in the auction, the third party auction purchasers' interest, protection of strangers to the decree and distinction from the case of decree holder and an auction purchaser.

(ii) 2017 SCC 1245 (International Asset Reconstruction Company of India Ltd., ..vs.. The Official Liquidator of Aldrich Pharmaceuticals Ltd., and others) to emphasis the application of Section 5 of the Limitation Act, 1963.

(iii) 2014 (5) LW 381 (M/s.Maan Saravoar Properties Development Pvt. Ltd., represented by its Director, Besant Nagar Extension, Chennai ..vs.. The Union of India and others), to support Rule 60 of the Income Tax Act.

(iv) 2017 (8) SCC 272 (Allokam Peddabbayya and another ..vs.. Allhabad bank and others) to emphasis the mortgage right of redemption under Section 60 of the Transfer of Property Act stands extinguished under proviso thereto by the act of parties.

(v) 2007 (5) SCC 745 (B.Arvind Kumar ..vs.. Government of India and others) to impress upon recovery of possession by person dispossessed of immovable property.

(vi) 2012 (6) CTC 710 (Ram Karan Gupta ..vs.. J.S.Exim Ltd., and others) to emphasize that when the auction purchaser complied with the requirement, the auction purchaser cannot be thrown out.

38. After hearing the learned counsel for the parties and perusing all the documents in the present batch of cases, the points to be seen are that whether the petitioner Trust has any right of redemption and whether the order passed by the Debt Recovery Appellate Tribunal in modifying the order of Debt Recovery Tribunal is valid and legally sustainable.

39. Under the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966, invoking Section 146 by the Deputy Commissioner, acting for the Chief Commissioner on 16.09.2002, the petitioner/Raj Bai Anusuya Devi Gulecha Memorial Charitable Trust was granted a perpetual licence of land to an extent of Rs.8 acres in Survey No.1/134, situated in Brookshabad under Port Blair Tehsil, for construction of a residential School, subject to the general provision of the Regulation and the Rules made therein and the said licence came into force from 01.09.2002.

40. Clause 146 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966, reads as follows:-

> 146. The Chief Commissioner may, on such terms and subject to such conditions, as he thinks fit:-

(i) make to any person, for the cultivation of coconuts, coffee, rubber and other long lived crops and for the construction of buildings and works to be used for the purpose of, or in connection with, such cultivation, a grant of land for any period not exceeding thirty years with an option for renewal for a like period:

Provided that for the cultivation of rubber crop a longer period may be specified by the Chief Commissioner with the approval of the Government;

(ii) grant a licence in writing to any person to occupy any land to such extend and for such purposes as may be prescribed.

41. The admitted facts by the parties herein are that the petitioner Trust, after getting licence to construct a residential school, obtained a valuation certificate from the Tahsildar, Port Blair, for the purpose of obtaining loan from the Bank/Government and the Housing and Urban Development Corporation, Chennai, second respondent herein had also sanctioned the loan facility to the petitioner Trust on 16.03.2004, who had originally advanced Rs.2.50 crores and subsequently, Rs.1.92 crores, on the condition that the petitioner shall mortgage the land to the second respondent. The argument of the petitioner that after construction of the residential School, the School was functioning in the name of 'Blair International School' upon the said 20 acres of land and 1,25,000 square feet building with 300 students from K.G to +2th standard. However, before the Tsunami struck the islands in the year 2004 the petitioner/Trust was repaying the loan to the second respondent regularly. After Tsunami strucked the island, the residential School was literally affected and the petitioner Trust could not mobilise fund for repayment of the loan, which thereafter, the second respondent/secured creditor classified the petitioner Trust account as a 'Non-Performing Asset'.

42. Whatever may be the reason for non-repayment of the loan amount, the fact remains that the petitioner Trust was classified as a 'Non-Performing Asset', as against which, the second respondent had initiated proceedings under SARFAESI Act, in which, the petitioner Trust stood exparte and a final order came to be passed by the Debt Recovery Tribunal-I, Chennai, in O.A.No.208 of 2010, dated 28.06.2012. Pursuant to the order passed by the Debt Recovery Tribunal-I, Chennai, e-auction sale notice had been published on 21.08.2014 for recovery of a sum of Rs.7,76,11,942/- with further cost, payable as per the Recovery Certificate, fixing the on-line auction sale on 30.09.2014 from 11 hours to 12 hours with auto time extension of three minutes

each till sale is concluded. Undoubtedly, the third respondent/auction purchaser M/s.Krishna Trust had participated in the e-auction and the said Trust has purchased the immovable property for Rs.7.51 crores.

43. It is to be further noted that the e-auction notice was published for recovery of a sum of Rs.7,76,11,942/- . However, the bid price offered by the third respondent/auction purchaser for Rs.7,51,00,000/- was accepted on the reason that the reserve price fixed by the Debt Recovery Tribunal-I in the e-auction sale notice was only Rs.7,50,00,000/-.

44. It is seen from the records that though the e-auction has taken place on 30.09.2014, the confirmation of sale was done only on 30.05.2015 subject to the outcome of the SLP filed against the order passed by this Court in W.P.No.25924 of 2014. It is not out of place here to mention that even at the time of confirmation of sale, the sale was subject to legal proceedings initiated by the petitioner Trust. Though the petitioner was unsuccessful in the Writ Petition filed in W.P.No.25924 of 2014 challenging e-auction sale notice, dated 21.08.2014, wherein the writ petition was dismissed and the S.L.P filed as against the order passed in W.P.No.25924 of 2014 also came to be dismissed by the Honourable Supreme Court on 12.10.2015, for non-compliance of its order, dated 21.09.2015, when the petitioner Trust did not comply to the condition imposed by the Honourable Supreme Court that they will deposit Rs.8 crores within two weeks by order, dated 21.09.2015.

45. It could be further seen that the petitioner had filed an appeal before the DRT in Appeal No.5 of 2015 against the order of confirmation of sale in D.R.C.No.37 of 2012 in O.A.No.208 of 2010, dated 13.05.2015, however, with a delay of 109 days. No doubt the Debt Recovery Tribunal in M.A.No.49 of 2015 by order, dated 30.10.2015, has condoned the delay of 109 days in filing the Appeal.

46. From the perusal of the typed set of papers, it could be seen that the learned Debt Recovery Tribunal-I, Chennai, has passed an order dated 30.10.2015 in the condone delay petition in M.A.No.49 of 2015 and the relevant portion is extracted hereunder:-

> "15. For the above said reasons, I find that the petitioner/appellant has challenged the sale notice before the Hon'ble High Court and the Hon'ble Supreme Court by way of a Writ Petition and SLP without approaching the DRT. Further, in obedience to the decision rendered by the Hon'ble Supreme Court of India with

> regard to condone delay as referred by Ld. Counsel for the petitioner/appellant and in the interest of justice, I am inclined to allow this condonation application with some condition.
>
> 16. In the result, the petition is allowed on a condition that the petitioner/appellant should deposit a sum of Rs.8.00 crores before the Ld. Recovery Officer on or before 11.11.2015, failing which this MA shall stand automatically dismissed. If the petitioner/ appellant deposits the said amount of Rs.8.00 crores on or before 11.11.2015, the Ld. Recovery Officer shall keep the same in a Fixed Deposit in a Nationalised Bank until further orders. Call on 12.11.2015. Status quo is extended till 12.11.2015."

The above said order was not challenged by the auction purchaser, though they were shown as party to the miscellaneous application in M.A.No.49 of 2015, to condone the delay, filed by the petitioner Trust before the Debt Recovery Tribunal and contested the same. the petitioner Trust, while challenging the order of confirmation of sale in D.R.C.No.37 of 2012 in O.A.No.208 of 2010, dated 13.05.2015 has pleaded before the Debt Recovery Tribunal that the land was not valued by the Recovery Officer properly, by applying Rules 60 and 61 of the Income Tax Act and Section 29 of RDDB & FI Act. The Debt Recovery Tribunal, vide its order dated 18.12.2015, has set aside the confirmation of sale and allowed the appeal on condition that petitioner Trust shall deposit Rs.7.51 crores with 6% simple interest from 30.09.2014 on or before 31.12.2015 before the Recovery Officer, after deducting the already deposited amount of Rs.8 crores in compliance to the order passed in M.A.No.49 of 2015.

47. We are unable to accept the argument of the learned counsel for the third respondent/auction purchaser with regard to application of Rules 60 and 61 of the II Schedule to Income Tax Act, which provides for a period of 30 days to the debtor to set aside the sale of property by the Recovery Officer. Rules 60 and 61 of II Schedule to Income Tax Act are extracted hereunder:

> "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 one and one-fourth per cent for every month or part of a month, 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.

61.Application to set aside sale of immovable property on ground of non-service of notice or irregularity.- 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. "

48. A plain reading of the above Rules 60 and 61 of the Income Tax Act would permit a person, whose interest are affected by the sale, to approach the Recovery Officer, with the sale amount along with interest within 30 days, if there had been any irregularity in the sale. The petitioner Trust did not avail the same. However, merely because the petitioner did not approach the Recovery Officer under Rules 60 and 61 of Schedule II of Income Tax Act, 1961, the same does not disentitle the petitioner Trust from approaching the DRT to set aside the sale certificate issued by the Recovery Officer in confirmation of the auction in favour of the auction purchaser.

49. As pointed out by the learned counsel appearing for the petitioner, it could be seen that even in the counter filed before the Honourable Supreme Court by the secured creditor, the Housing and Urban Development Corporation Limited, which would reveal that in the valuation report, dated 15.02.2014, the market value of the property was Rs.8.2 crores and distress value was fixed at Rs.5.74 crores and the upset price was fixed at Rs.7.5 crores. However, the sum to be recovered from the debtor was Rs.7,76,11,942/- as against Rs.7.51 crores, the bid amount of the auction purchaser. The petitioner Trust ought to have challenged the sale certificate. Without approaching the High Court and subsequently the Supreme Court, had the petitioner approached the Debt Recovery Tribunal directly, the delay of 109 days would not occur.

50. Nevertheless, it is seen from the records that the DRT had condoned the delay of 109 days, which was not challenged by the auction purchaser though he was made as a party to the said proceedings. The Debt Recovery Tribunal had categorically given a right finding regarding the statements that were filed before the Honourable Supreme in the counter of Housing and Urban Development Corporation Limited. However, while setting aside the confirmation of sale, the DRT had fixed the rate of interest at 6% to e-auction purchaser.

51. On a careful perusal of the order passed by the Debt Recovery Tribunal, except the interest rate of 6%, we do not find any infirmity in the order passed by the Debt Recovery Tribunal-I while setting aside the confirmation of sale, thereby allowing the appeal in Appeal No.5 of 2015 filed by the petitioner Trust. What remains to be answered in the present writ petitions is that whether the petitioner Trust as well as the auction purchaser have challenged the order passed by the Debt Recovery Appellate Tribunal, which modified the order passed by the Debt Recovery Tribunal, within the legal ambit.

52. On a careful perusal of the order passed by the Debt Recovery Appellate Tribunal, wherein which the Debt Recovery

Appellate Tribunal by order, dated 03.07.2017 in M.A.No.7 of 2017 filed by the third respondent/auction purchaser, while confirming the order passed by the Debt Recovery Tribunal in Appeal No.5 of 2015 modified the interest payable to the petitioner Trust, apart from directing the petitioner Trust to deposit Rs.1.6 crores in addition to Rs.8 crores, that was deposited by the petitioner Trust in compliance to the order passed in M.A.No.49 of 2015. As the interest awarded by the DRT-I at the rate of 6% to the amount paid by the third respondent/auction purchaser of Rs.7.51 crores is too meagre, the Debt Recovery Appellate Tribunal has increased the rate of interest to 10% p.a. from 6% p.a. However, it is to be seen that the order passed by the Debt Recovery Tribunal in Appeal No.5 of 2015 was not challenged by the petitioner Trust. Only the third respondent/ auction purchaser, aggrieved by the order passed by the Debt Recovery Tribunal, has approached the Debt Recovery Appellate Tribunal. As far as the interest rate fixed by the Debt Recovery Tribunal from 6% to 10% p.a, the order of Debt Recovery Appellate Tribunal is modified to 12% and as far as directing the petitioner Trust to deposit Rs.1.6 crores in addition to Rs.8 crores already deposited by the petitioner Trust, the order of Debt Recovery Appellate Tribunal cannot be interfered with and the same is confirmed.

53. With regard to the contention raised by the third respondent/auction purchaser stating that the right of redemption under Section 60 of Transfer of Property Act is lost to the petitioner Trust as the sale was confirmed by the Debt Recovery Tribunal in favour of the auction purchaser/third respondent. This Court in a judgment reported in MANU/TN/2848/2015 (K.Kailasam ..vs.. The Authorised Officer, Canara Bank and Ors.) has held in paragraphs 34 and 35 as follows:-

> "34. The Honourable Supreme Court in Mathew Varghese v. Amritha Kumar (2014 (5) SCC 610) considered the provisions of SARFAESI Act and the mandatory nature of Rules 8 and 9(1). The Supreme Court in the said Judgment very clearly observed that it is the constitutional and human right of a person to hold property and that in the event of a fundamental procedural error occurred in a sale, the same can be set aside. The Supreme Court indicated the mandatory nature of the publication and statutory period before the date of notification and sale in the following words:-
>
> > "53. We, therefore, hold that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured

creditor. In the event of any such sale properly notified after giving 30 days clear notice to the borrower did not take place as scheduled for reasons which cannot be solely attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read along with Section 13(8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. In that respect, the only other provision to be noted is sub-rule (8) of Rule 8 as per which sale by any method other than public auction or public tender can be on such terms as may be settled between the parties in writing. As far as sub-rule (8) is concerned, the parties referred to can only relate to the secured creditor and the borrower. It is therefore, imperative that for the sale to be effected under Section 13(8), the procedure prescribed under Rule 8 read along with 9(1) has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale as has been explained in detail by us in the earlier paragraphs by referring to Sections 13(1), 13(8) and 37, read along with Section 29 and Rule 15. In our considered view any other construction will be doing violence to the provisions of the SARFAESI Act, in particular Section 13(1) and (8) of the said Act.”

35. The requirement with regard to publication of auction notice in atleast two newspapers was included in the statute for a larger purpose. In case, there is wide publication, auction sale would attract bidders in large numbers and competitive offers. The Bank would be in a position to realize maximum

> amount by way of sale of secured asset. It would also relieve the borrower of his obligation to clear the loan amount. In case the property is sold at a lesser price, on account of failure to give wide publicity and the absence of bidders, the borrower would be liable to pay the remaining amount notwithstanding the sale of his property. The approach of the Bank in a matter of this nature must be to advertise the proposed sale in a wide manner to attract more number of bidders and to secure the best price. In case there is a balance after sale and satisfying the amount due to the Bank, it would help the borrower also. Therefore, the notification of the sale as provided under Rule 8 and giving sufficient time to the bidders to inspect the property and submit bids would serve the interest of the Bank as well as the borrower."

54. On a careful reading of the above Judgment, wherein, the Honourable Supreme Court has categorically held that the right of redemption which is embodied under Section 60 of the Transfer of Property Act is available to the mortgagor unless it was extinguished by the act of the parties. As far as the present case on hand is concerned, no doubt the petitioner Trust was classified as 'Non-Performing Asset' and on invoking RDDB & FI Act by the Housing and Urban Development Department, the secured creditor herein in O.A.No.208 of 2010, the Debt Recovery Tribunal had allowed the claim of Recovery Certificate as against the petitioner Trust jointly and severally, for a total sum of Rs.4,88,93,333/- together with interest thereon at 12.25% monthly rests on Rs.2,17,93,998/- and 12.25% monthly rests on Rs.2,70,99,335/- from the date of petition till the date of realisation along with costs. Though the entire due was calculated at a sum of Rs.7,76,11,942/- by the secured creditor before the Debt Recovery Tribunal-I for recovery of amount by auctioning the property, the petitioner Trust had moved this Court as against e-auction sale notice in W.P.No.25924 of 2014 which was dismissed and subsequently, the petitioner Trust had also approached the Honourable Supreme Court challenging the said order passed in W.P.No.25924 of 2014. The sale certificate issued by the Debt Recovery Tribunal-I was subject to the outcome of the writ petition and S.L.P. by the petitioner Trust.

55. The petitioner Trust have thereafter approached the Debt Recovery Tribunal by filing an application for condonation of delay of 109 days in filing the appeal, which was also came to be allowed by the Debt Recovery Tribunal and that was not challenged by the auction purchaser. Subsequently, Appeal No.5

of 2015 filed challenging the sale certificate issued in favour of the third respondent/auction purchaser was also came to be in favour of the petitioner Trust wherein Debt Recovery Tribunal-I has set aside the sale certificate issued in favour of the third respondent/auction purchaser.

56. All the above facts would go to show that the right of the petitioner Trust, being a mortgagor, was not extinguished until a final order is passed by the Debt Recovery Appellate Tribunal in modifying the order passed by the DRT in Appeal No.5 of 2015 and in each and every stage, the petitioner Trust has not redeemed the property that were mortgaged with the second respondent herein. Though the petitioner Trust failed to comply with the order passed by the Honourable Supreme Court directing the petitioner Trust to deposit Rs.8 crores within two weeks from the date of that order, subsequently, the petitioner Trust has shown its bonafide to secure their mortgaged property by depositing Rs.8 crores, as directed by the DRT. Moreover, the petitioner Trust is running a School, in which more than 300 students are studying. The interest of the auction purchaser cannot be more than that of the petitioner Trust in running the School.

57. However, considering the interest rate at a lower of 6% and the right of the auction purchaser also need to be secured, the Debt Recovery Appellate Tribunal had increased the same to 10%. The auction purchaser had deposited Rs.7.51 crores as early as 2015. However, almost 4 years have lapsed where the amount of the third respondent/auction purchaser lying without any accrued interest to it.

58. Under these circumstances, we are of the opinion that the rate of interest fixed by the Debt Recovery Appellate Tribunal at 10% from 6% to that of interest fixed by the Debt Recovery Tribunal is also meagre and it is modified to 12% simple interest to be paid by the petitioner Trust. The petitioner shall pay the remaining amount, calculating the interest from the date on which auction purchaser made the deposit i.e., from 26.09.2014 on Rs.75,00,000/- and from 30.09.2014 on Rs.1,15,00,000/- and from 13.10.2014 on Rs.5,68,51,000/-. The above payment shall be made by the petitioner Trust in W.P.Nos.31295 and 31296 of 2017, within a period of eight weeks from the date of receipt of copy of this order, failing which, the auction purchaser is entitled to get the possession of the property and consequently, the certificate holder is entitled for appropriation of the sale proceeds arising out of the sale held on 30.09.2014.

59. In view of the above, the Writ Petitions filed by the writ petitioner in W.P.Nos.31295 and 31296 of 2017 are dismissed and W.P.Nos.1829 and 1830 are allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ps/mra

To

1. The Registrar
Debts Recovery Appellate Tribunal
Chennai.

+2 ccs to Mr.K.S.Sundar, Advocate, S.R.No.46385 and 46386

+1 cc to M/s.Aiyar & Dolia, Advocate, S.R.No.47077

W.P.Nos.31295 and 31296 of 2017
and
W.P.Nos.1829 and 1830 of 2018
and
WMP No.34377 of 2017

SJ(CO)
SSM(27/08/2019)