IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.30879 of 2019
and
W.M.P.No.30972 of 2019

M/s.Kumar Constructions,
rep. by Mr.P.V.R.S.Mani Kumar,
residing at No.32 (Old No.6), Jamalia Nagar,
Perambur High Road,
Chennai 600 012. Petitioner/1st Defendant

Versus

1. Indian Bank,
Stressed Assets Management Branch,
No.2, Jehangir Street,
Chennai 600 001. ... 1st Respondent/Applicant Bank

2. Mrs.P.Bhuvaneswari
3. Mrs.P.Satha Keerthy
... 2 & 3rd Respondents/2 & 3rd Defendants

4. The Hon'ble Debts Recovery
Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai 600 002. ... 4th Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of the 4th respondent pertaining to the order dated 15.10.2019 passed in AIR No.248/2019 and quash the same and direct the DRT-1, Chennai to provide an opportunity to the Petitioner/1st Defendant for cross examination of A.W.1 in O.A.No.182 of 2007.

For petitioner : Mr.T.V.Suresh Kumar

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

The Petitioner, M/s.Kumar Constructions, the borrower filed an Application in I.A.No.546 of 2019 seeking leave of the court to cross examine the Official of the Bank which came to be dismissed by the learned DRT by its order dated 3.6.2019. While, the learned DRT rejected the Application filed by the Petitioner/borrower had observed as under:-

> "10. While it is the firm contention of the Respondent Bank that the petitioners/defendants having categorically admitted availing of the credit facilities, creation of equitable mortgage over the application schedule mentioned properties to serve the same security for the due discharge of the credit facilities are not entitled to question the said mortgage, the petitioners/defendants would contend that the original documents pertaining to the application schedule mentioned properties are always in the custody of the first petitioner/defendant, as such there cannot be any valid mortgage by deposit of title deeds in favour of the Respondent Bank.
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> 11. In the light of these rival contentions, I have carefully perused the reply statement filed by the petitioners/defendants. In the reply statement, it has been stated as follows:-
>
> Para 3... that signatures of the defendants were taken in blank forms which have been later filled up by the bank officials to suit their convenience, without the knowledge of the defendants. These made-up documents are also unregistered and are said to create security for the due repayment of amounts advanced. .... These documents are not executed on the date they are purported to have been executed..."
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> Para 14 .... The Agricultural lands which were given as additional security to the bank may fetch only a maximum of Rs.25 lakhs. In fact most of the lands are under encroachment. Then the total value of the properties (barren land and agricultural lands) is Rs.75+Rs.25 lakhs = 100 lakhs"
>
> Para 18 .... To pass an order of adjudication dereeing the sum of Rs.1,85,00,000/- in favour of the Indian Bank, which the first defendant will pay in full discharge of the loan amount, as agreed to in the O.T.S. within a time frame of 4 weeks of the date of the decree...."
>
> 12. Thus, a mere perusal of the aforesaid statements by the petitioners/defendants i.e., their reply statements, it is as clear as crystal, that the petitioners/defendants have un-equivocally admitted creation of equitable

mortgage over the application schedule mentioned properties in clear and unambiguous terms. Therefore, creation of equitable mortgage over the application schedule mentioned properties, being clear and categorical, I do not hesitate to hold that the petitioners/defendants are estopped under law from pleading contra, for the following reasons.

(i) There is no pleading whatsoever in the reply statement that the first petitioner, all through is in possession of the original title deeds of the properties over which the Respondent Bank claimed mortgage right.

(ii) It is clear and categorical from the statements, supra, that the defendants have admitted creation of equitable mortgage in favour of the Respondent Bank over the aforesaid properties.

(iii) The petition for leave to file additional reply statement with almost similar contentions vide I.A.No.197/2008 was dismissed, and W.P.No.15092 of 2011 filed by the petitioners/defendants challenging the same was also dismissed by the Hon'ble High Court of Madras, vide Order in W.P.No.15092 of 2011 and M.P.No.1 of 2011 dated 03.12.2018.

13. Therefore, for the aforesaid reasons, I am fully convinced that the petitioners are not entitled for, leave to cross-examine AW.1, on the factual aspects relating to the mortgage over the application schedule mentioned properties. This finding of mine does not preclude the petitioners/defendants herein from challenging the mortgage on legal grounds if any, however in the back-drop of their pleadings in the written statement. Permitting the Petitioners to cross-examine AW-1 regarding the creation of equitable mortgage over the application schedule mentioned properties, would be nothing but allowing the petitioners to approbate and reprobate, which is impermissible under law. The Tribunal thus, finds no merit or substance in the petition."

2. Being aggrieved by the order passed the learned Tribunal, the Petitioner had filed an Appeal before the DRAT which also came to be dismissed by the learned DRAT on 15.10.2019 upholding the order passed by the learned DRT. The observation made by the learned DRAT is quoted below for ready reference:-

"In view of the fact that both parties have filed their Proof Affidavits and Counter Proof Affidavits and matter is more than 20 years old, it appears that this delay has been caused on account of some stay orders by this Tribunal or Hon'ble High Court. Ultimately, fact remains that more than 20 years old O.A. needs to be adjudicated.

Counsel for Appellant places reliance on i) I (2005) BC 258 (DB) (M/s.Allied Chemical Laboratories, Jagatpur, Cuttack Vs. Presiding Officer, Debts Recovery Tribunal, Cuttack & Anr.) and ii) Hon'ble High Court of Madras order dated 24.1.2007 in W.P.No.12801/2006 (S.M.Mohammed Siddique & Ors. Vs. UCO Bank & Ors.)"

3. The learned counsel for the Petitioner Mr.T.V.Suresh Kumar has urged before us that the delay of 20 years cannot be attributed to the Petitioner and since a large number of documents were sought to be produced by the Respondent Bank, the Petitioner/borrower wanted to cross- examine the Bank Officials about such filing of large number of documents, however, only 24 documents alone were marked by the learned DRT. He further submits that even subject to cost, the Petitioner may be allowed to cross-examine the Bank officials with regard to the said documents proposed to be filed by the Bank.

4. Having heard the learned counsel for the parties, we are of the opinion that this Petition under Article 226 of the Constitution of India is not maintainable at this stage.

5. The learned Tribunal, in our opinion has rightly quoted Rule 12(9) of Debts Recovery Tribunal (Procedure), Rules, 1993 and has held that the proceedings before the Tribunal being summary in nature, the Tribunal is not bound by the provisions of Code of Civil Procedure and while complying with the principles of natural justice, they can follow the principles laid down the Debts Recovery Tribunal (Procedure) Rules, 1993.

6. It seems that instead of filing the documents available with the Petitioner/Borrower, who is the Defendant before the DRT with its Affidavit, the Petitioner has simply tried to drag on the proceedings before the DRT. Filing of frivolous Applications by the borrowers and the time taken by the Tribunals to reject them takes its own time giving undue benefit to the borrowers and results in a sheer wastage of time. Such frivolous litigation is nothing but the advantage taken by the

Borrower. We strictly deprecate this practice.

7. In our opinion, the learned DRT and DRAT are perfectly justified in rejecting the Application filed by the Borrower, instead of defending the O.A. and dragging the litigation upto this court. Therefore, the Writ Petition is dismissed. The connected Miscellaneous Petition is also dismissed. Though we were inclined to impose some costs, taking a lenient view, we are not doing so.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. Indian Bank,
Stressed Assets Management Branch,
No.2, Jehangir Street,
Chennai 600 001.

2. The Debts Recovery
Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai 600 002.

+1cc to Mr.Genicon & Associates, Advocate, S.R.No.93257

W.P.No.30879 of 2019

CA(CO)
GN(27/11/2019)