

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM:

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.30710, 30712, 28034 & 28036 of 2019
and WMP Nos.30793, 30795, 31127,
27652 and 27654 to 27656 of 2019

W.P.Nos.30710 & 30712/2019

N.Subhash Chand Jain

... Petitioner

Vs

1.Mr.C.Ravindran

2.Mr.R.Rajasekaran

3.Mrs.Shanthisivasamy

4.Mr.Rajarajan

5.Ms.S.Kalpana

6.Mr.S.Karthik

7.Mrs.R.Sivasakthi

8.Mrs.R.Abirami

9.Mrs.R.Rajalakshmi

10.Indian Overseas Bank

Represented by its Authorized Officer
No.477, Kilpauk Garden Road
Kilpauk, Chennai - 600 010.

... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, calling for the records of the Hon'ble Debt Recovery Appellate Tribunal, Chennai in R.A.(S.A.) Nos.141 & 143 of 2018 dated

06.09.2019 and to quash the order directing the 10th respondent to return Rs.4,48,00,000/- (Rupees Four Crores Forty Eight Lakhs only) to the 3rd respondent and to direct the 10th respondent to pay the rental income of the Rs.4,00,000/- (Rupees Four lakhs only) per month in respect of the properties described in the Schedule A and Schedule C in the auction notice dated 09.07.2012 collected for the period from 13.09.2012 to till the date of handing over actual physical possession of the properties to the petitioner.

For Petitioner : Mr.M.V.Seshachari

For Respondents : Mr.N.Rajan for R3
Mr.S.R.Rajagopal for M/s.Ojas Law Firm
for R2, R4 to R8
Ms.Benjamin George for R10

W.P.Nos.28034 & 28036 of 2019

1.R.Rajasekaran

2.R.Rajarajan

3.S.Kalpana

4.S.Karthik

5.D.Abirami

6.R.Rajalakshmi

... Petitioners

1.The Authorized Officer
Indian Overseas Bank
Kilpauk Branch
No.477, Kilpauk Garden Road
Chennai - 600 010.

2.N.Subhash Chand Jain

3.Mr.C.Ravindran

4.Mrs.Shanthisivasamy

5.Mrs.R.Sivasakthi

.. Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorarified Mandamus, calling for the records leading to passing of the final order dated 06.09.2019 passed in R.A.(S.A.) Nos.141 & 143 of 2018 passed by the Hon'ble Debt Recovery Appellate Tribunal, Chennai and quash the same and consequently direct to the 1st respondent bank to refund the excess of amount of Rs.4,48,00,000/- (Rupees Four Crores Forty Eight Lakhs only) with accrued interest to the 2nd respondent auction purchaser and return the title deeds in respect of A & C schedule covered under sale notice dated 09.07.2012.

For Petitioners : Mr.S.R.Rajagopal
for M/s.Ojas Law Firm

For Respondents : Mr.N.Rajan for R4
Mr.M.V.Seshachari for R2
Ms.Benjamin George for R10

COMMON ORDER

[Order of the Court was made by Dr.VINEET KOTHARI, J]

The auction purchaser viz., Subhash Chand Jain and the borrowers viz., Mr.R.Rajasekaran, Mr.R.Rajarajan, Ms.S.Kalpana, Mr.S.Karthick, Ms.D.Abirami and Ms.R.Rajalakshmi, have filed these writ petitions in this Court aggrieved by the order dated 06.09.2019, passed by the 'Debt Recovery Appellate Tribunal' (hereinafter referred to as 'DRAT') in RA (SA) Nos.141 and 143 of 2018. The auction purchaser has filed W.P.Nos.30710 & 30712 of 2019, whereas the borrowers have filed W.P.Nos.28034 & 28036 of 2019.

2. We have heard Mr.M.V.Seshachari the learned counsel for the auction purchaser, Mr.S.R.Rajagopal, learned counsel appearing for the borrowers and Mr.N.Rajan, learned counsel appearing for the guarantor, who is respondent No.3 in W.P.Nos.30710 and 30712 of 2019 and respondent No.4 in W.P.Nos.28034 & 28036 of 2019.

3. The facts in nutshell giving raise to this litigation are as under:

The Indian Overseas Bank extended financial assistance to the tune of Rs.21,14,00,000/- on 30.03.2010 to M/s.ACE Concrete Private Ltd., and M/s.ACE Concrete Private Ltd., executed some agreement to M/s.AKR Holding Pvt. Ltd., on behalf of them. Mr.Abdul Rehman was authorized to operate the bank account on behalf of the borrower. Loan was sanctioned against the mortgage of four properties on the basis of Memorandum of

Deposit of title deeds. Borrowers defaulted in repayment and the account became NPA. The bank issued a Demand Notice under Section 13(2) of SARFAESI Act and thereafter, issued Possession Notice under Section 13(4) of SARFAESI Act on 25.08.2011.

4. The further facts, as noticed by the learned DRAT in its order, are as under:

(a) On 21.01.2012, the Bank issued Sale Notice for auction sale on 27.02.2012 for recovery of a sum of Rs.23,39,54,702/-. The borrowers challenged the sale in SARFAESI Appeal in S.A.No.69 of 2012. On 28.03.2012, the borrowers sold one property situated at Maduravoyal with the consent of the Bank and paid a sum of Rs.12.25 crores towards loan amount. Therefore S.A.No.69 of 2012 was dismissed on 02.07.2012.

(b) On 09.07.2012, the bank issued second Sale Notice for recovery of the balance amount of Rs.11,99,53,926/- for the sale to be conducted on 20.07.2012. The auction purchaser, being the highest bidder, purchased the Schedule properties of A & C, the details of which are given hereunder:

i) Schedule 'A' property is 1600 sq. ft residential land and 4806 sq. ft building, situated at original Door No.1/31, Old No.52, New No.34, Present Door No.73, at Maddox Street, Vepery, Chennai - 600 112, comprised in OS No.788, RS No.830, Block No.20, under Vepery Division and bounded on : North by : Chockalinga Mudaliar's house / private passage : South by : Amiruddin Sahib's house / Land & Building Old No.35 New No.75; East by : Veterinary College compound; West by : Maddox Street and

(ii) Schedule 'C' property is 10900 sq. ft., (25 cents) Residential land and 2700 sq. ft. building, situated at No.7 & 8, New No.14A, Spring Garden, Second Street, Akkaral, Sholinganallur, Chennai - 600 119, comprising at S.No.1/1C4 old RS.1/1F, present RS.No.1/329,1/330, 1/331 and 1/332 at No.155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District, bounded on North by : Spring Garden II St., South by : R.S.No.1/1C5, East by : Field No.14 A3 and 14/A4 / Field No.14A, West by : Field No.15/property belonging to C.Surendran (Field Nos.14A/1 and 14A/2).

(c) Both properties belonging to the borrowers were sold in favour of the auction purchaser, Mr.Shubhas Chand Jain, for a sum of Rs.4,86,21,000/-. On 18.07.2012, the borrowers preferred

S.A.No.227/2012, challenging the sale notice. On 24.07.2012, borrowers obtained stay of further proceedings, on deposit of Rs.1 crore. On 07.08.2012, DRT had granted one month's time to make payment of Rs.4.80 crores, but the borrowers failed to do so. The auction purchaser paid the remaining sale amount and the sale certificate was issued in favour of the auction purchaser, Mr.Shubhas Chand Jain on 13.09.2012. The DRT, however, was pleased to set aside the sale, vide order dated 25.06.2018, allowing S.A.No.227 of 2012, against which the auction purchaser and respondent Bank preferred an appeal in R.A. (S.A.) Nos.141 & 143 of 2018 before the DRAT, Chennai.

(d) Thereafter, Schedule 'B' property was brought to sale in pursuance of the second sale notice dated 27.09.2012 and on 30.10.2012, the sale was concluded in favour of another auction purchaser. The said property was belonging to the guarantor viz., Mrs.Shanthi Sivasamy.

e) In the month of April 2013, by sale of the property belonging to the guarantor Mrs.Shanthisivasamy, which is described as 'Item C' in the sale notice dated 21.01.2012 issued by the Indian Overseas Bank viz., 62201.25 sq.ft land with built in area of 38800 sq. ft (part land of an extent 142 cents) in the name of Mrs.Shanthi Sivasamy, W/o.Dr.Sivasamy at Old No.9, New Door No.51, Anna Salai, Nagalkeni, Pammal Village, Chrompet, Chennai - 600 044, within the sub-Registration district of Pammal, comprised in R.S.No.187/1B and bounded on North by : 33 feet Road/Anna Salai, South by : R.S. & Sons property/Land and Building, East by : 33 feet Road/Anna Salai, West by : Mr.A.Mubrak Ali property / Land & Building. The bank realised a sum of Rs.6 crores on 02.04.2013 and 03.04.2013, and a sum of Rs.5.25 crores on 29.04.2013, which after adjustment of the loan account of the respondent bank, a surplus amount of Rs.4.48 crores is lying in deposit with the respondent bank. Thus, the excess amount of Rs.4.48 crores realised on the sale of the property of the guarantor Mrs.Shanthi Sivasamy, which she claimed, the DRT in its order, impugned before us, directed the respondent bank to pay.

5. The learned counsel for the auction purchaser Mr.M.V.Seshachari, however, submitted that though schedule 'A' and 'C' of the properties were purchased by him in the year 2012 and sale certificates were also issued in his favour, but the borrowers, who are in possession of the property in question and continued to realise the rents from the said property, had approached this Court by way of filing petitions viz. C.R.P.(PD) Nos.3487 and 3597 of 2012 and a Division Bench of this Court, vide order dated 30.04.2013, directed the borrowers to deposit the amount collected by way of rent before the Debt Recovery

Tribunal III, Chennai. Thus, the learned counsel for the auction purchaser submitted that either the borrowers or the bank should be directed to make over the rentals realised from the properties purchased by him in the year 2012, since he has not received the fruits of the said auction property so far.

6. In the alternative, the learned counsel for the auction purchaser also submitted that the entire auction proceedings in his favour may be set aside and the auction price paid by him may be directed to be refunded back by the respondent bank with interest

7. Having heard the learned counsel for the auction purchaser and the learned counsel appearing for the borrowers, we are satisfied that the order passed by the DRAT on 06.09.2019, does not require any interference and meets the ends of justice. In our opinion, the learned DRAT has rightly directed to refund the excess amount of Rs.4.48 crores realised by the bank on the sale of the property of the guarantor viz. Mrs. Shanthi Sivasamy, to the said guarantor herself. Once the property of the guarantor, whose obligation is at par with the borrowers to the extent of guarantee given, has been put to sale and admittedly the excess amount has been realised, therefore, the owner of the property, whose property has been sold, is entitled to the excess sale price realized. Therefore, this direction of the DRAT does not call for any interference and we direct the respondent bank to refund the said amount forthwith to the respondent No.3/guarantor viz., Mrs. Shanthi Sivasamy.

8. As far as the claim of the auction purchaser is concerned, the contentions raised in the alternative by the learned counsel for the auction purchaser that the auction itself may be set aside and the amount paid by him in the year 2012 viz., 4.86 crores for purchase of schedule 'A' and 'C' properties may be directed to be refunded back to him, cannot be accepted after so many years. Further, the properties in question i.e., schedule 'A' and 'C' have been sold to the present auction purchaser i.e., Subhash Chand Jain, and sale certificates have been issued, therefore, he has to bound by the contract and cannot pray for setting aside of the sale in question. As far as the rental from the said property realized by the borrowers, the erstwhile owners, is concerned, the auction purchaser is at liberty to take suitable legal remedies for realization of the said rentals from the borrowers or the Bank, where such money, if deposited by the borrowers in pursuance of the order passed by this Court in DRAT as aforesaid is already deposited with them. The non-deposit of the rentals in the bank and non-payment thereto to the auction purchaser, in

our opinion, does not entitle the auction purchaser to seek setting aside of the auction proceedings itself. As far as the imposition of costs of Rs.50,000/- set aside by the DRAT is concerned, we do not find any ground to interfere with the said direction as given in paragraph 16 of the DRAT order.

9. Accordingly, all the writ petitions are disposed of with the above said directions. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Authorized Officer,
Indian Overseas Bank,
477, Kilpauk Garden Road,
Kilpauk, Chennai-600 010.

+1cc to M/s.Ojas Law Firm, Advocate SR.96148

+1cc to Mr.F.B.Benjamin George, Advocate SR.96122

+4cc to Mr.N.Rajan, Advocate SR.95949,95948,95950,95951

+4cc to M/s.M.V.Seshachari, Advocate SR.96198,96199,96200,96201

W.P.Nos.30710, 30712, 28034 & 28036 of 2019
and WMP Nos.30793, 30795, 31127,
27652 and 27654 to 27656 of 2019

GJ(CO)
CB(11/12/2019)

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