IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(NPD)Nos.4499 and 4500 of 2017
C.R.P.Nos.3517 and 3518 of 2017
M.P. No.1 /2014, 16294 & 16295/2017

M/s. Capro Connections
Rep by its Proprietor
Philip S. Sakthivel
Chennai ..1st Petitioner in CRP.Nos.4499 & 4500/2014

Philip S.Sakthivel,
Proprietor of M/s.Capro Connections,
No.1220, 20th Main Road,
Anna Nagar West,
Chennai 600 040.

Mrs.Hepshiba,
W/o.Philip S.Sakthivel,
No.1220, 20th Main Road,
Anna Nagar West,
Chennai 600 040. ... 2nd & 3rd Petitioners (in CRP.Nos.4499 and 4500/14)
1st & 2nd Petitioners (in CRP.Nos.3517 and 3518/17)

Vs.

1. Central Bank of India,
Asset Recovery Management Branch,
Rep., by its Authorised Officer,
No.48/49, Montieth Road,
Egmore, Chennai 600 008.

2. Canara Bank,
Asset Recovery Branch,
Rep., by its Authorised Officer,
Spencer Tower-II, First Floor,
770 A, Anna Salai, Chennai-2. ...Respondents 1 and 2 in CRP.Nos.4499 and 4500/14
Respondents 2 and 3 in C.R.P.No.3517 of 2017
Respondents 1 and 2 in C.R.P.No.3518 of 2017

3. Mr.R.S.Perumal,
AP 236, Kamber Colony,
No.31, 1st Block, Anna Nagar West,
Chennai 600 040. ... 3rd Respondent in
in CRP.Nos.4499/14
1st Respondent in CRP.3517/17
3rd Respondent in CRP.3518/17

C.R.P.(PD)No.4499 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 31.10.2014 passed in S.A.Sr.No.5775 of 2011, on the file of the Debts Recovery Tribunal-I, Chennai.

C.R.P.(PD)No.4500 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 31.10.2014 made in S.A.No.210 of 2009, on the file of the Debts Recovery Tribunal-I, Chennai.

C.R.P.(PD)No.3517 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 09.08.2017 made in M.A.(S.A.)No.96 of 2017, on the file of the Debts Recovery Appellate Tribunal, Chennai.

C.R.P.(PD)No.3518 of 2017: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 09.08.2017 made in R.A.(S.A.)No.61 of 2017, on the file of the Debts Recovery Appellate Tribunal, Chennai.

For Petitioners
(in CRP.4499 & 4500/2014) : Mr.V. Mohan

For Petitioners
(in CRP.3517 & 3518/2014) : Mr.R.Gowthamanarayanan

For 3rd Respondent
(in CRP.4499/2014 & 3518/2017): Mr.ARL.Sundaresan,SC
and for (1st Respondent in
CRP.3517/2017) for Mr.S.Sethuraman

For Respondents No.2 : Mr.M.Arunkumar
(in CRP.4499 & 4500/2014) for Mr.Sampath Kumar
(for 3rd Respondent in CRP.3517/2017) Associates
(for 2nd Respondent in CRP.3518/2017)

COMMON ORDER

(Order of the Court was delivered by S.MANIKUMAR, J)

All the Civil Revision Petitions are on same set of facts, and they are taken up together and disposed of, by a common order.

2. Facts leading to the civil revision petitions are as follows:

Petitioners have created mortgage on their house property at No.1220, 20th Main Road, Anna Nagar West, Chennai - 600 040, in favour of the Central Bank of India, Chennai, 1st respondent herein. Apart from the said property, they have also created Mortgage of their property at Mela Arasadi Village, Ottapidaram Taluk, Ottapidaram SRO, at Tuticorin, in favour of the said bank. Canara bank, Chennai, claimed 2nd charge over the abovesaid house property. They classified the account of the 1st petitioner, as Non Performing Asset and invoked the provisions of the SARFEASI Act. On 28.08.2009, bank issued a Sale Notice, bringing the house property for sale, by enforcing their 2nd Charge.

3. Central Bank of India, being the mortgagee, has preferred S.A.No.210 of 2009, on the file of the Debts Recovery Tribunal, Chennai, questioning the right of the Canara Bank, in bringing the property for sale, without their consent. Since sale did not take place on 29.08.2009, a second Sale Notice was issued, fixing the date of sale on 29.12.2010. Central Bank of India, Chennai has preferred W.P.No.545 of 2011, challenging the second sale notice, on the grounds that mortgage is in their favour and that issuance of sale notice and conduct of auction with only one bidder for a bid price of just Rs.1 Lakh, over and above, the upset price, appears to be questionable and not transparent. This Court dismissed the said writ petition, on the ground that S.A.No.210 of 2009 is already pending on the Debts Recovery Tribunal and therefore, Central Bank of India, Chennai, can take up the issue in the said S.A. Subsequently, the Central Bank of India, Chennai, has preferred another S.A. in S.A.Sr.No.5775 of 2011, challenging the action of the 2nd Respondent on the following grounds:

> (1) The mortgage with the Central Bank of India, Chennai was created in 2003, with original title deeds. The Canara Bank is not having the original title deeds and therefore, the mortgage in favour of the Central Bank of India, is only valid and legal.
>
> (2) The Canara Bank, Chennai, in the impugned sale notice, has fixed the upset price at Rs.165 Lakhs, which will not cover the dues of the Central Bank of India and therefore, there is no need or necessity for the Canara Bank to bring the property for sale, in which, they do not have any secured interest.

(3) The Central Bank of India is justified, in their apprehension, as there was only one bidder, who had bid for Rs.2 Lakhs over and above the upset price.

In the said S.A. Sr.5775 of 2011, orders were reserved by the Debts Recovery Tribunal. Subsequently, Central Bank of India, Chennai, also issued proceedings under the Arbitration Act in O.A.No.201 of 2012, against the Canara Bank, Chennai, in which, they have raised the following issues:

(i) Whether the Canara Bank without any proper charge can bring the property for auction?
(ii) Who has got valid right of mortgage?
(iii) Who has got the Original Title Deeds and perfect mortgage created in their favour?

The abovesaid Original Application was dismissed by this Court, on the ground that Central Bank of India had already chosen a forum and filed the above S.A.Sr.No.5775 of 2011 on the file of the Debts Recovery Tribunal and therefore, their rights can be adjudicated only in the said Appeal.

4. Immediately coming to know of the proceedings in S.A.No.210 of 2009, the petitioners have moved an application to implead themselves as parties to safeguard their interest. However, the Tribunal dismissed the said application. Against the said order, the petitioners have preferred Civil Revision Petition (PD) No.179 of 2012, before this Court. According to the petitioners, during the hearing in the said Civil Revision Petition, the learned counsel appearing for the Canara Bank, Chennai, conceded that the petitioners can be made as parties, in order to give quietus to the entire issue. This Court allowed the Civil Revision Petition and directed the Debts Recovery Tribunal, Chennai, to implead the petitioners as parties in S.A.No.210 of 2009. Accordingly, notice was ordered to them and on 24.06.2014, when the matter was taken up, a joint memo was filed by the Central Bank of India, Chennai and Canara Bank, Chennai, based on which, the said S.A., was dismissed on 24.06.2014.

5. The petitioners have challenged the abovesaid order in C.R.P.Nos.2839 and 2840 of 2014 and this Court, by order, dated 11.09.2014, set aside the order, dated 24.06.2014 and directed the Debts Recovery Tribunal, Chennai, to take up S.A.No.210 of 2009 and S.A.Sr.No.5775 of 2011 for hearing on 22.09.2014 and pass appropriate orders on merits. The Debts Recovery Tribunal, Chennai, has passed orders on 31.10.2014, dismissing both the S.As., on the grounds of maintainability and delay. The said orders have been challenged in C.R.P.Nos.4499 and 4500 of 2014.

6. In the mean time, Sale Certificate was issued in favour of Mr.R.S.Perumal, the 3rd Respondent herein, on 10.11.2014. The said sale certificate was challenged by the petitioners in S.A.No.5 of 2015. Pending S.A.No.5 of 2015, Mr.R.S.Perumal, 3rd Respondent herein, has filed I.A.No.4 of 2016, for a direction to the Canara Bank, Chennai, to initiate action, under Section 14 of the SARFAESI Act, by handing over the physical possession of the schedule mentioned property. Vide order, dated 31.01.2017, the Debts Recovery Tribunal, Chennai, while dismissing S.A.No.5 of 2015, allowed Interlocutory Application in I.A.No.4 of 2016 in S.A.No.5 of 2015 filed for physical possession. Both the final and interlocutory orders are challenged in R.A.(S.A.)No.67 of 2017 and R.A.No.96 of 2017 respectively. After considering the facts and circumstances of each case, both the applications are dismissed. Challenging the same, the present civil revision petitions are filed, on various grounds.

7. Canara Bank, Chennai, 2nd respondent, has filed a detailed counter affidavit, contending inter alia that M/s.Capro Connection represented by its Proprietor Mr. Philip Shakthivel, the 1st Petitioner had availed credit facilities from Canara Bank. The 2nd Petitioner Mrs Hepshiba, wife of Mr.Philip Shakthivel and Mr.P.S.Kirubakaran, son of petitioners 1 and 2, are the guarantors to the credit facilities availed. Further the borrower/guarantors had extended certain properties owned by them as security to the advances, duly executing all loan / security documents with the intent to create security over the property including the property fully described herein below:

> Item No.1: Chennai North Registration District, Anna Nagar Sub Registration District, Villivakkam Village, S.No.210/part Northern portion of Plot No.1220, presently Plot No.1220/2, measuring undivided half share in 2030 sq.ft. together with constructed portion of Building measuring 1750 sq.ft. bearing Door No.1220/2, 20th Main Road, Anna Nagar West, Villivakkam Village, Chennai 600 040 in the name of Philip S. Sakthivel, the 1st Petitioner herein.
>
> Item No.2: Chennai North Registration District, Anna Nagar Sub Registration District, Villivakkam Village, S.No.210/part, Northern portion of Plot No.1220, presently Plot No. 1220/2, measuring undivided half share in 2030 sq ft together with constructed portion of Building measuring 1850 sq.ft. bearing Door No. 1220/2, 20th Main Road, Anna Nagar West, Villivakkam Village, Chennai 600 040 in the name of Mrs. Hepshiba, the 2 nd Petitioner herein.

The above mentioned property was mortgaged with 1st charge to the Central Bank of India, Chennai and second charge to Canara Bank, Chennai.

8. According to the Canara Bank, Chennai, on 24.04.2005, they sanctioned credit facilities to the tune of Rs.14 Crores, with a sub limit of packing credit as Rs.6 Crores and Bill discounting facilities of Rs.5 Crores to M/s.Capro Connections. Since the Petitioners have failed to pay the loan, as per the sanctioned terms and conditions, Canara Bank was constrained to declare the account as NPA, as per norms. Further SARFAESI Action was initiated under Section 13(2). As per the demand notice, dated 23.01.2007, the outstanding loan amounts were as follows:

| | |
|---|---|
| (a) Packing Credit Facility | - Rs.457.87 Lakhs |
| (b) FBE/FDB | - Rs. 46.47 Lakhs |
| (c) TOD in C A/c. | - Rs. 34.12 Lakhs |
| | - Rs.538.46 Lakhs |

9. According to Canara Bank, Chennai, creation of 2nd mortgage in favour of the said Bank was informed to the Central Bank of India, Chennai, by its letter dated 02.05.2005, which was acknowledged by Central Bank of India on 03.05.2005. Subsequently, Central Bank of India, by its letter, dated 11.03.2008, not only admitted and confirmed the creation of 2nd charge/Mortgage, but also wanted the Canara Bank to proceed under the SARFAESI Act, to sell the above mentioned properties, acknowledging their symbolic possession. Relevant portion of the said letter is extracted hereunder,

> “We request you to examine the feasibility of the proceedings under SARFAESI Act against the Chennai property second charge to you which you have taken symbolic possession".

In the said letter, there was no stipulation with regard to parting of sale proceeds to Central Bank of India.

10. Canara Bank has issued possession notices, dated 10.04.2007 and 05.05.2007, for Item Nos.1 and 2 property respectively. Sale notices for the said properties were issued on 16.05.2007. 2nd Petitioner herein along with her son P.S.Kirubakaran, Guarantors have preferred SARFAESI appeal bearing S.A.No.90 of 2007, to set aside the possession notices, dated 10.04.2007 and 05.05.2007 as well as sale notice issued on 16.05.2007 to the petitioner by the Canara Bank. The 1st Petitioner preferred SARFAESI appeal in S.A.No.91 of 2007 to set aside the possession notice, dated 05.05.2007 and sale notice, dated 16.05.2007. Both S.A.Nos.90 and 91 of 2007 were dismissed by the Hon’ble DRT-I, Chennai. After the dismissal of S.A.Nos.90 and 91 of 2007, Canara Bank, Chennai, has issued fresh Sale Notice, dated 28.08.2009 for the above mentioned properties, fixing the date of auction sale on 29.09.2009. The abovesaid sale notice, dated 28.08.2009 was challenged by Central Bank of India, who has

got first charge over the properties mentioned before DRT-I, Chennai in S.A.No.210 of 2009. The Petitioners were also parties to the said S.A.210 of 2009.

11. However, the sale intended under the sale notice dated 28.08.2009 did not take place. As such fresh sale notice dated 26.11.2010 fixing the sale on 30.12.2010 was issued. Mr.R.S.Perumal was the highest and successful bidder for a sum of Rs.1,67,20,000/- in the sale conducted on 30.12.2010 and he has paid 25% of the bid amount on the same day. Central Bank of India challenged the said sale notice, dated 26.11.2010 by filing W.P.No.545 of 2011, in which, 1st petitioner was shown as 2nd Respondent. Since there was an order of interim stay in the writ petition, at the time of admission, confirmation of the sale in favour of Mr.R.S.Perumal, was kept in abeyance. On 15.03.2011, the said W.P.No.545 of 2011 was dismissed, by holding that Central Bank of India, can agitate the issue in S.A.No.210 of 2009, filed for similar reliefs, pending before the DRT-I, Chennai.

12. Mr.R.S.Perumal, Auction Purchaser deposited the balance amount after the disposal of W.P.No.545 of 2011, on 19.03.2011. It is pertinent to note that the petitioners herein have not challenged both the sale notices, dated 28.08.2009 and 26.11.2010 and they became final. On 15.12.2011, Central Bank of India, 1st Respondent herein has filed S.A.SR.No.5775 of 2011, before the Debts Recovery Tribunal-I, Chennai, for declaring that the auction held on 30.11.2010 is null and void, ultra vires and unenforceable. During March' 2012, Central Bank of India has filed O.A.No.201 of 2012, before this Court, under Section 11 of SARFAESI Act, against Canara Bank, Mr.R.S.Perumal and 1st petitioner herein, for an injunction to proceed further in any manner with the Schedule Property as per the auction held on 30.12.2010. Said O.A.No.201 of 2012 came to be disposed of, on 31.10.2013, as follows:

> "According to the Canara Bank, the Central Bank of India expressly gave consent to the Canara Bank to bring the property to sale admitting the fact that the Canara Bank holds a second charge. But today the Central Bank of India has gone back on the same. But this time taken by the Applicant/ Central Bank of India does not appear to be fair and reasonable".

13. Moreover, letter evidencing, Deposit of Title Deeds, were filed before the Debts Recovery Tribunal-I, Chennai, by Canara Bank and that Central Bank of India, vide its letter, dated 11.03.2008, had requested the Canara Bank to proceed under SARFAESI Act, as second charge holder. On the contention of the 2nd charge, this Court, at Paragraph 20, held as follows:

> "20. But the stand taken by the applicant/Central Bank of India does not appeared to be fair and reasonable. If the Canara Bank did not

have a second charge on the properties the Canara Bank could not have done two things. First is that the Canara Bank could not have authorized the Central Bank of India to proceed with the sale. Second is that the Central bank of India could not have filed an appeal in S.A.No.210 of 2009 before the Debts Recovery Tribunal seeking a direction to the Canara Bank to the property. After having done so it is not open to Central bank of India to raise a dispute and the claim that such dispute should be resolved under Sec. 11"

14. According to the 2nd respondent, the allegation of the petitioners that there is no mortgage in their favour, is not acceptable, as the plea had already been adjudicated by the DRT-I, Chennai in S.A.No.210 of 2009 and S.A.SR.No.5775 of 2011, duly dealing with Section 78 of the Transfer of Property Act. The said section is extracted hereunder:

"78. Postponement of prior mortgagee:- Where, through the fraud misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgages shall be postponed to the subsequent mortgagee."

15. Thereafter, in pursuance of the joint memo of compromise filed by the Central Bank of India, Chennai and Canara Bank, Chennai, respectively Debts Recovery Tribunal-1, Chennai, has passed a common order on 31.10.2014, dismissing the application in S.A.No.210 of 2009, duly impleading the petitioners herein and held that the sale by the Canara Bank on 30.12.2010 is valid in law and directed the Canara Bank to issue sale certificate in favour of the Auction purchaser, as per the provisions of the Act and Rules. Accordingly Sale Certificate was issued in favour of the Auction Purchaser, on 10.11.2014. The Petitioner herein had challenged the above said order by filing S.A.No.5 of 2015, which came to be dismissed, as follows:

"The mere challenge of the sale certificate alone will not entitle the appellants to challenge the various other previous stages in the proceedings as the same are barred not only by the law of limitation but also by the principle of functus officio, resjudicata and constructive Resjudicata. The Petitioner even had the knowledge and the opportunity to question the same earlier."

16. It is the contention of the 2nd respondent that initially the petitioners after the sale certificate was issued in favour of the auction purchaser on 10.11.2014, craved for an interim relief for not to dispossess them from the subject property on the reason that they have got their daughter's marriage fixed on 09.12.2015. But thereafter, the petitioners filed the above mentioned S.A., challenging the

Sale Certificate shows the conduct of the petitioners. The petitioners have no right to question the mortgage executed by them in favour of Central Bank of India, Chennai and subsequently to the Canara Bank, Chennai and DRT-I have categorically held the same as valid. The petitioners had never denied the execution of documents creating charge over the properties, nor had they denied availment of credit facilities. Hence, the Canara Bank, Chennai, has prayed for dismissal of the civil revision petitions.

17. The 3rd respondent, Mr.R.S.Perumal, has also filed a counter affidavit and contended that though he is the successful bidder in the auction conducted on 30.12.2010, for the scheduled mentioned property, due to several litigations between respondents 1 and 2, he was issued with the sale certificate on 10.11.2014. After issuance of the sale certificate, the revision petitioners, who were silent spectators to the entire proceedings, have filed S.A.No.5 of 2015, before the DRT-I, to set aside the sale certificate and obtained interim order of possession. In the said SA, an Interim Application was filed for injunction, restraining the bank from disturbing his possession of the auctioned property on the pretext of their daughter's marriage. DRT, by order, dated 4.2.2015, granted an interim order. However, the revision petitioner, even after the marriage did not vacate the property and continued to enjoy the possession. Therefore, he filed a petition to vacate the interim Order in I.A.Sr.No.1007 of 2015. After hearing the parties, the DRT-I has vacated the interim Order on 27.04.2015 and directed the bank to take action for handing over possession to him. Aggrieved by the same, the petitioner has preferred an appeal in A.I.R.No.340 of 2016 before the DRAT, but did not prosecute the same.

18. The 3rd respondent has further submitted that the bank did not take action for vacating the borrower, despite the directions by the Debt Recovery Tribunal. Therefore, he approached this Court in W.P.No.1150 of 2016, seeking for a direction against the Bank and this court directed him to approach the DRT for appropriate direction, to which, he filed a interim application in SIA.No.4 of 2017. The Tribunal, after hearing the parties, was pleased to allow the application, pursuant to which, the Bank had already initiated action under Section 14 of SARFAESI Act, before the Chief Metropolitan Magistrate, Egmore and the same is pending, since March' 2017.

19. The 3rd respondent has further submitted that the main SA No5/2015 was dismissed by DRT, vide order dated 31.01.2017. The Revision petitioner preferred R.A.No.61 of 2017 before the DRAT. Whereas, the DRAT, by order, dated 09.08.2017 dismissed the same. Aggrieved by the said order, C.R.P.No.3518 of 2017 has been filed. Whereas, C.R.P.No.3517 of 2017 has been filed against the order, dated 09.08.2017 in the dismissed M.A.(SA)No.96 of 2017 filed against order, dated

31.01.2017 in SIA No.4 of 2016 in SA No.5 of 2015, seeking a direction to the Bank to initiate action under Section 14 of SARFAESI Act to hand over the physical possession of the property.

20. It is the contention of the 3rd respondent that relief sought for in this petitions has already attained finality in the proceedings of the D.R.T. Besides, the action taken by the Bank under Section 14 of the SARFAESI Act has not been challenged. The proceeding initiated under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate is not the subject matter of the present CRPs. There is a statutory bar in terms of Section 14(3) of SARFAESI Act which stipulates that Chief Metropolitan Magistrate or the District Magistrate (any officer authorized by the Chief Metropolitan Magistrate or District Magistrate) done in pursuance of this section shall not be called to question in any court or before any authority.

Heard the learned counsel for the parties and perused the materials available on record.

21. On 24.04.2005, the petitioners were sanctioned credit facilities to the tune of Rs.14 Crores and when the Petitioners have failed to repay the loan, as per sanctioned terms and conditions, Canara Bank was constrained to declare the account as NPA and issued notice, Section 13(2) of the SARFAESI Act. 2nd mortgage was in favour of Central Bank of India, Chennai and by its letter, dated 11.03.2008, Central Bank of India, wanted the Canara Bank to proceed under the SARFAESI Act, to sell the above mentioned properties, acknowledging the symbolic possession taken by the Canara Bank.

22. Canara Bank has issued possession notice, dated 10.04.2007 for item No.1 property and subsequently, on 05.05.2007, issued possession notice for item No.2 property. Sale notices for both the properties were issued on 16.05.2007. The 2nd Petitioner herein along with her son P.S.Kirubakaran, the Guarantor preferred SARFAESI appeal, bearing S.A.No.90 of 2007, to set aside the possession notice, dated 10.04.2007, issued on 05.05.2007 as well as sale notice issued on 16.05.2007 to the petitioner by the Canara Bank. The 1st Petitioner preferred SARFAESI appeal in S.A.No.91 of 2007 to set aside the possession notice, dated 05.05.2007 and sale notice dated 16.05.2007. Both S.A.Nos.90 and 91 of 2007 were dismissed by the Hon'ble DRT-I, Chennai. After the dismissal of S.A.Nos.90 and 91 of 2007, Central Bank of India, Chennai, issued fresh Sale Notice, dated 28.08.2009 for the above mentioned properties fixing the date of auction sale on 29.09.2009. The above said sale notice, dated 28.08.2009 was challenged by Central Bank of India, who has got first charge over the properties mentioned before DRT-I, Chennai in S.A.No.210 of 2009. The Petitioners were also parties to the

said S.A.210 of 2009.

23. However, the sale intended under the sale notice, dated 28.08.2009, did not take place. As such fresh sale notice, dated 26.11.2010 fixing the sale on 30.12.2010 was issued. Mr.R.S.Perumal was the highest and successful bidder for a sum of Rs.1,67,20,000/- in the sale conducted on 30.12.2010 and he has paid 25% of the bid amount on the same day. Central Bank of India challenged the said sale notice, dated 26.11.2010 by filing W.P.No.545 of 2011, in which, 1st petitioner was shown as 2nd Respondent. Since there was an order of interim stay in the writ petition at the time of admission, the confirmation of the sale in favour of Mr.R.S.Perumal, was kept in abeyance. On 15.03.2011, the said W.P.No.545 of 2011 was dismissed, by holding that the Central Bank of India, can agitate in the S.A.No.210 of 2009 filed for similar reliefs pending before the DRT-I, Chennai.

24. Mr.R.S.Perumal, Auction Purchaser deposited the balance amount after the disposal of W.P.No.545 of 2011, on 19.03.2011. It is pertinent to note that the petitioners herein have not challenged both the sale notices, dated 28.08.2009 and 26.11.2010 and said notices became final. On 15.12.2011, Central Bank of India the 2nd Respondent herein has filed S.A.SR.No.5775 of 2011, before the Debts Recovery Tribunal-I, Chennai, for declaring that the auction held on 30.11.2010 is null and void, ultra vires and unenforceable. During March 2012, Central Bank of India has filed C.A.No.201 of 2012, before this Court, under Section 11 of SARFAESI Act, against Canara Bank and Mr.R.S.Perumal and also the 1st petitioner herein, for an injunction to proceed further in any manner with the Schedule Property as per the auction held on 30.12.2010. The Said O.A.No.201 of 2012 was disposed by this Court on 31.10.2013.

25. Letter, evidencing of deposit of Title Deeds were filed before the Debts Recovery Tribunal-I, Chennai, by the Canara Bank and that the Central Bank of India, vide its letter, dated 11.03.2008, had requested Canara Bank to proceed under SARFAESI Act, as the second charge holder. Thereafter, a joint memo of compromise has been filed by Central Bank of India, Chennai and Canara Bank, Chennai and thereafter, the Debts Recovery Tribunal-1, Chennai, passed a common order on 31.10.2014, dismissing the application in S.A.No.210 of 2009, duly impleading the petitioners herein and in the S.A.SR.No.5775 of 2011, the DRT held that the sale by the Canara Bank on 30.12.2010 is valid in law and directed the Canara Bank to issue sale certificate in favour of the Auction purchaser, as per the provisions of the Act and Rules. Accordingly Sale Certificate was issued in favour of the Auction Purchaser, on 10.11.2014. The Petitioner herein had challenged the above said order by filing S.A.No.5 of 2015, which came to be dismissed, as follows:

> "The mere challenge of the sale certificate alone will not entitle the appellants to challenge the various other previous stages in the proceedings as the same are barred not only by the law of limitation but also by the principle of functus officio, resjudicata and constructive Resjudicata. The Petitioner even had the knowledge and the opportunity to question the same earlier."

26. After the sale certificate was issued in favour of the auction purchaser on 10.11.2014, the petitioners have sought for an interim relief not to dispossess them from the subject property on the reason that they have got their daughter's marriage fixed on 09.12.2015. But thereafter the petitioners filed S.A.No.5 of 2015, before the DRT-I, to set aside the sale certificate and obtained interim order of possession. In the said SA, an Interim Application was filed for injunction, restraining the bank from disturbing his possession of the auctioned property on the pretext of their daughter's marriage. The DRT, by order, dated 4.2.2015, granted an interim order. However, revision petitioners, even after the marriage, did not vacate the property and continued to enjoy the possession. The bank did not take action for vacating the borrower, despite the direction by the Debt Recovery Tribunal.

27. Therefore, the 3rd respondent has filed W.P.No.1150 of 2016, seeking a direction against the Bank and this court directed him to approach the DRT for appropriate direction, to which, he filed a interim application in SIA.No.4 of 2017. The Tribunal, after hearing the parties, allowed the application, pursuant to which, the Bank had initiated action under Section 14 of SARFAESI Act, before the Chief Metropolitan Magistrate, Egmore and the same is pending, since March' 2017.

28. From the above facts, it is clear that the petitioners have not challenged both the sale notices, dated 28.08.2009 and 26.11.2010 and they became final. The petitioners have remained as mute spectators for the entire proceedings and only after issuance of sale certificate, the petitioners filed S.A.No.5 of 2015, before the DRT-I, to set aside the same.

29. In view of the above, all the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

skm

To

The Debts Recovery Appellate Tribunal
Chennai.

+4 CCS to Mr.S. Sethuraman, Advocate sr 56633 & 56634
+3 Ccs to Mr.R.Gowthamanarayanan, Advocate sr 57035, 57032 & 57033.

C.R.P.(NPD)Nos.4499 and 4500 of 2017
C.R.P.Nos.3517 and 3518 of 2017
and Connected Miscellaneous Petitions

VD(CO)
SP(11/11/2019)