IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CRP.No.546/2020 & CMP.No.2809/2020

1.Mr.A.R.Santhanakrishnan
2.Mr.V.S.Narayanan .. Petitioners

Versus

1.M/s.Indian Bank
Purasawakkam Branch
19, Narayana Guru Road
Chennai 600 112.
rep.by its Assistant General Manager.

2.M/s.S.&S Industries and Enterprises Limited
A-31, Main Road, Industrial Estate
Ambattur, Chennai 600 058.
Now at:-
204, SIDCO AIEMA TOWER
First Main Road, Ambattur Industrial Estate
Chennai 600058.

3.Mr.M.S.Venkataraman
4.Mr.S.Nandakumar
5.Mr.V.Kesavan
6.Mr.N.Kannan
7.Mr.S.Natrajan
8.Mr.R.Ramani
9.Mrs.R.Radhika

10.Mr.T.V.Babu
11.The Branch Manager
State Bank of India
Commercial Branch
232, NSC Bose Road
Chennai-1.
12.The Branch Manager
The Vyasa Bank Limited
185, Mount Road, Chennai-6.
13.The Branch Manager
Oriental Bank of Commerce
Spencer Plaza, 769 Mount Road
Chennai 2.
14.The Branch Manager
Punjab National Bank
No.17, Rajaji Salai, Chennai-1.
15.The Branch Manager
IDBI Bank Limited, PM Towers
37, Greames Road, Chennai-6.
16.The Branch Manager
ICICI Limited, No.1, Cenetoph Road
Teynampet, Chennai-18.
17.The Branch Manager
Industrial Development Bank of India
115, Anna Salai, Saidapet,
Chennai-15. .. Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the Debt Recovery Tribunal-III in OA.No.92/2010 dated 06th August 2019 as there is an error apparent on the face of the record and it is liable to be set aside.

For Petitioners	:	Mr.P.H.Arvind Pandiyan, SC for Mr.C.V.Shailandhran
For R1	:	Mr.Jayesh B.Dolia

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

(1)By consent, the Civil Revision Petition is taken up for final disposal and is disposed of by this order. Mr.Jayesh B.Dolia, learned Standing counsel accepts notice on behalf of the 1st respondent/Bank.

(2)The 1st respondent/Bank had filed the Original Application in OA.No.92/2010 by invoking the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 against the petitioners herein and respondents 2 to 10 herein for the following reliefs:-

*"**RELIEF[S] SOUGHT:-***

(a)The applicant therefore prays that the Tribunal will pass an order against the respondents 1 to 11 jointly and severally to pay the sum of Rs.7,37,52,431/- to the applicant with future interest at the rate of 19.89% per annum with quarterly rests from date of application till date of realisation in full and to draw a certificate of recovery for the same.

(b)To pass an order that the Schedule I to XI mentioned properties may be sold and the sale proceeds after defraying thereout the expenses of

the sale be applied in and towards the payment of the amount of the said principal, interest and costs;

(c)that if such proceeds are not sufficient for the payment in full of such amount, then to ass a personal decree against the 2 to 11 respondents to pay to the applicant the amount of the deficiency with interest thereon at 19.89% per annum with quarterly rests until realization and

(d)for that purpose all proper directions may be given and accounts taken by the Tribunal.

(3)The respondents in the Original Application, have been served and they have engaged the services of Mr.B.Nataraj.

(4)The 1st respondent in the Original Application / 2nd respondent in this Civil Revision Petition, has filed the Written Statement dated 06.08.2019 and took the following stand:-

*"**8.**The First respondent in respect of paragraph 5[a] titled **FACTS OF THE CASE** of the application submits that the contents only describe the details about the respondents. The First respondent denies that the 4th and 5th respondents are Guarantors. In reality, the said 4th and 5th respondents were the then Directors of M/s.AKR Finance Limited which Company had initially executed a Corporate Guarantee towards the repayment of the loans but had subsequently been*

discharged of that liability when the Corporate Guarantee was waived and relesed vide Santion cum Renewal Letter dated 23rd may 1995. The First Respondent further denies that it had ever approached the Applicant for any financial assistance. On the contrary, it was the applicant which approached the First respondent for commencing a relationship by way of the First respondent availing financial assistance from the Applicant."

(5)Mr.P.H.Aravind Pandiyan, learned Senior Counsel assisted by Mr.C.V.Shailandhran, learned counsel appearing for the petitioner would would submit that the revision petitioners herein who are arrayed as respondents 2 and 3 in the Original Application would submit that as per the proceedings of the Presiding Officer of the Debts Recovery Tribunal-III at Chennai, dated 06.08.2019, on the same date of filing of the written statement by the 1st respondent in the Original Application/2nd respondent in this petition, the Original Application came to be allowed in toto without providing any opportunity to the rest of the respondents therein. Learned senior counsel has also drawn the attention of this Court to the contents of the written statement and would submit that the security was created by way of equitable mortgage over immovable properties and that the Corporate Guarantee was also relinquished on 23.05.1995 and in the absence of any specific averment as to the execution of the Deeds of Guarantee by the petitioners herein, the prayer/relief No.[c] sought for by the 1st respondent/Bank herein/Applicant in the Original Application is wholly unsustainable and the Tribunal, without even considering the averments made in paragraph No.8 of the written statement, ordered the Original Application on the same date of filing of the written statement by the 1st respondent in the Original Application/2nd respondent herein on 06.08.2019 and on instructions, would further add that though the prayer in the revision petition is for quashment of the entire order, the prayer is restricted to the petitioners herein, insofar as the personal guarantee alone and it is always open to the Bank to proceed against the mortgaged assets.

(6)Per contra, Mr.Jayesh B.Dolia, learned Standing counsel appearing for the 1st respondent/Bank on instructions, would submit that no Deeds of Personal Guarantee have been executed by the petitioners herein who are arrayed as respondents 2 and 3 in the Original Application and therefore, the 1st respondent herein ought not to have sought for the prayer/relief No.[c] and due to inadvertent error, the Tribunal has allowed the Original Application in toto and also granted the relief as prayed for, which include proceeding against the respondents 2 to 11 in the Original application personally for the deficiency of the adjudged amount with interest and cost until realization and prays for appropriate orders.

(7)This Court has carefully considered the rival submissions and also perused the materials placed before it.

(8)A perusal of the contents of the Original Application in OA.No.92/2010 would disclose that, apart from creating equitable mortgage and other documents, no Deeds of Personal Guarantee had been executed by the petitioners herein who are arrayed as respondents 2 and 3 in OA.NO.92/2010. The learned Standing counsel appearing for the 1st respondent/Indian Bank, on instructions, would also fairly concede that in the absence of execution of the said documents and averments, there should not have been prayer/relief No.[c] in the Reliefs sought for in the Original Application.

(9)It is to be noted at this juncture that in paragraph No.8 of the written statement of the 1st respondent in the Original Application who has been arrayed as the 2nd respondent herein it has been specifically denied that respondents 4 and 5 were the guarantors and it is further stated that the Corporate Guarantee towards repayment of the loans, had subsequently been discharged of that liability vide Sanction-cum-Renewal Letter dated 23.05.1995.

(10)In the light of the same, Clause No.[d] of paragraph No.11 of the

Impugned order insofar as petitioners/respondents 2 and 3 are concerned, are liable to be set aside.

(11)In the result, the Civil Revision Petition is PARTLY ALLOWED and the impugned order dated 06.08.2019 made in OA.No.92/2010 on the file of the Debts Recovery Tribunal-III at Chennai, **insofar as paragraph No.11[d] of the order as against the petitioners herein / respondents 2 and 3 in the Original Application alone is set aside.**

(12)It is open to the 1st respondent/Bank herein to proceed against the respondents in the Original Application in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

[M.S.N.,J] [R.H., J]
10.02.2020

AP

Internet : Yes

To
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M.SATHYANARAYANAN, J.,
AND
R.HEMALATHA, J.,
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