

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

**C.R.P (PD).No.2741 of 2013 and
M.P.No.1 of 2013**

Indian Bank
Mannady Branch
221/108, Thambu Chetty Street
Chennai 600 001
Rep by Chief Manager
Asset Recovery Management Branch,
No.55, Ethiraj Salai, Chennai-8. ... Petitioner

...Vs...

T.K.Lakshmi Narayanan ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal Order dated 16.03.2012 passed by the Additional District and Sessions Judge, Chennai, Fast Track Court No.IV, Chennai, in I.A.No.23 of 2011 in O.S.No.13164 of 2010.

For Petitioner : Mr.T.Sundarrajan
For Respondent : No appearance

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ORDER

This Civil Revision Petition has been filed against the order dated 16.03.2012 passed by the Additional District and Sessions Judge, Chennai, Fast Track Court No.IV, Chennai, in I.A.No.23 of 2011 in O.S.No.13164 of 2010.

2. Heard the arguments on the side of the petitioners on 05.08.2020 and the matter was directed to be listed today for the arguments on the side of the respondent. Despite the notice being served on behalf of the respondent and the counsel entered appearance there is no representation for the respondent today and therefore the matter is decided on merits by considering the submissions made by the learned counsel for the petitioner as well as on perusing the records.

3. The petitioner is the bank and the respondent is the borrower. The respondent filed a suit in C.S.No.734 of 2010 against the petitioner and five others for declaration and permanent injunction. Subsequently, for want of jurisdiction the same was transferred to the City Civil Court and renumbered as O.S.No.13164 of 2010. During the pendency of the suit, the respondent filed O.A.No.848 of 2008 before this Court for interim injunction

restraining the respondents 1 and 2 from in any manner proceeding further with or taking any action further under the provisions of the SARFAESI ACT, 2002 in respect of notices dated 27.05.2008, 12.06.2008 & 27.06.2008 and the petitioner filed an application in I.A.No.5248 of 2008 to reject the plaint. Subsequently the said application was transferred to Additional District and Sessions Judge, Chennai (Fast Tract Court IV, Chennai) and renumbered as I.A.No.23/2011 in O.S.No.13164 of 2010. The said petition was dismissed by the trial Court vide order dated 16.03.2012. Challenging the said order the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the respondent is the borrower and he is the defaulter as his account has become NPA. Therefore the petitioner filed original application in O.A.No.412 of 2007 before the Debt Recovery Tribunal, Madras. The same was decreed and final order is passed on 14.09.2009 and therefore the said suit filed by the respondent is not maintainable and the Civil Court has no jurisdiction to entertain the suit. Therefore, the petitioner filed an application in I.A.No.5248 of 2008 to reject the plaint. Subsequently the said application was transferred to Additional District and Sessions Judge, Chennai (Fast Tract Court IV, Chennai) and renumbered as I.A.No.23/2011 in O.S.No.13164 of 2010 and the said application

was dismissed. He would further submit that the trial Court failed to consider that the suit is barred under Section 34 of the SARFAESI Act and the plaint is liable to be rejected and the order passed by the trial Court is liable to be set aside.

5. The petitioner filed original application before the Debt Recovery tribunal for recovery of money and during the pendency of the same, the respondent filed the suit before this Court in C.S.No. 734 of 2008. Subsequently for want of jurisdiction the same was transferred to Additional District and Sessions Judge, Chennai (Fast Tract Court IV, Chennai) and renumbered as I.A.No.23/2011 in O.S.No.13164 of 2010. During the pendency of the suit, the petitioner/bank has filed the application in I.A.No.5248 of 2008 to reject the plaint. Subsequently the said application was transferred to Additional District and Sessions Judge, Chennai (Fast Tract Court IV, Chennai) and renumbered as I.A.No.23/2011 in O.S.No.13164 of 2010. The said petition was dismissed by the trial Court vide order dated 16.03.2012. Therefore, the petitioner/bank is before this Court by way of this revision. The trial Court failed to consider that the City Civil Court has no jurisdiction to entertain the suit and dismissed the application filed by the petitioner to reject the plaint. Therefore, this Court is of the view that there is perversity in the order passed by the learned Trial Judge and hence the same is liable

to be set aside.

6. The petitioner Bank filed application for recovery of the debts before DRT Madras in O.A.No.412 of 2007 in which the respondent herein/plaintiff in O.S.No.13164 of 2010, was shown as fourth defendant. He has filed written statement in the said original application before Debts Recovery Tribunal. The respondent has suppressed O.A. filed by the petitioner before the Debts Recovery Tribunal, Madras. Subsequently, final order passed in O.A.No. on 14.09.2009. Further, as per Section 34 of SARFAESI Act 2002 civil suit is barred. The Court below failed to consider the material facts and erroneously dismissed the petition filed by the Bank.

7. Accordingly, the order passed in I.A.No.23 of 2011 is hereby set aside and the plaint filed by the respondent in O.S.No.13164 of 2010 is hereby rejected and this revision stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
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P. VELMURUGAN, J.

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To

**1. The Additional District and Sessions Judge, Chennai.
(Fast Track No.IV, Chennai).**

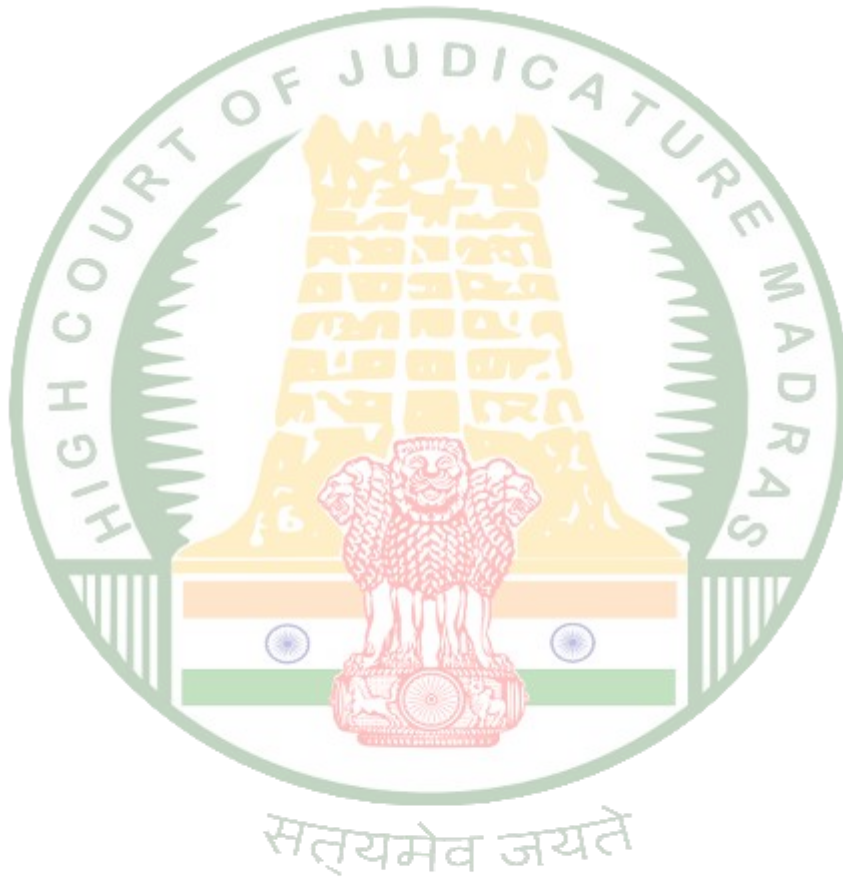
2.The V.R.Section,High Court, Chennai.



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