

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2020

DELIVERED ON : 21.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

and

THE HON'BLE MRS.JUSTICE R.HEMALATHA

WP.Nos.29641 of 2019 and 27770 of 2019 &
WMP.Nos.27305 of 2019, 7915 & 7919 of 2020

WP.No.29641 of 2019

M.R.Vasumathi

... Petitioner

Vs.

1.The Authorized Officer,
Indian Bank,
No.1, Abdul Razak Street,
Saidapet, Chennai - 600 015.

2.R.Kumar

3.R.Anbarasu

4.Jayasekhar

Sumathi (Died)

5.C.Radhakrishnan

6.Suganthi

7.M.R.Vasanthi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to order dated 16.12.2016 in RA(SA) 91 of 2014 and consequential order

dated 16.12.2016 in MA(SA) 107 of 2011 on the file of Debt Recovery Appellate Tribunal, Chennai and quash the same as illegal.

For Petitioner : Mr.S.Sethuraman

For Respondents : Mr.L.Prabhakar for R2
No appearance for others

WP.No.27770 of 2019

M.R.Anbarasu ... Petitioner

Vs.

1.The Branch Manager,
Indian Bank,
Saidapet, Chennai - 600 015.

2.The Authorised Officer,
Indian Bank,
Saidapet Branch,
No.1, Adbul Razack Street,
Saidapet, Chennai - 600 015.

3.R.Kumar ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondents 1 and 2 relating to the statutory notice issued under Central Act 54 of 2005 dated 08.09.2009 auction notice dated 03.02.2010 and the auction held on 11.03.2010 in respect of the Secured Assets offered by the guarantor and quash the same.

For Petitioner : Mr.A.S.Narasimhan

For Respondents : Mr.Kubeeran for M/s.Rank Associates for R1
Mr.L.Prabhakar for R3
No appearance for R2

COMMON ORDER

(Order of the Court was delivered by R.HEMALATHA, J.)

The first respondent in W.P.No.29641 of 2019 and the second respondent in WP.No.27770 of 2019 all one and the same, that is the Authorized Officer, Indian Bank. The petitioner in W.P.No.29641 of 2019 is the daughter of the deceased G.Ramanujam and the petitioner in W.P.No.27770 of 2019 is the son of the deceased G.Ramanujam. One Mr.Murugesan who is the sole proprietor of M/s.Shiv Shankar Agencies in West Mambalam, Chennai, had availed a loan in the year 1984 from the respondent Indian Bank. The loan went bad and a money suit in OS.No.4067 of 1996 was filed in the City Civil Court, Chennai by Indian Bank against the said Murugesan and late G.Ramanujam, father of both the petitioners. Late G.Ramanujam had offered his property as collateral security for the loan. The two petitioners are brother and sister. The suit was decreed ex-parte. A preliminary decree was passed for Rs.1,87,004.23/- together with interest at the rate of 18% per annum. The correspondence

between the bank and Late G.Ramanujam prior to his death on 26.09.2001 and with his legal heirs after his death show that there were attempts for out of court one time settlement till 2003. On 08.09.2009, notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act (SARFAESI Act), 2002 was issued to Mr.Murugesan and the legal heirs of Late G.Ramanujam. Subsequently, on 21.12.2009, symbolic possession of the property mortgaged to the bank and owned by late G.Ramanujam was taken on 03.02.2010 and a notice of intended sale was also issued under Rule 6(2) and 8(6) of SARFAESI Rules. In the e-auction sale on 11.03.2010, one R.Kumar, the second and third respondent in WP.Nos.29641 and 27770 of 2019 successfully bid the property for Rs.2,11,00,500/-. The two sons of late G.Ramanujam approached Debts Recovery Tribunal II, Chennai in SA.No.28 of 2010 under Section 17 of SARFAESI Act, on 22.02.2010 praying for setting aside the sale notice. The Debts Recovery Tribunal II, Chennai, dismissed the said Appeal and the connected Miscellaneous Petitions Nos.6504 of 2010, 6505 of 2010 and 6506 of 2010 and also concluded that since Section 5 of the Limitation Act is not applicable to the filing of the Original Application

under Section 17(1) of the SARFAESI Act, the delay of 155 days in filing the SA could not be condoned.

2. Aggrieved over this order dated 30.12.2020 passed by Debts Recovery Tribunal II, Chennai, Debt Recovery Appellate Tribunal was approached by both the brothers in RA(SA) 91 of 2014 which was also dismissed. Furthermore, MA(SA) 107 of 2011 also was dismissed by Debt Recovery Appellate Tribunal which was filed against the order in MA.SR.No.6505 of 2010 in SA.SR.No.6473 of 2010 by which the Debt Recovery Tribunal had declined to condone the delay of 155 days in filing SARFAESI Application stating that Act 5 of the Limitation Act does not apply to the Act.

3. Hence, the present writ petitions challenging the orders dated 16.12.2016 in RA(SA) 19 of 2014 and MA(SA) 107 of 2011 on the file of the Debt Recovery Appellate Tribunal, Chennai. The W.P.No.29641 of 2019 is filed by one of the two daughters of the deceased Ramanujam and W.P.No.27770 of 2019 by one of the two sons of the deceased Ramanujam.

4. Both the petitioners have assailed the Debt Recovery Appellate Tribunal orders stating that E-auction conducted by the Indian Bank was defective in many respects. Mr.S.Sethuraman and Mr.A.S.Narasimhan, learned counsels appearing for both the petitioners also contended that securitisation proceedings itself was barred by limitation due to the fact that the preliminary decree awarded by City Civil Court, Chennai, was as early as 10.09.1997, while the paper publication under Section 13(2) of SARFAESI Act, was on 19.09.2009, that is roughly after 12 years. Another aspect which was contended by the learned counsels for both the petitioners is that the Judgment debtor died in the year 2001 and the enforcement of the death and the security, eight years after his death is impermissible in law. It was also contended that preliminary decree was enforced by the Debts Recovery Tribunal and accepted by the Debt Recovery Appellate Tribunal much against the procedure laid down under Section 31A of Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI Act), 1993.

5. Mr.Kubeeran, learned counsel appearing for the Branch Manager, Indian Bank and Mr.L.Prabhakar, learned counsel appearing for one

Mr.R.Kumar (the auction purchaser) have elaborated upon the long journey of this particular loan account with the Bank and all the evasive methods adopted by the borrower, mortgagor / guarantor and all the related parties after the death of the mortgagor / guarantor. According to the learned counsels, the loan which was sanctioned in the year 1984, which became bad and a suit was filed before the High Court in 1987 and the same got transferred to City Civil Court, Chennai, on the point of pecuniary jurisdiction on 24.02.1996. The preliminary decree having got passed in 1997, there were attempts by the deceased G.Ramanujam to arrive at a compromise with the bank to protect his property. The learned counsel also highlighted the facts that SARFAESI Act was introduced only in 2002 and subsequently, the procedure under the SARFAESI Act was resorted to by the bank resulting in the auction on 11.03.2010. The OS.No.4067 of 1996 which was filed by the bank for recovery of the loan was set exparte and the petitioners approached to set aside the exparte decree dated 10.09.1997 only on 13.04.2010 ie., 4594 days later and the same was dismissed by the said court. They contended that it is to be noted that the setting aside application was filed after the e-auction sale got completed. It was also further

contended that there were number of Interlocutory Applications filed by the petitioners obstructing the auction purchaser from taking possession of the property, all of which were dismissed by the Court. Ultimately, it is contended that the sale certificate was registered on 23.09.2019 in favour of the auction purchaser with the undue delay due to the extraneous factors as elaborated above. The learned counsels further claimed that the petitioners, have no *locus standi* whatsoever in claiming any right over the property and both the writ petitions deserved to be dismissed without any hesitation.

6. Having heard both the parties and having gone through all the related papers we find no reasonableness in any of the claims made by the writ petitioners. Having been in a deep slumber for more than 4594 days without even bothering to set aside the exparte decree, finding fault with the first or the second respondent is meaningless. It is true that the mortgagor late G.Ramanujam had the inclination to settle the loan atleast to save his own property from being auctioned by the Bank.

7. Both the petitioners totally misunderstood the recovery procedure adopted by the bank. In fact in 1987, when the Original Suit was filed, the SARFAESI Act was non-existent. The RDDBFI Act was also non-existent. The whole purpose of SARFAESI Act was to expedite the process of recovering dues from the borrowers without following the tardy and lengthy Civil Court recovery process. In the instant case, the plight of the auction purchaser who has been waiting since 2010 for taking possession of the property and getting sale certificate registered in his name is unenviable. Having parted with a huge sum of more than two crores and waiting patiently for the litigations to come to an end would have been the least expected by him. However, in the instant case, the Debts Recovery Tribunal and the Debt Recovery Appellate Tribunal had categorically established the right of the auction purchaser and ruled out the scope for any intervention. In fact, the Debt Recovery Appellate Tribunal in its order dated 16.12.2016 in RA(SA) 91 of 2014 drove the last nail in the coffin by observing as follows:

"8. After considering the contentions of rival parties, and after perusal of the record, it becomes clear that the respondent Bank always remained interested in

recovering the loan amount since 1997, ie., the date of decree before Civil Court till the date of auction ie., 11.03.2010. The apart, the borrower has obtained the loan somewhere, in the year 1984. The deliberations for One Time Settlement (OTS) entered into between the parties were also remained of no use. The DRT has dealt with the issue of compliance of mandatory provisions in a careful manner. In SARFAESI Application before Debt Recovery Tribunal, there was no issue of non compliance of provisions of Rules 8 and 9. However, the Bank has the documentary record of service of Possession Notice by Affixture by way of photographs.

9. Taking overall view of the facts and circumstances of the case, in my considered opinion, the Appellants cannot succeed by counting faults. The Authorised Officer of respondent Bank has proceeded in the matter with utmost care and caution. As compared today, the appellants never evinced their interest and responsibility on repayment of the loan amount. The Ld. Presiding Officer has appreciated the facts and law well in the impugned Order and there appears no material illegality in the SARFAESI proceedings initiated by the Authorised Officer of the respondent Bank."

8. Loans granted by Banks and Financial Institutions cannot become the property of the person taking the loan. Such loans retain the character of public money given in a fiduciary capacity as entrustment by the public. The natural circulations of the public money cannot be blocked by frivolous litigations by the defaulters.

9. We find no merit in the writ petitions.

10. In the result, both the writ petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

(M.M.S., J.) (R.H., J.)
.09.2020

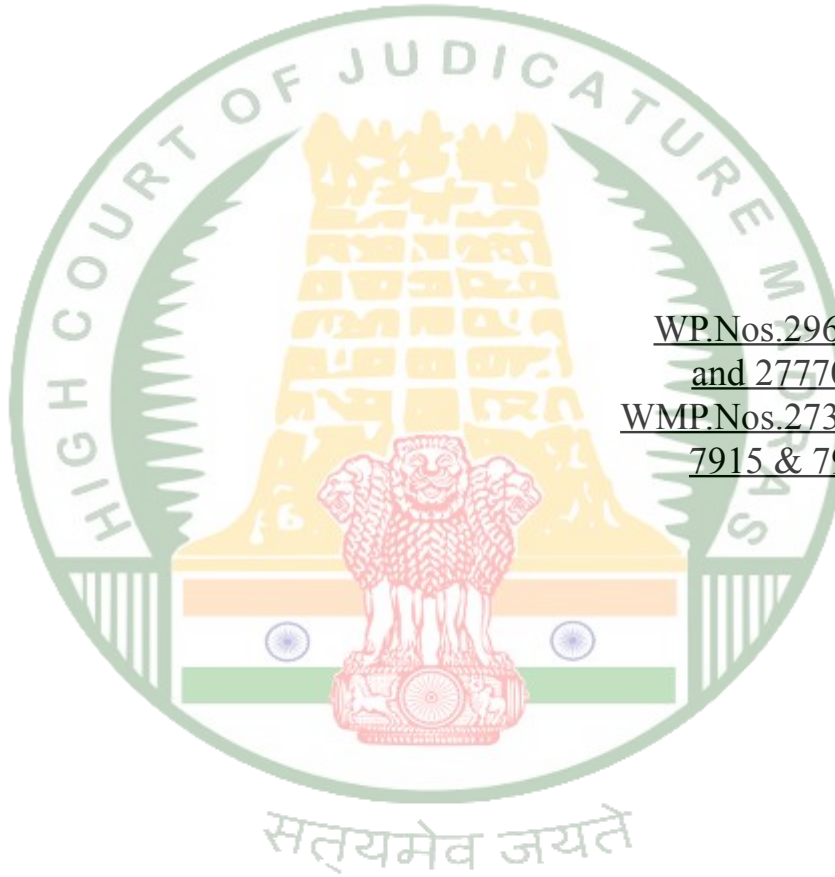
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and
R.HEMALATHA, J.

Mbi/lbm



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