

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

AND

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.34706 of 2019
and W.P.No. 5673 of 2020

Minor D.Chandrika,
Rep. by Maternal Grandmother
Subulakshmi

... Petitioner
in both WPs

Vs

1.The Authorized Officer,
M/s.Central Bank of India,
Rep. by its Authorized Officer,
Regional Officer,
#14/15 - V.H.Road,
Coimbatore - 107.

2.The District Collector,
Executive Magistrate,
Coimbatore - 107.

3.P.S.Dharmalingam

4.D.Jayanthi

... Respondents
in both WPs

PRAYER: Writ Petitions filed under 226 of the Constitution of India to issue a writ of certiorari calling for the records pertaining to AIR(SA)261/2019 on the file of Debt Recovery Appellate Tribunal dated 20.09.2019 at Chennai and quash the same.

For Petitioner
in both WPs : Mr.J.R.Prabhakaran

For Respondents
in both WPs : Mr.M.L.Ganesh for R1
: Mr.G.K.Muthukumar, Spl GP
for R2

COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH,J)

Writ petitions have been preferred by the petitioner challenging the order passed by Debt Recovery Appellate Tribunal

by which she was asked to deposit 50% of the amount payable to the first respondent.

2. The first respondent filed O.A before the Debts Recovery Tribunal, Coimbatore in O.A.No.428 of 2015 for recovery of a sum of Rs.2,93,15,544/-. The said application filed was allowed on 15.06.2016 and thus become final. In the said application, respondents 3 and 4 were the parties.

3. The petitioner is the daughter of respondents 3 and 4. Claiming that without her consent and against her interest they have mortgaged the property in which she has got a share. She filed an application before the DRT. The DRT refused to entertain the application and, therefore, the petitioner preferred the appeal. As a pre-condition, the DRAT, directed the petitioner to pay 50% of the amount payable. Challenging the same and for a consequential direction to the DRAT to restore the appeal, the present writ petitions have been filed.

4. The learned counsel appearing for the petitioner submitted that Section 21 of The Recovery of Debts and Bankruptcy Act, 1993 merely says that the amount as determined by the Tribunal. As no amount has been determined, the petitioner cannot be asked to pay 50% of the amount payable otherwise by respondents 3 and 4. The petitioner has got 50% share in the property mortgaged. The order passed by DRT is not one on merit and, therefore, the order requires interference.

5. The learned counsel appearing for the first respondent submitted that O.A.No.428 of 2015 has been allowed. The natural guardians are still alive and, therefore, the writ petitions filed and also the application filed are not maintainable. There was a registered partition sale deed executed on 17.11.1997. Therefore, the petitioner cannot claim any right. The respondent/Bank has already taken possession of the secured property. Hence, the writ petitions will have to be dismissed.

6. We do not propose to go into the merits of the case as the issue involved before us is very limited. The appeal filed by the petitioner was entertained on condition. Therefore, the only question for consideration is as to whether such an order under challenge is appropriate or not. The petitioner does not want to set aside the SARFAESI proceedings rather, she claims the share in the property which has been mortgaged and brought for sale. It appears that the sale certificate has already been issued. However, we do not want to go into the said issue.

7. The Tribunal, may not be correct, in our considered view, in asking the petitioner to pay 50% of the amount payable to the first respondent in total. The very claim of the petitioner is

only 50% of the mortgaged property. Therefore, of this amount, a certain percentage will have to be directed to be made though the learned counsel appearing for the petitioner submitted that Section 21 of the Act only says that 50% of the amount of debt so due as determined by the Tribunal, the technical interpretation cannot be given. The amount payable is one in the decree that has become final. However, as we stated, we are only concerned with the case as projected by the petitioner. In other words, regarding the liability of respondents 3 and 4, there is absolutely no issue involved. The petitioner also cannot challenge the liability especially when respondents 3 and 4 have accepted it. We are of the view that the Karta has the right of alienation of the Coparcenary property.

8. Thus, we are of the view that the Tribunal ought not to have directed 50% of the total amount payable. We are also inclined to press into service Section 21 of the Act on the facts and circumstances of the case. This we do so for the reason that the subject matter of the appeal is very limited.

9. In such view of the matter, the order passed by the appellate Tribunal stands modified to the effect that the petitioner shall pay a sum of Rs.35 lakhs which would roughly come to 25% of the 50% share claim of the petitioner in the property auctioned. We also pass this order taking into consideration the fact that the property has been auctioned at a sum of Rs. 1.46 crores, out of the said amount, Rs.60 lakhs has already been received by the Bank. The petitioner is given a period of six weeks from the date of receipt of a copy of this order to deposit Rs.35 lakhs. On such receipt, the consequential order passed by the appellate authority stands set aside and the same will have to be decided on merit.

10. The writ petitions stand disposed of. However, we make it clear that the DRAT is directed to dispose of the appeal on its own merits without being influenced by any of the observations made by this Court. No costs. Consequently, connected W.M.P.Nos. 6611, 6614 of 2020 and 35462 of 2019 are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssm

To

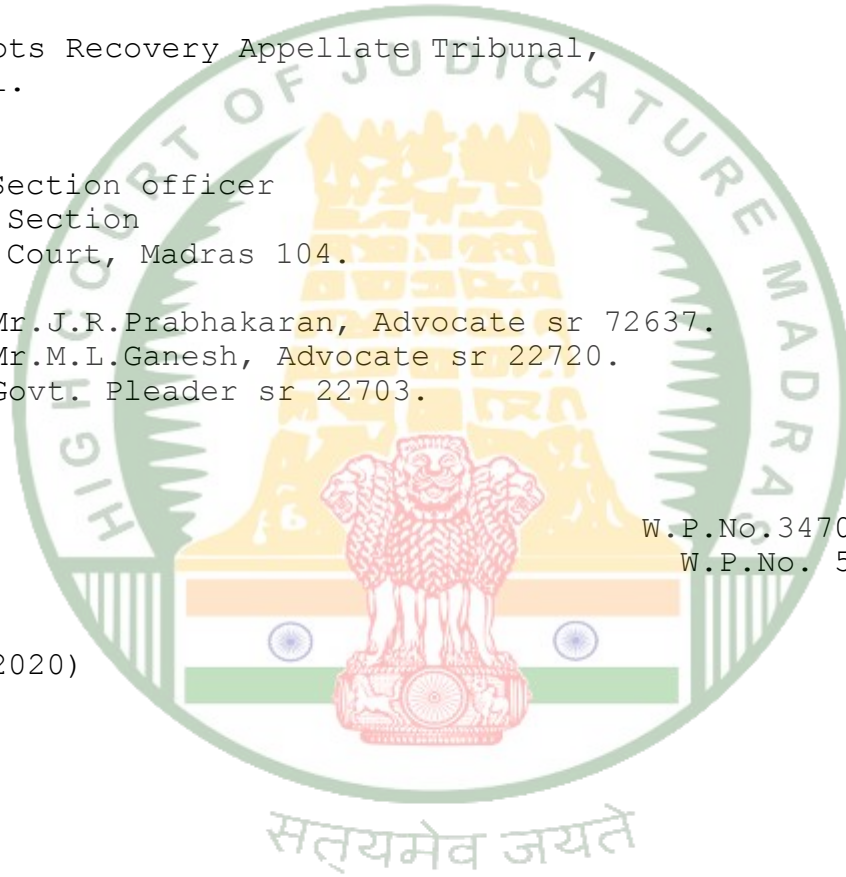
1. The Authorized Officer,
M/s. Central Bank of India,
Rep. by its Authorized Officer,
Regional Officer, #14/15 - V.H.Road,
Coimbatore - 107.
2. The District Collector,
Executive Magistrate,
Coimbatore - 107.
3. The Debts Recovery Appellate Tribunal,
Chennai.

Copy to
The Section officer
Writ Section
High Court, Madras 104.

- +1 CC to Mr.J.R.Prabhakaran, Advocate sr 72637.
- +1 CC to Mr.M.L.Ganesh, Advocate sr 22720.
- +1 Cc to Govt. Pleader sr 22703.

W.P.No.34706 of 2019 &
W.P.No. 5673 of 2020

VSNII (CO)
SP(31/07/2020)



WEB COPY