

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P. (NPD) No.430 of 2021

1.M/s.Sinduja & Co.,
rep. by its Proprietrix Amereswari,
No.60, Varadha Muthiappa Street,
1st Floor, Shop No.26,
Chennai – 600 001.

2.Sinduja Enterprises,
Proprietor M.V.Sesha Rao,
No.60, Varadha Muthiappa Street,
1st Floor, Shop No.26,
Chennai – 600 001.

3.M/s.Sinduja Exports,
Proprietor M.V.Sesha Rao,
No.60, Varadha Muthiappa Street,
1st Floor, Shop No.26,
Chennai – 600 001.

... Petitioners

Vs.

1.The Authorised Officer,
UCO Bank,
Chennai Main Branch,
328, Thambu Chetty Street,
Chennai – 600 001.

2.K.Babu

3.B.Surya Baskar

4.B.Aruna Respondents

Prayer: Petition under Article 227 of the Constitution of India against the orders dated 01.02.2021 made in RA(SA) No.6 of 2020 on the file of the Debts Recovery Appellate Tribunal, Chennai confirming the order of Debts Recovery Tribunal-II, Chennai made in S.A.No.71 of 2018.

For Petitioners : Mr.R.Thiagarajan

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The borrowers have failed in their myriad excuses proffered before both the Debts Recovery Tribunal and the Debt Recovery Appellate Tribunal and now seek to approach this Court with the object of gaining more time and delaying the closure of the transaction with the bank.

2. The facts have been lucidly indicated in the order impugned dated February 1, 2021 passed by the appellate tribunal. The petitioners obtained substantial credit facilities from UCO Bank in 2012 upon mortgaging their individual properties as security. A demand notice was issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on April 19, 2017 on the petitioners. The petitioners claim that the mandatory time required to be given under Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 was not followed. However, such complaint is of no significance since the bank had enlarged the time for repayment because of the floods in 2015 and allowed a moratorium. It appears that the petitioners lodged a claim with the insurance company on account of the floods, but the claim was declined. Subsequent notices were issued to the petitioners, who are all related parties, but the excuse before the Debts Recovery Tribunal was that some of the petitioners had received notices in their capacity as borrowers but may not have received notices in their avatar as mortgagors.

3. The Debts Recovery Tribunal, quite appropriately, saw through the game that the petitioners were attempting to play. In the mean time, the auction sale was conducted, first on November 10, 2017 and, subsequently, for the remainder on March 13, 2018. Due sale notices were published in newspapers. The sale was finalised for a sum of Rs.1,30,08,000/-.

4. The auction-purchaser, the second respondent before the appellate tribunal, paid 25% of the bid amount immediately upon the bid being accepted. The balance amount was paid on April 3, 2018 and a sale certificate was issued by the bank in favour of the auction-purchaser. The auction-purchaser demonstrated before the tribunal that it had purchased the property upon obtaining interest-bearing loans from financial institutions.

5. The grievance of the petitioners herein before the appellate forum was that if the bank could grant time to the auction-purchaser to put in the balance consideration, the bank ought to have granted the present petitioners time to repay the amount and not put the properties up for auction.

6. The appellate tribunal considered the matter in appropriate perspective and held that if there was any delay on the part of the auction-purchaser to deposit the amount, it was within the discretion of the secured creditor to charge interest and receive the delayed payment. The appellate tribunal noticed that there was a minor delay since the sale had been concluded on March 13, 2018 and the payment was completed by the auction-purchaser by or about April 3, 2018. Since the appellate tribunal noticed that the sale certificate had been issued and that the transaction as between the secured creditor bank and the auction-purchaser had been done and dusted, there was no scope for any relief to be given to the petitioners herein or for the entire auction to be undone.

7. There is no infirmity in the order passed by the appellate tribunal. The appellate tribunal approached the matter in the proper perspective, took relevant considerations into account and dealt with the contentions raised by the petitioners herein. There does not appear to be any illegality or material irregularity in the order impugned.

8. It is possible that the petitioners herein may have offered to pay a substantial amount immediately upon receipt of the notice and may have deposited the same in a suspense account and may have sought to repay the balance within a short period of time. In such a scenario, the Debts Recovery Tribunal or the Debt Recovery Appellate Tribunal may have taken such factors into consideration and may have exercised their discretion in favour of the borrowers. However, the conduct of the present set of borrowers is not such as could have permitted either the Debts Recovery Tribunal or the Debt Recovery Appellate Tribunal the exercise of any discretion in their favour.

9. For the reasons aforesaid C.R.P. (NPD) No.430 of 2021 is dismissed. There will be no order as to costs. Consequently, C.M.P.Nos.3718 and 3719 of 2021 are closed.

10. In the event the respondent bank, upon obtaining the pre-deposit made by the petitioners herein, finds that there is any amount which is held by the bank to the credit of the petitioners herein, such bank will be obliged to refund the amount in accordance

with law, failing which the petitioners herein may file an appropriate suit before a civil forum in such regard.

(S.B., CJ.) (S.K.R., J.)
01.03.2021

Index : No
bbr

To

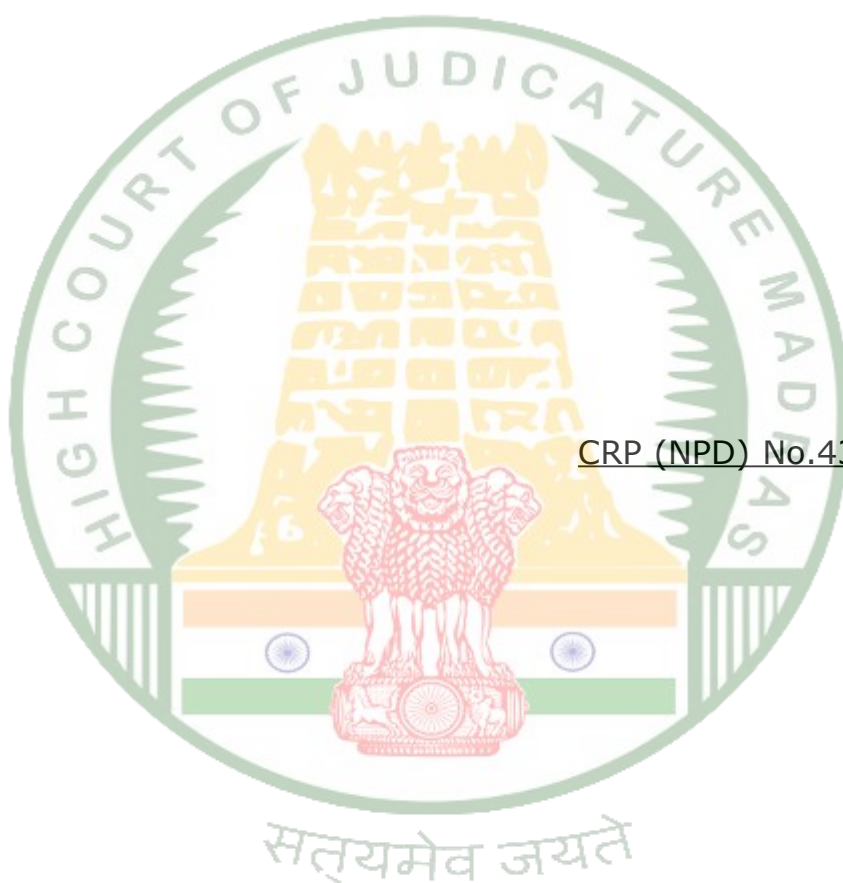
The Authorised Officer,
UCO Bank,
Chennai Main Branch,
328, Thambu Chetty Street,
Chennai – 600 001.



WEB COPY

THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

bbr



CRP (NPD) No.430 of 2021

WEB COPY 01.03.2021