

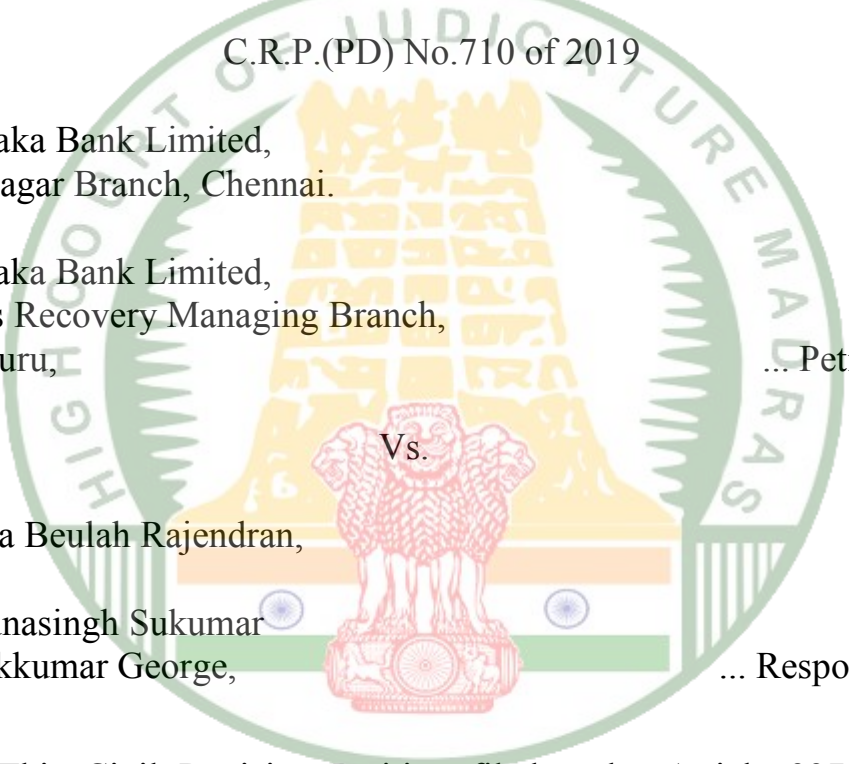
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.710 of 2019

- 
1. Karnataka Bank Limited,
Anna Nagar Branch, Chennai.
2. Karnataka Bank Limited,
Assests Recovery Managing Branch,
Bangaluru, ... Petitioners
- Vs.
1. Hepsiba Beulah Rajendran,
2. Mr. Gunasingh Sukumar
@ Sukkumar George, ... Respondents

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India praying for to set aside the impugned order and decreetal order dated 01.10.2018 made in I.A. No.17 of 2018 in O.S. No.57 of 2015 on the file of the learned III Additional District Judge, Thiruvallur at Poonamallee.

For Petitioners ... Mr. A. Arumugam

For Respondents ... M/s. Nathan and Associates

ORDER

This Civil Revision Petition under Article 227 of the Constitution of India has been filed praying for to set aside the impugned order and decreetal order dated 01.10.2018 made in I.A. No.17 of 2018 in O.S. No.57 of 2015 on the file of the learned III Additional District Judge, Thiruvallur at Poonamallee.

2. The case of the petitioners is that the respondents herein have originally filed a suit in O.S. No.57 of 2015 on the file of III Additional District Judge, Thiruvallur, at Poonamallee as against Mr.Rajkumar and 9 others seeking for a partition of the suit property and other reliefs wherein these revision petitioners were not made as parties. After having came to the knowledge of the order in O.A. No.35 of 2016 filed by the petitioners on the file of the Debt Recovery Tribunal-I, Chennai, the respondents have filed an application in I.A. No.131 of 2016 in the above suit in O.S. No.57 of 2015 to implead these Revision petitioners herein as proposed 11th and 12th defendants in the above suit. The same was allowed by order dated 18.09.2017 of the Court below thereby the Revision petitioners have been impleaded in the suit as Defendants 11 &

12 therein even though it was resisted by them on the various grounds. Pending suit, the petitioners herein have filed I.A. No.17 of 2018 on its file to reject the plaint questioning the maintainability and the Trial Court by order dated 01.10.2018 has dismissed the same stating that the suit is barred by law is not applicable to the present facts and circumstances of the case. Challenging the same, this Civil Revision has been filed.

3. The learned counsel for the petitioner would submit that the third defendant in the above suit had availed over draft loan as against the suit property from the 1st petitioner bank. The same was not duly repaid in terms of the loan agreement. Hence, the 1st petitioner has filed a case in O.S. No.35 of 2016 on the file of the Debt Recovery Tribunal-I, Chennai for recovery of the said loan amount and other relief including bringing the suit schedule property for sale. The said O.A. NO.35 of 2016 was allowed by order dated 30.08.2016 to execute as prayed for. After impleading them as the parties in the suit, the petitioners have filed I.A. No.17 of 2018 having mentioned the order in O.A. No.35 of 2016 on the file of DRT-I, Chennai. The same was dismissed by order dated 01.10.2018 without considering the specific bar of Civil Court under the

provisions of Section 9 CPC and Section 18 of the Recovery Debts due to Banks and Financial Institutions Act, 1993 in respect of subject matters covered under Section 17 of the Recovery Debts Due to Banks and Financial Institutions Act, 1993. It has been further specifically pointed out by the learned counsel for the petitioners that pending the suit, the revision petitioner could not proceed further to avail the benefit of the order in O.A. No.35 of 2016 on the file of the DRT-I, Chennai since no one came forward to purchase the suit schedule property.

4. Further, in the affidavit filed by the revision petitioners, it has been stated in para No. 6 that their claim is only with respect to the relief granted in order dated 30.07.2016 made in O.A. No.35 of 2016 on the file of the DRT-I, Chennai and restricted to the same. It is categorically made clear therein that they would not claim any thing more than relief in O.A. No.35 of 2016 passed by the DRT-I, Chennai, since they have no claim or any interest in other suit properties or portion thereof or as against the respondents herein except the subject matter of schedule mentioned property referred to in O.S. No.35 of 2016 on the file of DRT-I, Chennai. The petitioners have prayed this Court to pass an

appropriate and suitable order for ends of justice protecting the interest of the revision petitioners herein regarding the secured property obtained under the memorandum of deposit of tile deed dated 07.03.2009 executed by the 3rd defendant in the suit in O.S. No.57 of 2015 on the file of the III Additional District Court, Poonamallee.

5. The learned counsel for the respondents would submit that since Principal of power of attorney, Late. G.Jayasingh Gnankan who was one of partner in M/s.Golden Bricks and Tiles Co., was given power with regard to the suit schedule property, on behalf of other three partners of the said company, had clandestinely executed the suit schedule property in favour of the defendants in contrary to the powers given to him and the 3rd defendant in the suit based upon the above said settlement deed have created lien in respect of portion of the suit property by getting loan from the petitioners herein and therefore, the respondents have challenged very execution of settlement deeds as null and void and have sought for the relief of partition. Therefore, in such case the suit filed by the respondents before the Trial Court is maintainable.

6. Heard, the learned counsel for the petitioners and the respondents as well as perused the material available on record.

7. Having considered facts and circumstances of the case and submissions made by both counsel appearing on behalf of parties, this Court is of the view that despite the favourable order dated 30.08.2016 made in O.A. No.35 of 2016 on the file of the DRT-I, Chennai, the petitioners are unable to utilize the benefit of the aforesaid order to recover the loan amount by way of bringing the specific suit property for sale as per the order of DRT-I, Chennai since the defendants/respondents herein are claiming partition in the suit schedule property which has been sought by the petitioner bank herein as relief in the prayer of O.A. No.35 of 2016, by way of filing the suit in O.S. No.57 of 2015 on the file of the III Additional District Judge, Tiruvallur at Poonamalle and the same is pending from the year 2015 without disposal. Further, the issue cannot be attained finality without disposal of the suit. Hence, in the interest of justice and considering the affidavit filed by the petitioners herein, this Court deems it fit and appropriate to direct Trial Court to dispose of the suit in O.S. No.57 of 2015 pending from the year 2015, by proceeding

with the Trial, as expeditiously as possible preferably within one year from the date of receipt of copy of this order.

7. With the aforesaid direction, the Civil Revision petitions is disposed of. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

29.03.2021

Lbm

Index: Yes/No.
Speaking/Non-Speaking order
Internet: Yes/No.

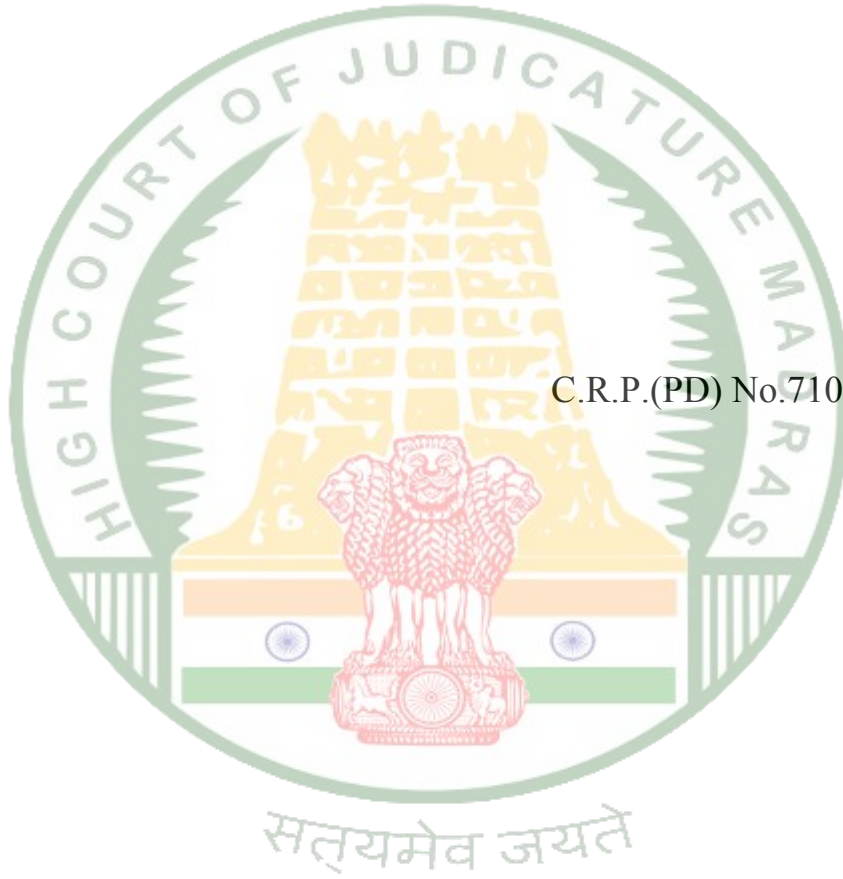
To:
The III Additional District Judge,
Thiruvallur at Poonamallee.

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V.BHAVANI SUBBAROYAN, J.,

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