IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2021

Pronounced on : 23.04.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.4427 of 2015 and
MP.No.1 of 2015 & CMP.No.5247 of 2021

1.M/s.Jersey Developers (P) Limited,
Q-46, III Main Road,
Anna Nagar,
Chennai – 600 040
2.Dr.M.K.Zawahir
3.Dr.Rais J.Zawahir ..Petitioners

Vs.

Canara Bank,
Vepery Branch,
Chennai – 600 112
Represented by its Manager ..Respondent

PRAYER:

The Civil Revision Petition is filed under Section 115 of CPC against the fair order and decreetal order of the II Additional City Civil Judge, Chennai dismissing IA.No.6778 of 2014 in OS.No.3749 of 2003 dated 17.03.2015.

For Petitioners : Mr.C.A.Thiagarajan

For Respondent : Mr.S.Kesavan

ORDER

This Civil Revision Petition is directed as against the fair order and decreetal order of the II Additional City Civil Judge, Chennai dismissing IA.No.6778 of 2014 in OS.No.3749 of 2003 dated 17.03.2015, thereby dismissing the petition to set aside the exparte decree.

2. The learned counsel for the petitioners would submit that the petitioners are the defendants 1 to 3 in the suit filed by the respondent herein for recovery of money. The second petitioner is a doctor practising in USA. He is staying along with family members in USA for the past 40 years. While being so, one, N.Sundara Raman floated the company on behalf of the second petitioner herein and approached the respondent for a loan to buy machinery. The machineries were purchased and the same were sent to various customers. Thereafter it was informed that there is loss in the business and as such the machineries were sold out. From the sale consideration the loan amount was paid to the respondent and there is no dues to the bank. In fact, the said petitioner also sold his house at No.Q46, 3rd Main Road, Anna Nagar in the year 2002 and no one was there to receive any communication sent to that address.

2.1 He further submitted that on 19.02.2014, the second petitioner came to India to visit his friends and relatives at Ramanathapuram. When he returned back to Chennai, the watchman of the house situated at No.Q46, 3rd Main Road, Anna Nagar handed over the cover. Thereafter, he came to know that the recovery certificate being issued from the Debt Recovery Tribunal directing him to pay a sum of Rs.47,21,320.53/-. In fact, the petitioners never received any summons from the proceedings. The other defendants also are staying in USA and they have not received any notice. Immediately, he approached his counsel and filed petition. In fact he already deposited a sum of Rs.31,34,000/- in Kamadhenu Deposit Scheme in the respondent bank. However, the said amount was not considered and adjusted towards some other loan account which is not connected to the petitioners, thereby the respondent committed fraud and obtained an exparte order. He further submitted that there is no delay in filing petition to set aside the exparte decree, since immediately he filed petition to set aside the exparte decree after came to his knowledge.

2.2 The learned counsel for the petitioners further submitted that when the suit was decreed by the civil court and the same court has only got jurisdiction to set aside the exparte decree. Therefore, the Debts Recovery Tribunal has no jurisdiction to entertain the petition to set aside the exparte decree or to issue recovery certificate. In support of his contention he relied upon the judgment of this Court in the case of ***V.K.Rajeswari and another Vs. UCO Bank and others*** in CRP.NPD.No.1120 of 2011 dated 04.07.2012.

3. Per contra, the learned counsel for the respondent would submit that the respondent filed suit in OS.No.3749 of 2003 and the same was decreed. In pursuant to the decree, the recovery certificate was issued by the Debts Recovery Tribunal-III, Chennai in DRC.No.127 of 2013. The petitioners 2 and 3 are the Directors of the first petitioner herein. They availed loan of Rs.10 lakhs to purchase machinery on execution of loan documents. Those machineries have been hypothecated to and in favour of the respondent Bank. They also executed personal guarantee agreement on 25.10.1995. Thereafter, they miserably failed to comply the repayment schedule and they committed default in payment of instalments. Therefore, the respondent issued legal notice on 02.06.2000. It was duly received by the petitioners and they did not choose to send any reply. Therefore, the

respondent had no other option than to file suit for recovery of money together with interest. It is true that summons and notice were sent to the address given by the petitioners, i.e. No.Q46, 3rd Main Road, Anna Nagar, Chennai. They were returned as unclaimed. Even then, the court below ordered substituted service by paper publication. It was effected and even then no one appeared before the court below and they were set exparte and exparte decree was passed.

3.1 He further submitted that in pursuant to the exparte decree, since it is more than Rs.10 lakhs, the Debt Recovery Tribunal is having jurisdiction to entertain the application to issue recovery certificate under Section 31A of Recovery of Debts Due to Banks and Financial Institution Act, 1993. Accordingly, the respondent filed application in OA.No.15 of 2013 on the file of the Debts Recovery Tribunal-III, Chennai and issued recovery certificate No.127 of 2013. At that juncture, the petitioners filed petition to set aside the exparte decree dated 12.02.2004, that too without any condone delay petition after period of 10 years. The court below rightly dismissed the petition and it does not warrant any interference by this Court. He further submitted that in respect of the fixed deposit of Rs.31,34,000/- is concerned, immediately after deposit of the said amount, the petitioners availed loan against fixed deposit under value security loan scheme. Therefore the fixed deposit was adjusted towards the said loan and remaining amount was credited to the account of the second petitioner herein. He further submitted that he came with cock and bull story stating that at the time of his visit to India he was handed over the recovery certificate by the watchman of the premises at No.Q46, 3rd Main Road, Anna Nagar, Chennai. He further submitted that whatever the issue raised in the petition is only between his friends and others in respect of selling the machineries and other facts. Those facts are nothing to do with the respondent since the petitioners only availed loan as mentioned above and they are liable to repay the same. There is absolutely no cause to set aside the exparte decree as such he prayed for dismissal of the civil revision petition. The learned counsel for the respondent, in support of the jurisdiction is concerned, relied upon the following judgments:

(i) V.K.Thyagarajan Vs. Syndicate Bank Ors in CRP.No.2768 of 1998

(ii) M.Vasanthalakshmi and another Vs. Indian Bank and others dated 17.10.2000 of this Court

(iii) M/s.National Rubber Industries and another Vs. State Bank of India and another reported in 2000 (AIR) Patna 203

(iv) Pritpal Singh Vs. State Bank of India and Ors reported in (2005) 139 PLR 453

(v) Punjab National Bank, Dasuya Vs. Chajju Ram reported in 2000 AIR (SC) 2671

4. Heard, Mr.C.A.Thiagarajan, the learned counsel for the petitioners and Mr.S.Kesavan, the learned counsel for the respondent.

5. The petitioners are the defendants in the suit filed by the respondent for recovery of money. The first petitioner is a private limited company and the second and third defendants are its Directors. They availed term loan to the tune of Rs.10 lakhs from the respondent on 25.10.1995 to purchase machineries. Accordingly, the deed of hypothecation in respect of machineries and vehicles were executed on 25.10.1995. They also executed letter of undertaking on the same day and thereafter they defaulted payment of loan. Therefore, the respondent filed suit for recovery of money to the tune of Rs.9,93,812/-. Admittedly, the

second and third petitioners are residing in USA. The house owned by the second petitioner herein is situated at No.Q46, 3rd Main Road, Anna Nagar, Chennai was sold out in the year 2002 itself. Thereafter, no communication from the petitioners in respect of communication address in Chennai to the respondent herein. Therefore, the respondent filed suit and suit summons were sent to the address given by the petitioners. Those summons were returned unclaimed and as such substituted service was ordered. Accordingly, the respondent effected paper publication and the petitioners were set exparte and exparte decree was passed on 12.02.2004. In pursuant to the exparte decree, the Debts Recovery Tribunal-III, Chennai issued recovery certificate in RC.No.127 of 2013.

6. In fact, the petitioners deposited a sum of Rs.31,34,000/- on 26.08.1994 by way of fixed deposit. On the fixed deposit under the scheme of value security loan, availed loan against fixed deposit. Thereafter, fixed deposit amount was adjusted towards value security loan and the same was duly informed to the petitioners by the respondent herein. In fact, when the second petitioner visited respondent's bank on 04.10.2004, it was duly informed to him about the adjustment to the value

security loan availed on the fixed deposit. After adjustment of the loan, the balance amount was duly transferred to the savings bank account maintained by the petitioners on 01.03.1995. Accordingly, it was endorsed in the ledger and closed the account. Therefore, now it cannot be said that the fixed deposit made by the petitioners not returned to the petitioners by the respondent. That apart, the petitioners filed petition to set aside the exparte order without any condone delay petition. Though it was numbered and ordered on merits, the petitioners failed to mention sufficient cause for the delay in petition to set aside the exparte decree. Exparte decree was passed on 12.02.2004. When the second petitioner visited India and had gone to Ramanathapuram, thereafter when he visited house at No.Q46, 3rd Main Road, Anna Nagar, Chennai, the watchman of the said house handed over the cover, which was sent by the Debts Recovery Tribunal. It is unbelievable statement and as rightly pointed by the learned counsel for the respondent, it is nothing but cock and bull story and only to maintain the petition to set aside the exparte decree without condone delay of petition. Therefore, the petitioners failed to state any sufficient cause to consider the petition to set aside the exparte decree.

7. Admittedly, the machineries are also sold out and no amount was paid towards loan in favour of the respondent herein. While admitting the present civil revision petition, this Court imposed condition and the said condition was only complied with by the petitioners by depositing 50% of the decree amount. Though the learned counsel for the petitioners submitted in respect of jurisdiction of the Debts Recovery Tribunal, on perusal of the order passed by the court below, it does not refer any jurisdiction point. The petition to set aside the exparte decree was dismissed only on merits. Therefore, there is nothing to go into the ground of jurisdiction of Debts Recovery Tribunal. Hence, this Court finds no irregularity of infirmity in the order passed by the court below.

Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

23.04.2021

Speaking/Non-speaking order
Index : Yes/No
lok

To

The II Additional Judge,
City Civil Court, Chennai

G.K.ILANTHIRAIYAN,J.

lok

CRP.NPD.No.4427 of 2015

23.04.2021