IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

L.P.A.No.1 of 2012
and
M.P.No.1 of 2012

The Branch Manager,
Indian Bank,
Assets Recovery Management
Branch - I,
55, Ethiraj Salai,
Egmore, Chennai - 600 008.
(impleaded as per order dated 25.7.2011
in Sub A.No.334 of 2011) ...Appellant

Vs

1. W.J.Subramaniam (Deceased)

2. Tmt.Kakarla Usha, IAS,
Collector of Chennai,
Chennai Collectorate,
Chennai - 600 001.

3. S.Narayanan
S/o. Late W.J.Subramaniam

4. S.Maheswari
D/o. Late W.J.Subramaniam
5. S.Uma Devi
D/o. Late W.J.Subramaniam ...Respondents

(R3 to R5 brought on record as LRs
of the deceased R1 vide order of Court
dated 19.11.2019 made in CMP.Nos.
313 to 315 of 2017 in LPA.No.1 of 2012)

APPEAL under Clause 15 of Letters Patent to set aside the order dated 08.09.2011 passed by His Lordship Hon'ble Mr.Justice K.Chandru in Contempt Petition No.1320 of 2010.

Petition filed under Section 11 of the Contempt of Courts Act to punish the respondent for having disobeyed the orders of this Hon'ble Court dated 10.02.2004 passed in WP.No.2403 of 2004 filed under Article 226 of the Constitution of India praying for the issue of Writ of Mandamus directing the respondent to recover a sum of Rs.1,08,940/-from the Management of Southern Security Services, 9th Street, Choolaimedu Chennai-94 and pay the same to the petitioner as per provisions of the Revenue Recovery Act.

For Appellant : Mr.Jayesh B.Dolia assisted by Mr.V.Kalayanaraman

For Respondents: Mr.V.Elango, GP for R2

Mr.V.B.Thirupathi Kumar for R3 to R5

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal, by the Branch Manager, Indian Bank, Assets Recovery Management Branch - I, Chennai - 600008, is directed against the order and direction issued in Contempt Petition No.1320 of 2010 filed by W.J.Subramaniam, who is the first respondent in this appeal, who is since deceased, and the legal heirs have been impleaded as respondents in the place of the deceased first respondent. The second respondent in this appeal is the Collector of Chennai.

2. We have heard Mr.Jeyash B.Dolia, assisted by Mr.V.Kalyanaraman, learned counsel for the appellant, Mr.V.Elango, learned Government Pleader for the second respondent and Mr.V.B.Thirupathi Kumar, learned counsel for the respondents 3 to 5.

3. The appellant-Bank has filed this appeal on the ground that the deceased first respondent was an employee of an individual, who borrowed a loan from the appellant-Bank and defaulted in re-payment. Consequently, the Bank initiated recovery proceedings and proceeded against the secured asset of the first respondent's employer. It appears that the first respondent had filed a computation petition before the Principal Labour Court under Section 33-C(2) of the Industrial Disputes Act to compute the wages payable to him by his employer. The Principal Labour Court, by order dated 28.11.1995, computed the wages payable. Since the amount could not be recovered, the deceased first respondent approached the District Collector of

Chennai to initiate recovery proceedings by resorting to the provisions of the Revenue Recovery Act.

4. The Government, vide G.O.Nos.1004 and 1005 dated 19.11.2002, directed the District Collector, Chennai to recover a sum of Rs.39,700/- and Rs.69,240/- from the first respondent's employer. Though such a direction was issued by the Government to the District Collector, it appears that the amount could not be recovered, which compelled the first respondent to file a writ petition in W.P.No.2403 of 2004, praying for a direction to the District Collector, Chennai to recover a sum of Rs.1,08,940/- from the Management of Southern Security Services and pay the same to him by invoking the provisions of the Revenue Recovery Act. The writ petition was disposed of by order dated 10.02.2004, directing the District Collector, Chennai to recovery the amount and pay the same to the first respondent.

5. Since this direction was not complied with by the District Collector, the first respondent filed Contempt Petition No.1320 of 2010, in which, the District Collector of Chennai was the sole respondent. Subsequently, Sub Application No.334 of 2011 was filed seeking to implead the appellant-Bank as the second respondent in the contempt petition. The second respondent-Bank vehemently opposed such a prayer and submitted that the Bank, as a secured creditor, was entitled to proceed against the defaulter and more particularly when the appeal filed by the borrower under the SARFAESI Act in S.A.No.51 of 2010 before the concerned Debts Recovery Tribunal was dismissed on 16.08.2010 and parallelly, the borrower approached the Lok Adalat on 30.08.2010 and agreed to pay the amount to the Bank. However, without fulfilling the undertaking, the borrower filed an application before the Debts Recovery Appellate Tribunal in M.A.No.529 of 2010 and obtained an ex-parte order of injunction against the appellant-Bank, which was subsequently vacated by the Appellate Tribunal in I.A.No. 1444 of 2010. It was further submitted that the property was brought for auction on 12.11.2010 under the provisions of the SARFAESI Act with a reserve price of Rs.155.00 lakhs and the same was sold in pubic auction for a sum of Rs.156.50 lakhs and the sale was confirmed in favour of the purchaser on 15.11.2010.

6. It is further stated that the borrower had filed S.A.No.286 of 2010 before the concerned Debts Recovery Tribunal challenging the Sale Certificate and obtained certain interim orders. The appellant-Bank, in the counter affidavit, which was filed in 2011 in the contempt petition, would submit that on account of the stay obtained by the borrower, they were unable to issue Sale Certificate in favour of the purchaser. It is not clear as to what is the present position of the matter.

7. Be that as it may, the appellant-Bank has specifically stated that even after appropriation of the entire sale consideration of Rs.156.50 lakhs realized on account of sale of the property, a sum of Rs.1416.22 lakhs still remains unpaid by the borrower as on 31.03.2011. Though such a stand was taken by the appellant-Bank before the Contempt Court, the Bank was impleaded as the second respondent in the Contempt Petition. The Court, after noting all the facts, which was placed on record by the appellant-Bank, opined that the entire amount realized from the sale could not be appropriated towards the contractual dues of the Bank and the claim of workmen had a priority charge over the property as against the contractual dues to the appellant-Bank. Accordingly, in exercise of the extraordinary jurisdiction of the Court, the appellant-Bank was directed to pay the first respondent a sum of Rs.1,08,940/-. Aggrieved by such direction, the appellant is before this Court.

8. The legal position as on date is that the secured creditor enjoys priority over all debts including crown debts. This issue came up for consideration before the Hon'ble Full Bench of this Court in the case of Assistant Commissioner (CT) Vs. The Indian Overseas Bank and another in W.P.No.2675 of 2011, etc. batch dated 10.11.2016, to which one of us (TSSJ) was a party, wherein this Court had an occasion to consider a similar issue, as to whether the taxes due to the Commercial Taxes Department would have preference over the interest of the secured creditor, wherein the Court took a view in favour of the secured creditor/Bank. The operative portion of the order reads as follows:

> "2.We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-
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> ''31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.
>
> Explanation. - For the purposes of this section, it is hereby clarified that on

or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code.''

3.There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with ''notwithstanding'' clause and has come into force from 01.09.2016.

4.The law having now come into force, naturally it would govern the rights of the parties in respect of even a lis pending.

5.The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.

6.In so far as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of Section 31B, as it includes ''secured debts due and payable to them by sale of assets over which security interest is created''.

7.We, thus, answer the aforesaid reference accordingly.

8.The matters be placed before the roster Division Bench for dealing with the individual cases."

9. Thus, the legal position having been settled in the aforementioned decision of the Hon'ble Full Bench of this Court, the view expressed in the impugned order does not lay down the correct legal principle. Furthermore, there is no privity between the appellant-Bank and the deceased first respondent, who was admittedly an employee under the Management of Southern Security Services, which was the borrower of the loan from the appellant-Bank. Thus, we have no hesitation to interfere with the order and direction issued in the impugned order directing the appellant-Bank to pay the sum of Rs.1,08,940/- to the first respondent (since deceased). Therefore, the appeal needs to be allowed in favour of the appellant-Bank.

10. When the appeal came up before us earlier on 07.01.2021, we directed the learned Government Pleader to verify the financial position and assets held by the said M/s.Southern Security Services and directed the office of the District Collector to file a report in that regard. The District Collector, Chennai has filed a status report dated 25.01.2021, wherein it has been stated that the property, which was earlier held by the said M/s.Southern Security Services, was auctioned by the appellant-Bank and the property now belongs to one Mr.Kamala Kannan. Further, the report states that on a field enquiry done by Tahsildar, Egmore, whereabouts of the Company are not known and despite sincere efforts, it could not be traced and therefore, the financial status and assets could not be ascertained.

11. Given the present factual position, we are constrained to consider as to how best the claim made by the first respondent, since deceased, can be met. His legal heirs were brought on record by order dated 19.11.2019 and they have been patiently waiting all these years despite their father having been successful before the Principal Labour Court as early as on 29.11.1992. Thus, we are of the view that while sustaining the arguments of the appellant-Bank and holding that the legal position stands in favour of the appellant-Bank, we are inclined to exercise discretion and compassion in favour of the legal heirs of the deceased first respondent. What prompted us to do so is because of the interim order issued by the Hon'ble Division Bench on 02.02.2012, when the appeal was entertained, which order reads as follows:

"Heard the learned counsel for the petitioner/appellant.

2. There shall be an order of interim Suspension of the Order dated 8.9.2011 made in Contempt Petition No.1320 of 2010 on condition that the petitioner/appellant invests a sum of Rs.1,08,940/- (Rupees One lakh eight thousand nine hundred and forty only) in a Fixed Deposit by way of Re-Investment Plan, in the Indian Bank, High Court Branch, Chennai in the name of Registrar General, High Court, Madras initially for a period of one year and hand-over the Fixed Deposit Receipt to the Registrar General under acknowledgment and such deposit is to be made on or before 15.2.2012, failing which, interim suspension granted shall stand vacated automatically without any further reference to this Court. Notice to the respondents, returnable in two weeks. Private notice is also permitted."

12. In terms of the above direction issued in the miscellaneous petition while entertaining the appeal, the appellant-Bank has invested Rs.1,08,940/- in a fixed deposit by way of Re-investment Plan in the Indian Bank, High Court Branch, Chennai in the name of Registrar General, High Court of Madras, initially for a period of one year and handed over the fixed deposit receipt to the Registrar General under acknowledgment. This amount is still lying in deposit and since it was directed to be invested as a Re-investment Plan, the interest would have accrued. Therefore, by exercising discretion, we are inclined to direct that the amount, which is lying in deposit in the name of Registrar General, High Court of Madras, in terms of the above direction, to be paid over to the legal heirs of the first respondent, namely Mr.S.Narayanan (son), Ms.S.Maheswari and Ms.S.Uma Devi (daughters of the said late Mr.W.J.Subramaniam).

13. In the light of the above, the appeal filed by the appellant-Bank is allowed and the direction issued by the learned Single Bench is set aside. However, for reasons assigned in the preceding paragraph, we exercise discretion and direct that the entire amount lying in deposit together with accrued interest shall be paid over to the three legal heirs mentioned above in equal apportionment. This order shall be implemented by the Registrar General, as expeditiously as possible. In the light of the above direction, it is made clear that there are no more claims against the appellant-Bank by the first respondent

namely the said late Mr.W.J.Subramaniam or his legal heirs, in so far as this litigation is concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

hvk
To

1.The Collector of Chennai,
Chennai Collectorate,
Chennai - 600 001.

Copy to

The Registrar General,
High Court of Madras.

+1 cc to the Government Pleader High Court Madras sr4851

+1 cc to M/s.Aiyar & Dolia Advocate sr5321

L.P.A.No.1 of 2012
and
M.P.No.1 of 2012

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