

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.R.P.(NPD) No.1023 of 2021

1. Vasantha  
2. K.Thillairajan  
3. K.Durgapriya  
4. K.Vivekanandan .. Petitioners

Vs.

1. The Chief Manager,  
Indian Overseas Bank,  
(Previously Bharat Overseas Bank Ltd.,)  
E-104B, 3<sup>rd</sup> Main Road,  
GOCHS Colony,  
Besant Nagar  
Chennai 90.

2. M/s.Kinch Electronics,  
No.101, Royapettah High Road,  
Chennai 600 004  
rep. By its Proprietor Radhasankar.

3. M.Bhaskar .. Respondents

Prayer: Revision Petition filed challenging the order dated 05.04.2021 passed in I.A.No.143 of 2017 in AIR 76 of 2015 on the file of the Debts Recovery Appellate Tribunal, Chennai.

For Petitioners : Mr.V.Raghavachari,  
for Mr.K.S.V.Sethuraman

For Respondents : Mr.F.B.Benjamin George,  
for 1<sup>st</sup> respondent

**ORDER**

(Made by the Hon'ble Chief Justice)

The revision is directed against an order of the Debt Recovery Appellate Tribunal at Chennai passed on April 5, 2021 at the receiving stage of an appeal directed against the refusal by the relevant Debts Recovery Tribunal to restore one or more applications which had been dismissed for default.

2. The petitioners initially give an impression that the order impugned verges on the contumacious since the DRAT had acted in derogation of a previous order of this court that recognised that the petitioners were not liable to make any pre-deposit while preferring the appeal against the DRAT. However, upon the respondent secured creditor pointing out other features of the previous order of this court, it does not appear that the impression sought to be given by the petitioners was appropriate or even fair.

3. In the order of this Court of April 11, 2019, several petitions under Article 227 of the Constitution were taken up and the broad principles were enunciated at paragraph 22 of the judgment pertaining to the requirement of the pre-deposit for preferring an appeal before the DRAT in terms of Section 21 of the Recovery of Debts and Bankruptcy Act, 1993. Clauses (iii) and (vii) of paragraph 22 of the judgment are relevant for the present discussion and, though the petitioners rely on Clause (vii) to submit that they are not liable to make any pre-deposit, it has been rightly pointed out on behalf of the secured creditor that it would be the third clause that would apply to the petitioners:

"(iii) The 3rd parties who had purchased the property either after the date of mortgage or derived/accrued title or right or tenancy right in respect of the property in question or after the initiation of SARFAESI proceedings are liable to make the pre-deposit and they should be treated on par with the borrower and the guarantor as per the provisions of both the Acts for the purpose of making pre-deposit.

(vii) The appellant who has filed an appeal before the Debt Recovery Appellate Tribunal as

against the Interlocutory order passed by the Debts Recovery Tribunal, is not liable to make the pre-deposit if the liability is not determined by the Debts Recovery Tribunal in the interlocutory order."

4. There is no dispute that the petitioners were some of several persons who purchased the mortgaged property after the creation of the mortgage in favour of the secured creditor herein, though at a time when no proceedings may have been pending in respect of the mortgage. Despite the petitioners herein claiming that the petitioners had no knowledge of the mortgage, once it is evident that the petitioners' transferor had earlier transferred the property by way of mortgage, the petitioners would step into the shoes of the mortgagor. Accordingly, it was the third clause in paragraph 22 of the earlier judgment that was the more suited to the petitioners herein than the seventh clause thereof.

5. On this ground, the petitioners contend that the order carried in appeal has to be regarded as an interlocutory order since the main matter was not challenged and it was only the dismissal of the restoration application that had been challenged. Such submission is

exceptionable and cannot be accepted.

6. When the debt has crystallised as against the borrower, upon due adjudication, and a third party seeks to assert a post-mortgage right in respect of the mortgaged property, the liability of the mortgagor fastens to such person. Of course, in this case, several persons individually purchased parts of the mortgaged property from the mortgagor subsequent to the mortgage being created in favour of the secured creditor and, as such, the extent of their liabilities would have been limited to the extent of the purchase. But, in such a scenario, it cannot be ascertained with mathematical precision as to what percentage of the total property may have been purchased by which purchaser to identify the exact extent of pre-deposit that should be ordered. A rough and ready estimate may be made and if such rough and ready figure does not appear to be completely off the mark, the court would not interfere with the exercise of due authority by a tribunal in such regard.

7. The order impugned dated April 5, 2021 passed by the DRAT is somewhat unclear, but it conveys the sense that the petitioners may

be liable to pay Rs.36 lakh out of the balance due or a substantial part thereof. At the end of the day, it is only a sum of Rs.9 lakh which has been directed to be deposited by the tribunal in two tranches.

8. The order impugned does not call for any interference and the petitioners herein are permitted to make the deposit in two tranches within a fortnight from today and within four weeks from today, respectively. In default, the appeal would stand dismissed. If, however, the deposits are tendered in terms of the present order, the earlier order of the DRAT taking the appeal to be infructuous or dismissed would stand set aside and the appeal may be heard on merits by the DRAT.

C.R.P. (NDP) No.1023 of 2021 is disposed of without any order as to costs. Consequently, C.M.P.No.8154 of 2021 is closed.

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(S.B., CJ.) (P.D.A., J.)  
09.08.2021

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kpl

To:

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