

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE  
AND  
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.NO.12554 OF 2021

M.Janardhanam

.. Petitioner

Vs

1 The Debt Recovery Appellate Tribunal (DRAT)  
Rep.by its Registrar  
4th Floor, Indian Bank Circle Office  
No.55, Ethiraj Salai, Chennai.

2 The Assistant General Manager/  
The Authorised Officer  
State Bank of India  
Stressed Assets Recovery Branch  
Red Cross Building, 2nd Floor, No.32  
Montieth Road, Egmore  
Chennai - 600 008.

3 N.Rajasekar

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the first respondent, viz., Debt Recovery Appellate Tribunal (DRAT) at Chennai, culminating in its impugned common order dated 22.3.2021 passed in R.A.(S.A.) Nos.104 and 105 of 2017 and quash the same.

For Petitioner : Mr.Arun Anbumani

For Respondents : Mr.M.L.Ganesh  
for 2nd respondent

: Mr.E.Omprakash  
Senior Counsel  
for M/s.Karan and Uday  
for 3rd respondent

ORDER

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

This is another instance of a borrower seeking to delay the inevitable and cling on to the property furnished by way of security despite having failed to repay the debt.

2. Indeed, this borrower does not recognise his status as a borrower and seeks to make a distinction between the persons who obtained the credit facilities from the secured creditor and the petitioner herein who furnished the security. In law, however, there is no distinction as even under the Contract Act, 1872 the liability of a guarantor is co-extensive with that of a borrower. Further, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 makes no distinction between a principal debtor and a guarantor and clubs the two together within the fold of the definition of "borrower".

3. The facts are not in much dispute. A loan was obtained from the respondent secured creditor in 2006 to the tune of Rs.55 lakh. A land measuring approximately 3.36 acre was furnished by way of security. The borrowers failed to repay the loan as per the terms and upon the account turning NPA, the secured creditor adopted measures under the Act of 2002. On August 1, 2007, a notice was issued under Section 13(2) of the Act calling upon the debtors to repay a sum of Rs.65,11,681.50p that was outstanding as at July 31, 2007. Upon no repayment being made, a possession notice was issued on September 4, 2008 under Section 13(4) of the Act. The authorised officer of the secured creditor issued a sale notice on October 13, 2010 fixing the date of auction on November 18, 2010.

4. In between, there was a one-time settlement offer that was made by the bank and the borrowers, true to form, played ducks and drakes with the secured creditor after depositing a paltry amount.

5. The secured asset was valued by the secured creditor in May, 2009. The valuation indicated by the government approved valuer and chartered engineer was Rs.1.50 crore as the fair market value and the distress sale value was Rs.1.20 crore.

6. No further valuation of the property was made immediately prior to the sale notice being issued in October, 2010. It is the perceived delay of about 17 months between the preparation of the valuation report and the sale notice that the petitioner sought to urge as his principal ground to assail the auction sale of the property. The property was sold at Rs.2.07 crore. The auction- purchaser is the third respondent herein.

7. There does not appear to be any credible grievance that the petitioner herein was not aware of the initial notice issued by the secured creditor under Section 13(2) of the Act or of the subsequent notice of possession issued under Section 13(4) of the Act. Indeed, it is evident that the petitioner was aware of the impending sale as the petitioner had due knowledge of the sale notice dated October 13, 2010. It is not even the petitioner's case that after noticing the figures indicated in the sale notice of October 13, 2010, the petitioner protested to the secured creditor or its authorised officer regarding the valuation of the land or the reserve price indicated therein. The petitioner did nothing, waited for the auction to be conducted and, thereafter, challenged the auction sale by way of proceedings before the Debts Recovery Tribunal. Even though the principal plank of the petitioner's grievance was that the property had been sold at a gross undervalue, the petitioner did not put even the amount at which the sale was conducted on the table to show the petitioner's bona fides. It must also not be lost sight of that the petitioner failed to abide by the initial notice of demand issued under Section 13(2) of the Act and even the subsequent one-time settlement offer by the bank in early 2010. The wild goose chase that the petitioner wants to engage the Court in, is of the petitioner not really being the beneficiary of the credit facilities and the petitioner having been a party to the transaction only by furnishing the security. That, however, is of no consequence and utterly irrelevant in the context.

8. The Debts Recovery Tribunal found in favour of the petitioner herein. However, the order of such Tribunal dated April 8, 2015 is trifle short on reasons, if there are any reasons to be found therein at all. The primary ground that weighed with the Debts Recovery Tribunal appears to be that the secured creditor did not file a typed-set of documents and, therefore, an adverse inference had to be drawn against the secured creditor. Such line of reasoning cannot be appreciated, particularly in the light of the admitted facts that due notice under Section 13(2) of the Act had been issued, a further possession notice under Section 13(4) of the Act was served on the borrowers, and a sale notice was published on October 13, 2010 before the auction sale was conducted on November 18, 2010. In between, there was the one-time settlement proposal that had been initially accepted by the principal debtors but was not followed through by making the requisite payment within the time indicated. In the light of such glaring facts, the accidental or deliberate omission on the part of the secured creditor to file a typed-set of documents could not have made any difference and the Debts Recovery Tribunal appears to have been moved by irrelevant considerations in setting aside the auction sale. The conclusion of the Debts Recovery Tribunal that the secured asset

should not have been sold in entirety is unsustainable in the light of the admitted position that the mortgaged asset was the entire 3.36 acre of land. Merely because the law enables the secured creditor to sell the whole or part of the property, a legal obligation to sub-divide and sell a part of the mortgaged asset cannot be imposed.

9. The auction-purchaser and the secured creditor carried the matter in appeals before the Debt Recovery Appellate Tribunal. The common order impugned was passed on March 22, 2021. The Appellate Tribunal noticed that valuation reports of contiguous properties had been relied upon by the petitioner herein. However, the Appellate Tribunal found that the secured creditor had duly obtained a valuation report and there was no material for the Appellate Tribunal to come to a conclusion that the property had been sold for a lesser price in a mala fide manner. The Appellate Tribunal noticed that against the distress valuation of Rs.1.20 crore as indicated in the valuation report, the property fetched more than Rs.2 crore. The Appellate Tribunal also observed that the petitioner herein "never offered or paid the equivalent sum of sale amount or the total outstanding amount ... either before this Tribunal or to the Bank."

10. The Appellate Tribunal disregarded the present petitioner's contention that the property ought to have been divided and sold and the entirety of the property need not have been put up for sale since the bank's claim was much less. Indeed, it has to be noticed that the bank had adjusted its dues out of the sale proceeds received from the auction-purchaser and had even returned the balance amount in excess of Rs.80 lakh to the petitioner herein, which the petitioner refused to accept.

11. In the order impugned dated March 22, 2021, the Appellate Tribunal held that at or prior to the sale being confirmed in favour of the auction-purchaser, it was the duty of the borrower to offer or pay the actual sale amount or the total dues, whichever was less, to the bank to thwart the sale certificate being made over and the transaction being concluded. The Tribunal noticed that the petitioner herein had not resorted to any such course of action. In the case in hand, not only has the sale certificate been issued, but the registration has also taken place.

12. The petitioner relies on judgments reported at AIR 2009 Orissa 147 (Swastik Agency v. State Bank of India); AIR 2014 MP 125 (Anita Sadana v. Baljinder Kaur), and (2020) 4 BC 112 (Alpine Pharmaceuticals Private Limited v. Andhra Bank) to

sustain the grounds urged to have the auction sale annulled and the order impugned passed by the Debt Recovery Appellate Tribunal set aside.

13. In Swastik Agency, the Court observed that the valuation undertaken by the secured creditor was improper since the offer received at the auction was more than three times the valuation. It also appears from paragraph 69 of the report that a further factor that weighed with the Court was that despite a previous direction to the secured creditor to reconsider the stand taken by it, the secured creditor appears to have brushed aside the same and observed that the sale of the property had already taken place. It is also evident that the sale notice in that case had not been published in Odia language and the Court found such failure to be fatal as it deprived persons not knowing the English language of the opportunity to participate in the auction.

14. The reasons given in support of the judgment in Swastik Agency case do not appeal and may not be relevant in the present context. Though the petitioner emphasises that there was a huge gap between the date of the valuation report and the actual conduct of the sale, a period of 17 months does not appear to be so much of a hiatus for the valuation report to be found to be obsolete or irrelevant. At any rate, if such had been the case, the petitioner herein ought to have been diligent and protested the price fixed or the reserve price indicated in the sale notice contemporaneously. In the absence of such measure by the petitioner and further upon the petitioner failing to put in the much lesser amount that his property fetched at the auction sale, the challenge to the sale appears to have been the usual gimmick that borrowers in this country resort to to make creditors run round in circles and behave as if it is the debtor's fundamental right not to repay the credit facilities obtained.

15. As far as the judgment in Anita Sadana case is concerned, again the reasoning does not appeal, inter alia, on the ground that the order does not reveal the great change in the valuation for the Court to find that the distress sale valuation of the property was not appropriate.

16. As far as the other judgment in Alpine Pharmaceuticals Private Limited case rendered by the High Court of Telangana is concerned, the Court in that case found the gap of about six months between the date of the valuation report and the date of sale to be enormous. The judgment also does not indicate the difference in valuation during such period. Ordinarily, a six-month or even a twenty-month gap between the valuation report and the conduct of the sale would not be actionable and may not

excite a Court to reject the valuation altogether, unless other cogent grounds are indicated.

17. In the present case, the petitioner has relied on the valuations obtained of what the petitioner says to be comparable and nearby plots. Some of such valuations do, indeed, indicate a much higher valuation than what had been indicated in the valuation report that was made the basis of the auction sale by the secured creditor in this case, but it is evident that the market price indicated in the relevant documents are comparable to the market price indicated in the valuation report in the present case. It is also a matter of which judicial notice has to be taken, that of late it has become the practice to inflate circle rates with a view to augment the revenue of the State. At any rate, some of the comparable prices and figures that the petitioner has cited pertain to smaller pieces of land and it is common knowledge that the price fetched by a larger tract of land may not be comparable to the unit price fetched by a much smaller plot.

18. At the end of the day, it has also to be kept in mind that there is limited authority which is available to the Court at this stage. This Court does not sit in appeal over the decision of the Debt Recovery Appellate Tribunal. The limited scope of judicial review that is available permits the Court to look into the decision-making process, rather than the decision itself; unless the decision appears to be absurd to the meanest mind. The Appellate Tribunal has taken relevant considerations into account and has given cogent reasons in support of its order setting aside the order passed by the Debts Recovery Tribunal. The Appellate Tribunal did not find any mala fides on the part of the secured creditor. The Appellate Tribunal found that the petitioner's conduct was not bona fide and the petitioner had not put any money on the table either at the initial stage or at a later stage before even the Appellate Tribunal for canvassing the fanciful arguments that it carried to such forum.

19. For the reasons aforesaid, the order impugned dated March 22, 2021 does not appear to be unreasonable or objectionable. The petitioner had several opportunities to remedy the breach, inter alia, at the stage of the notice under Section 13(2) of the Act and subsequently at the stage of the possession being taken over by the secured creditor and even when the sale notice was issued or the sale was completed, but the sale certificate was not issued. True to the expected conduct of an Indian borrower, the petitioner herein did not reach for his pocket at any of such stages and cannot now be rescued out of the morass of his own creation.

W.P.No.12554 of 2021 fails. The petitioner will pay costs assessed at Rs.20,000/- each to the auction-purchaser and the secured creditor. By way of abundant caution, the interim order passed at the receiving stage of the petition on June 10, 2021 stands vacated and W.M.P.No.13335 of 2021 is dismissed.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

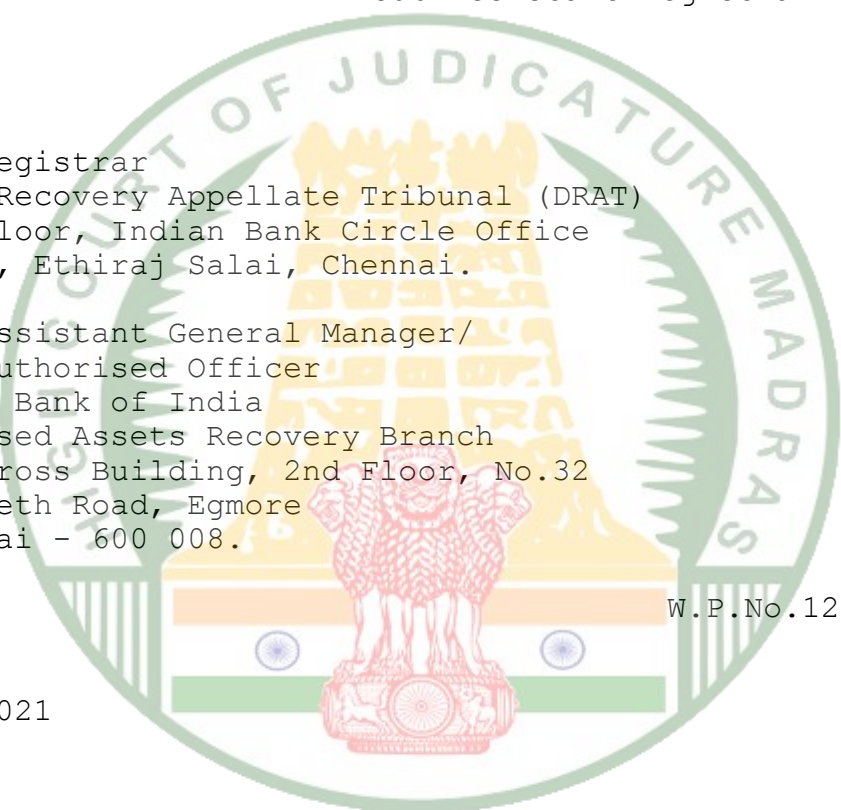
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To:

- 1 The Registrar  
Debt Recovery Appellate Tribunal (DRAT)  
4th Floor, Indian Bank Circle Office  
No.55, Ethiraj Salai, Chennai.
- 2 The Assistant General Manager/  
The Authorised Officer  
State Bank of India  
Stressed Assets Recovery Branch  
Red Cross Building, 2nd Floor, No.32  
Montieth Road, Egmore  
Chennai - 600 008.

W.P.No.12554 of 2021

GSM(CO)  
CS/16/06/2021



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