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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

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

C.R.P.Nos. 2036 and 1155 of 2021

and

C.M.P. Nos. 15448 and 8879 of 2021

1.P.N.Balasubramani

2.P N T Chandru

3.B.Amarjyothi

4.Vimalachandru

... Petitioners in both
C.R.P.Nos.

Vs

1.UCO Bank,
Kottayam Branch,
Railway Station Road,
Near Collectorate,
Kottayam - 686 001.

2.P.V.John

3.Thankamma John

4.Dr.Joli Varghese P.John

5.Fr.BijuKavattuMathai

6.Jyothi Ann John

7.EldhoseK. Mathai

8.Mathai K.I

9.Biju C.V



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10. Eden Cardamom Estate,
Rep. by its Managing Partner,
Fr.P.V.Johan, Door No 5/61,
Punnamattathil House, Mundakkayam P.O.,
Kottayam- 686513.

... Respondents in
both C.R.P.Nos

Prayer in C.R.P.No.2036 of 2021: Petition filed under Article 227 of the Constitution of India against the order dated 28.6.2021 passed in AIR.No.372 of 2019 on the file of the Debt Recovery Appellate Tribunal, Chennai filed against the final order dated 20.09.2019 passed in T.A.370/2016 (O.A.No.226/2015) on the file of the Debts Recovery Tribunal-II, Ernakulam.

Prayer in C.R.P.No.1155 of 2021: Petition filed under Article 227 of the Constitution of India against the order dated 24.3.2012 made in AIR No.372 of 2019 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For the Petitioners : Mr.R.Kannan
in both CRPs

For the Respondents : Mr.K.S.Viswanathan
in both CRPs for 1st respondent

: Mr.Christopher
Vijayachandran
for respondents 5 and 6

: No appearance
for respondents 2 to 4, 8
and 10

: -Left
for respondent 7
For respondent 9-Door locked

COMMON ORDER

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

The two petitions arise out of an initial order of deposit made by the Debt Recovery Appellate Tribunal, Chennai and the consequential order of dismissal upon the deposit not being made. The initial order was made on March 24, 2021 and the order of dismissal was passed on June 28, 2021.



2. By the order dated March 24, 2021, the delay of about 12 days in preferring the appeal was condoned and the appellate tribunal noticed that the petitioners had challenged the order dated September 20, 2019 passed by the Debts Recovery Tribunal-II, Ernakulam, by which proceedings under Section 19 of the then Recovery of Debts due to Banks and Financial Institutions Act, 1993 stood decreed for recovery of the sums of Rs.2,74,85,531.77 and Rs.7,08,533/- (total amount of Rs.2,81,94,064.77) together with interest at the rate of nine per cent per annum. The appellate tribunal directed the petitioners to make a pre-deposit of Rs.1 crore with the Registrar of such tribunal in two equal installments, the first of which was to be made within four weeks of the date of the order and the next within four weeks thereafter. The order also recorded that in the event of failure to make either part of the pre-deposit, the appeal would stand automatically dismissed.

3. When the matter was next taken up on June 28, 2021. The tribunal noticed that no amount had been deposited. The tribunal, thereupon, formalised the order of dismissal.

4. According to the petitioners, they were not the original borrowers and were subsequent purchasers of a cardamom estate that had been mortgaged by the original borrowers in favour of the respondent bank. The petitioners complain that no attempt was made either by the Debts Recovery Tribunal or the Debt Recovery Appellate Tribunal in ascertaining the extent of these petitioners' liability, referable to the cardamom estate, and the quantum of pre-deposit required to be made by these petitioners. There appears to be some substance in such assertion; but in the ultimate analysis it may bring no cheer to the petitioners herein.

5. The petitioners were impleaded as parties to the petition instituted by the respondent bank under Section 19 of the Act of 1993 before the Debts Recovery Tribunal. Despite the due service, the petitioners herein, as the respondents Nos.10 to 13 before the Debts Recovery Tribunal, took no steps to defend the bank's claim. Though it appears from the order dated September 20, 2019 passed by the Debts Recovery Tribunal that these petitioners had used a written statement, it appears that in the absence of representation on behalf of the petitioners, the bank's claim was set down to be heard ex parte against these petitioners. It is also submitted by the parties that an application to set aside the order by which the Debts Recovery Tribunal set the matter down for ex-parte hearing qua these petitioners was also dismissed shortly prior to the final order dated September 20, 2019 being passed by such Tribunal.



6. In the elaborate operative part of the order dated September 20, 2019, there is a reference to a term loan account in respect of which the borrowers were adjudicated to owe a principal sum of Rs.2,74,85,531.77 to the bank. In the other term loan account, the borrowers were adjudged to be liable to repay a sum of Rs.7,08,533/-. Interest was granted in respect of the money due under both term loans with effect from March 18, 2015 at the uniform rate of nine per cent per annum till realisation. The order for payment was confined to the respondent Nos.2 to 10 herein, jointly and severally, and the properties in Schedules A and B to the relevant order were declared as available to be sold in discharge of the debt. Schedule A to the order includes seven immovable properties and item numbers 3 to 7 cover the cardamom estate which had been apparently purchased by these petitioners from the original borrowers after the mortgage in respect thereof was created by the original borrowers in favour of the respondent bank. Schedule B to the order covers the hypothecation of crops.

7. Though the petitioners maintain that subsequent to the purchase of the cardamom estate from the original borrowers, the petitioners had put in money into the relevant accounts in part discharge of the original borrowers' obligation to repay the two term loans, the order dated September 20, 2019 does not indicate any adjustments being made or any credit being given to any payment made during the pendency of such proceedings. Though the relevant order records that evidence was received, there is no reflection in the order as to what was the original claim, what was the part payment that may have been received by the bank during the pendency of the proceedings and how credit had been given to the payments pendente lite. After the briefest of discussions pertaining to the transactions, the operative part of the order dated September 20, 2019 indicates the amounts due without any discussion preceding the same revealing how payments made during the pendency of the proceedings had been adjusted and due credit given to the borrowers.

8. Indeed, since the operative part of the order dated September 20, 2019 made only the respondent Nos.1 to 9 before the Debts Recovery Tribunal liable, in a sense it is evident that the claim made by the bank against the present petitioners was rejected. However, to the extent that the bank was permitted to proceed against all the securities indicated in Schedules A and B to the order to recover the amounts due in terms of the two term loans as declared by the order dated September 20, 2019, it is evident that the bank has been permitted to proceed against such properties, including the cardamom estate covered by item Nos.3 to 7 of Schedule A to the order dated September 20, 2019 passed by the Debts Recovery Tribunal.



9. While it is elementary that the creation of a mortgage does not amount to an absolute transfer of the property by the mortgagor in favour of the mortgagee, the subsequent purchase of the property or possession of the property being taken over by a third party do not dilute the rights of the mortgagee. In strict legal terms, what a mortgagor may transfer to a third party during the subsistence of the mortgage would only be the right of redemption in respect thereof. It is, thus, that the appeal preferred by the petitioners herein must be seen to be an assertion of their right of redemption.

10. Since such right of redemption would cover only such properties that had been purchased during the tenure of the mortgage, ideally, the appellate tribunal ought to have limited the quantum of deposit with reference to the share of item Nos.3 to 7 in the total basket of properties covered by Schedule A to the order dated September 20, 2019.

11. At the same time, on noticing the properties covered by the seven items in Schedule A to the said order, there can be no mistake that the cardamom estate covered by item Nos.3 to 7 would be the most valuable part of Schedule A to the order. If the total amount due in terms of the order dated September 20, 2019 were to be taken into account, the sum would invariably be in excess of Rs.4 crore since interest had been awarded at the rate of nine per cent from March 18, 2015 and by the time the initial order was passed by the Debt Recovery Appellate Tribunal, a period of six years had elapsed.

12. It is in such backdrop that the two orders passed by the appellate tribunal that have been assailed herein should be seen. The Act of 1993 permits an appellate tribunal to lessen the quantum of pre-deposit from 50 per cent to no less than 25 per cent. The amount of Rs.1 crore that was required to be deposited in all may be seen to be a rough and ready quantum falling within the permissible band. Such quantum is relatable to the value of the cardamom estate qua the entirety of Schedule A to the order dated September 20, 2019. It may also not be lost sight of that not a penny was deposited by these petitioners. If these petitioners had put in the first installment and had offered to pay a substantial part of the second installment, the court may have allowed it, since the value of the cardamom estate was not ascertained while directing the quantum of pre-deposit to be made. However, in the absence of any money being tendered by way of pre-deposit at all, the further challenge to the order of September 20, 2019 at the behest of these petitioners cannot be permitted.

13. It may also be observed that in the broader scheme of things, these petitioners have failed since no payment was made



on their behalf to make any deposit; but, the cavalier manner in which bank claims are decided by tribunals and the matter of pre-deposit is sometimes decided by the appellate tribunal, leave a lot to be desired.

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14. Since it is evident that, at the highest, these petitioners had stepped into the shoes of the original borrowers in so far as the cardamom estate covered by the item Nos. 3 to 7 of Schedule A to the order dated September 20, 2019 is concerned, and these petitioners did not put in any part of the pre-deposit as directed, there does not appear to be any seriousness in the challenge made by the petitioners herein and the order of dismissal does not merit reconsideration. It may have been more tricky if a substantial part of the pre-deposit had been tendered and the petitioners had questioned that the real quantum due from the petitioners had not been attempted to be adjudicated by the tribunal or ascertained by the appellate tribunal.

15. C.R.P.Nos.2036 and 1155 of 2021 are dismissed. Consequently, C.M.P.Nos.15448 and 8879 of 2021 are closed.

There will be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sasi/drm
To

1.The Debts Recovery Tribunal-II,
Ernakulam.

2.The Debt Recovery Appellate Tribunal,
Chennai.

+2cc to Mr.R.Kannan, Advocate Sr.51777
+1cc to Mr.K.S.Viswanathan, Advocate Sr.51682

C.R.P.Nos.2036 and 1155 of 2021

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