IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.07.2021

CORAM :

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

W.P.No.23913 of 2019

1.S.Sushil Kumar
S.Kamalabai (died)
2.S.Lalitha
3.A.Kalpana
4.S.Pushpa
5.A.Latha
6.S.Santhosh
7.V.Kavitha ...Petitioners

Vs

1.The Authorised Officer &
Chief Manager
Indian Bank ARM Branch-II
55, Ethiraj Salai
Wellington Estate, 4th Floor
Chennai 600 008.

2.M.Subramaniane

3.The Registrar
Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
No.55, Ethiraj Salai
Chennai 8. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent comprised in order dated 30.04.2019 passed in M.A.(S.A) No.124 of 2017, quash the same by allowing S.A.No.118 of 2010 and consequently direct the first respondent to restore possession of the property comprised in Door Nos.218 to 221, Kamarajar Street, Survey No.362/B, 34, A1, A1, A1, A1, A1, 81.06 Villupuram Town, land admeasuring about 5733 sq.ft. and constructed area of 24194 sq.ft. to petitioners.

For Petitioners : Mr.S.Ramesh

For Respondents : Mr.Jayesh B.Dolia
For M/s. Aiyar & Dolia
for respondent-1

Mr.Om Prakash, S.C.
For Mr.Ilaiyarajakumar
For M/s. Ramalingam Associates
for respondent-2

ORDER
(Made by the Hon'ble Chief Justice)

This is another case of a set of borrowers dragging the matter endlessly in the hope that the debt will just vanish.

2. A many splendoured legal presentation is made with emphasis on the mandatory nature of the pre-conditions to be followed before a mortgage sale is conducted under the Transfer of Property Act and the indispensability of notices and due publication thereof before a sale is conducted under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The immediate challenge is to an order passed by the Debt Recovery Appellate Tribunal on April 30, 2019 arising out of an order rejecting a restoration application upon the dismissal of default of a petition under Section 17 of the Act.

3. The facts are not much in dispute, though the conduct of the petitioners and, indeed, even that of the concerned secured creditor, Indian Bank, leave a lot to be desired. More often than not when nationalised banks seek to recover dues, there are several loopholes which are deliberately designed or accidentally placed for the borrower to get a toe-hold. In this case, the main plank of the petitioners' argument is that a sale notice was issued to a dead man despite previous intimation by the heirs of the deceased borrower that the borrower had expired. It boils down to the casual approach of a bank official and the colossal waste of public funds as a consequence with little or no accountability in such regard. The only justification on the part of the bank is that it may have been a bona fide mistake; though a wee bit of diligence may not have been left any room for the petitioners to question the measures taken by the secured creditor to realise its dues. More than a decade has been spent between one adjudicatory authority and another because of the apparent negligence of an official or of a bank. It must also be recorded that it has not been considered necessary at this stage to ascertain the veracity of the petitioners' contention that notice of the death of the original borrower was issued to the secured creditor.

4. The sale was conducted on February 15, 2010 pursuant to a notice dated January 11, 2010 which even the first petitioner admits to have received. The first petitioner had executed a personal guarantee in connection with the first petitioner's father having obtained the credit facilities. The father had furnished an immovable property by way of security. The petitioners claim that they had issued a notice to the bank in 2008 informing it that the borrower had died; but the bank proceeded to issue subsequent notices in the name of the deceased person.

5. There is equally no dispute that the first petitioner has a commonality of interests with the other petitioners, who are the sisters of the first petitioner. The common father of all the petitioners was the original borrower. The petition proceeds on the basis that the original borrower may have died intestate and all the petitioners are the joint heirs of the estate of the original borrower.

6. Three main grounds were urged before the Debts Recovery Tribunal in proceedings under Section 17 of the Act of 2002. It was asserted by the petitioners that despite the immovable property being valued at Rs.1.84 crore nearly six months before the sale was conducted, the sale notice of January 11, 2010 indicated a reserve price of Rs.1,30,10,999/- and the property was sold at the auction conducted on February 15, 2010 for a paltry Rs.1,31,20,000/-. The second ground canvassed was that the sale notice was not published in any vernacular newspaper and, as such, better claims could not be received and a rather insubstantial bid was received and the property sold without waiting to search for or obtain a better price for the property. The third ground taken was, of course, that no notice had been issued to the petitioners other than the first petitioner; and that too, to the first petitioner as guarantor and not as one of the heirs of the original principal debtor.

7. The petitioners complain that the matter was taken up before the jurisdictional Debts Recovery Tribunal on 30 occasions and on 29 occasions, the petitioners were represented, but on one of the days on or about September 6, 2012 when counsel for the petitioners was not present, because there was a change in vakalatnama and the previous clerk had taken down an erroneous date, the matter was dismissed and even the merits were addressed while dismissing the challenge to the sale. The petitioners complain that upon restoration proceedings being filed within ten days of the order of dismissal, the matter was re-heard and copious notes of arguments were submitted; but, the Tribunal refused to recall the exparte order of dismissal and pronounced the order more than two years after reserving the judgment.

8. According to the petitioners, the Debt Recovery Appellate Tribunal heard the matter, both on the aspect of the restoration application and on the merits of the matter and, despite holding that the restoration application had been rightly rejected, dealt with the merits of the matter to demonstrate that no prejudice had been suffered by the petitioners herein in their challenge to the sale notice and the measures adopted by the secured creditor being rejected. It is such order of the Appellate Tribunal which is questioned in the writ petition filed in the year 2019, which is taken up for consideration in right earnest for the first time today.

9. The petitioner refers to a judgment of the Supreme Court reported at 2014 (5) SCC 610 (Mathew Varghese v. M.Amritha Kumar) for the proposition that Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 are mandatory and due notice in accordance therewith must be issued.

10. In that case, the matter that fell for the Supreme Court's consideration involved the subsequent sale of a secured asset without further notice and the failure to publish any advertisement in the vernacular language. In the present case, it is asserted by the respondent bank that due publication of the notice for sale had been made in both English and vernacular papers. The secured creditor says that the first petitioner was served the sale notice and the auction was duly held in terms of such notice.

11. The first petitioner, as noticed above, is the brother of six other petitioners. The brother and the several sisters challenged the measures taken by the secured creditor in proceedings under Section 17 of the Act of 2002 by filing a common petition. There was no inter se feud between the brother and the sisters. If such is the case and it is the admitted position that the first petitioner had due notice of the sale notice dated March 11, 2010, there is little merit in the petitioners' assertion that the heirs of the deceased borrower had not been informed for them to exercise their right of redemption before the mortgage was enforced.

12. As to the valuation of the property, there is no doubt that the bank had conducted an exercise several months before the sale notice was published and the value of the property was indicated to be about Rs.1.84 crore. However, when a property is sold in distress or by way of a court sale, there is always a depression in value and barring the stray exception, it can scarcely be accepted that the actual price would be offered in court or before a tribunal, primarily because there is no finality to any sale conducted by a court or other adjudicatory body and luxury litigations as the present one continue to be filed which leave the sales unconfirmed for years together. There is no merit in the ground that the sale notice was not

published in any vernacular daily, particularly since the secured creditor asserts that the notice was duly published in a vernacular daily and the secured creditor claims to have referred to the same by way of an affidavit filed in course of the Debts Recovery Tribunal proceedings.

13. The petitioners refer to the comment by the Debt Recovery Appellate Tribunal in the appellate order impugned herein that it was absurd to commence or continue the proceedings against a dead man by the relevant bank. Seen in isolation, the argument appears to be attractive. However, when seen in the context that the son of the borrower had due notice and the son is one of the heirs of the borrower and does not have any apparent conflict with his sisters who had joined him in proceedings under Section 17 of the Act of 2002, it is not a fit ground to entertain the writ petition to question the concurrent orders of dismissal passed by statutory adjudicatory authorities. It is the same underlying thought expressed by the Debts Recovery Tribunal that has weighed with the Debt Recovery Appellate Tribunal.

14. It must be remembered that the power of judicial review exercised in this extraordinary jurisdiction is not akin to appellate authority. All that the supervision as to the procedural due process or even substantive due process in the present context requires is to ascertain whether the adjudicatory authority had adopted a fair process of adjudication by affording a reasonable opportunity to the petitioners to be represented and rendered a cogent decision on the grounds that were asserted by the petitioners herein. On such tests, the judgment and order impugned dated April 30, 2019 passed by the Appellate Tribunal does not call for any interference. There also does not appear to be any undue prejudice occasioned to the petitioners or any of them as a result of the alleged mistake, if any, in issuing the sale notice in the name of the dead borrower and not to the heirs of such borrower. As to the valuation, as long as the reserve price was met, the petitioners can have no grievance since the first petitioner had due notice of the reserve price and could have carried a buyer with a higher bid or even bid for himself at the reserve price and obtained the property. There is a limit to which fancied arguments can be carried and this was a case where such limit was stretched to almost the fanciful.

15. The auction-purchaser who has paid more than Rs.1.32 crore in 2010 has been kept at bay for more than a decade. The bank says that it has further monies to recover from the borrower in accordance with a certificate for a sum in excess of Rs.6 crore passed by the appropriate Debts Recovery Tribunal.

16. Since no good grounds are made out by the petitioners in assailing the orders of the Debts Recovery Tribunal or the

Debt Recovery Appellate Tribunal and no undue prejudice has been caused to the petitioners thereby, the petition is dismissed with costs assessed at Rs.50,000/- to paid in equal share to the respondent bank and to the second respondent auction-purchaser within four weeks from date.

W.P.No.23913 of 2019 stands dismissed. WMP Nos.23757 and 23756 of 2019 are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

kpl

To

1.The Authorised Officer &
Chief Manager
Indian Bank ARM Branch-II
55, Ethiraj Salai
Wellington Estate, 4th Floor
Chennai 600 008.

2.The Registrar
Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
No.55, Ethiraj Salai
Chennai 8.

+1cc to Mr.Aiyar & Dolia, Advocate, S.R.No.32829
+1cc to Mr.S.Ramesh, Advocate, S.R.No.32714
+2cc to Mr.Ramalingam Associates, Advocate, S.R.No.32742

W.P.No.23913 of 2019

KV(CO)
RVM(20/07/2021)