IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.33319 of 2019 &
CRP No.73 of 2021

M/s. Kotak Mahindra Bank Ltd
rep. by its Vice President
Presently at Asset Reconstruction Division
5th Floor, Samson Tower
No.402L, Pantheon Road
Egmore, Chennai 600 008. .. Petitioner

Vs.

1. A.Anand Prasad

2. M/s. Ravishankar Industries Pvt. Ltd
rep. by the Provisional Liquidator
Corporate Bhavan, Second Floor
No.29, Rajaji Salai
Chennai 600 001.

3. The Registrar
Debt Recovery Appellate Tribunal
Chennai. .. Respondents

CRP No.73 of 2021
A.Anand Prasad .. Petitioner

Vs.

1. Kotak Mahindra Bank Ltd
rep. by its Vice President
Dass India Tower, II Floor
No.3, II Line Beach, Parrys
Chennai 600 001.

Presently at
Asset Reconstruction Division
5th Floor, Samson Tower
No.402 L, Pantheon Road
Egmore
Chennai 600 008.

2. M/s. Ravishankar Industries Pvt. Ltd
rep. by the Provisional Liquidator
Corporate Bhavan, Second Floor
No.29, Rajaji Salai
Chennai 600 001. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the order dated 24.10.2019 passed in M.A.No.11 of 2019 on the file of the third respondent and quash the portion of the order that if due amount recovered from Andhra property and Mumbai property is found not sufficient then Bank has a right to recover the balance money from Adyar property and also allow the appeal filed by the petitioner to quash the impugned order dated 29.05.2018 passed in A.P.No.07 of 2018 in M.A.Nos.44 & 45/2018 in DRC No.05/2013 on the file of the Debts Recovery Tribunal-II, Chennai.

Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed by the Debt Recovery Appellate Tribunal, Chennai in M.A.No.11 of 2019 against A.P.No.7 of 2018 against M.A.Nos.44 & 45 of 2018 in DRC No.5 of 2013 dated 24.10.2019.

For Petitioner in WP & Respondent-1 in CRP	:	Mr.E.Om Prakash, S.C. For Mr.P.Elaya Rajkumar For M/s. Ramalingam & Associates
For Petitioner in CRP & Respondent-1 in WP	:	Mr.Prahalad Bhat

ORDER
(Made by the Hon'ble Chief Justice)

The two petitions arise out of the same order of October 24, 2019 passed by the Debt Recovery Appellate Tribunal.

2. The matter before the appellate authority was a challenge by the bank to an order dated May 29, 2018 passed by the Debts Recovery Tribunal II, Chennai in certificate proceedings by which the bank had been directed to exhaust the remedy of recovery of its dues against the mortgaged property before it proceeded against the other properties of the borrowers and guarantors.

3. According to the bank, the debt due to the bank in respect of the transactions which form the subject-matter of the present proceedings is in excess of Rs.50 crore. The bank

proceeds to add that if the other transactions are taken into account, the bank's dues would be in excess of Rs.450 crore. The banks says that the adjudication is complete and the matters are at the post-certificate, recovery stage.

4. According to the bank, the appeal before the Appellate Tribunal arose out of a rather strange application. The borrower was Ravishankar Industries Private Limited which was apparently owned and controlled by the family of Prasads with its two Directors at the relevant point of time being brothers A.Manohar Prasad and A.Ravishankar Prasad. The bank submits that while the debtor, the guarantor and the other promoters contested the proceedings instituted under Section 19 of the then Recovery of Debts due to Banks and Financial Institutions Act, 1993 (since renamed The Recovery of Debts and Bankruptcy Act), at the execution stage of the matter, the mother of the two brother Directors purported to claim some kind of family settlement in a vain attempt to thwart the bank's endeavour to realise and recover its dues. The relevant applicant's plea failed.

5. A grandson of the lady, who is also a son of A.Manohar Prasad, purported to pursue the matter by seeking to resurrect the grandmother's application and it is in such connection that the order dated May 29, 2018 came to be passed by the relevant Debts Recovery Tribunal in A.P.No.07/2018 (M.A.Nos.44 & 45 of 2018) in DRC No.05/2013. The Debts Recovery Tribunal observed that the bank should recover its dues from the other properties before seeking to proceed against the Adyar property in Chennai, which the grandmother and, later, the grandson claimed to be the subject-matter of an apparent oral family settlement.

6. The bank suggests that there is no law that requires a creditor or a decree-holder to proceed against some of the assets of the debtor or judgment-debtor and resort to other properties only if the earlier properties do not satisfy the claim or the decretal debt. This was the primary contention of the bank in its appeal before the appellate authority.

7. The appellate authority noticed the bank's contention that the Debts Recovery Tribunal had failed to appreciate that the other properties were in Andhra Pradesh and Mumbai. The appellate authority also recorded the bank's submission that A.Manohar Prasad had admitted on affidavit that he held 50% interest and title in the Adyar property. The bank complained to the appellate authority that it was with considerable difficulty and after carrying the matter to the Supreme Court that the bank was able to obtain deposit of a sum of Rs.25 crore when it pursued the Hyderabad property. According to the bank, the Mumbai property was covered by notices issued by creditors under the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002. The bank also questioned the veracity and existence of any family settlement.

8. The order impugned dated October 24, 2019, however, made a slight modification to the order of the Debts Recovery Tribunal II, passed on May 29, 2018, by merely recognising that the bank had a right to recover the amount due to it from the Adyar property, but the manner in which relevant sentence is worded in paragraph 11 gives credence to the bank's submission that the appellate authority permitted the bank to proceed against the Adyar property only after exhausting its remedies against the other properties.

9. Paragraph 11 of the order impugned may be seen in the context:

> "11. Accordingly, impugned order deserves to be modified to the extent that the Appellant Bank has a right of recovery of the balance due amount from Adyar property also. Order of attachment passed by the Recovery Officer is affirmed".

11. The short argument of the bank is that there is no basis to either the Debts Recovery Tribunal order of May 29, 2018 or the quoted part of the impugned order of the appellate authority calling upon the bank to recover its dues from the other properties before seeking to proceed against the Adyar property.

12. There is sufficient basis to the bank's submission that once the Tribunal permitted the bank to proceed against the Adyar property, the Tribunal could not have directed the order in which the bank could proceed against the properties. A similar anomaly appears from the appellate order impugned herein and as quoted above. No reason is indicated as to why the recovery of the bank's dues should be fashioned in the manner as directed by the Tribunal or the appellate authority.

13. The case run by the son of A.Manohar Prasad is that since the Adyar property belongs to the family, irrespective of A.Manohar Prasad's admission as to being the 50 per cent owner thereof, the bank cannot proceed to recover its dues from the undivided share or interest of a debtor in an immovable property particularly, if it is a family dwelling house.

14. The question raised by the petitioner in C.R.P.No.73 of 2021 cannot be urged at this stage. Implicit in the order of Debts Recovery Tribunal II passed on May 29, 2018 is the rejection of such contention on the part of the said petitioner. Such petitioner did not carry an appeal from the order dated May 29, 2018 and the limited scope of the appeal carried by the bank was whether it was appropriate for the Debts Recovery Tribunal

to require the bank to exhaust its remedies against the other assets before proceeding against the Adyar house.

15. In a sense, the order impugned has, in principle, maintained the order passed by the Debts Recovery Tribunal II on May 29, 2018 without indicating any reason despite such aspect of the matter being squarely challenged by the appellant before the Debt Recovery Appellate Tribunal.

16. Since there appears to be no basis in requiring the bank, which has obtained a certificate in its favour, to proceed against some assets of the borrowers or guarantors ahead of some other assets, the order impugned dated October 24, 2019 is modified and the restriction imposed by the Debts Recovery Tribunal II order of May 29, 2018 is undone by leaving the bank free to proceed against all the properties of the debtors, be they the guarantors or borrowers, in accordance with law.

17. W.P.No.33319 of 2019 and CRP No.73 of 2021 are disposed of without any order to costs. CMP No.551 of 2021 is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

kpl

To

The Registrar
Debt Recovery Appellate Tribunal
Chennai.

+2ccs to M/s.Ramalingam & Associates,Advocate, SR No.33477
+1cc to Mr.Prahalad Bhat,Advocate, SR No.33330

W.P.No.33319 of 2019 &
CRP No.73 of 2021

JPL(CO)
B.VC (03/08/2021)