BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.10.2021
CORAM :
THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE M.DURAISWAMY

Review Aplw (MD) No.83 of 2021
in WP (MD) No.5119 of 2020

The Industrial Development Bank of India,
No.115, Anna Salai, Saidapet,
Chennai 600 015. .. Applicant

Vs.

1.Sree Narayana Textile Private Limited,
Visalakshi Nagar, Madurai - 401,
Rep. by its Proprietor, Mr.N.Thiyagarajan.

2. N.Thiyagarajan (Died)
3. T.Visalakshi
4. T.Saraswathi
5. T.Uma
6. T.Narayanan

7.The Recovery Officer,
Debt Recovery Tribunal No.2,
Fourth Floor, Dewa Towers,
770-A, Anna Salai,
Chennai 600 002.

8. S.V.Gandhi .. Respondents

Prayer: Review Application filed under Order XLVII Rule 1 & 2 read with Section 114 of CPC to review the order passed by this court in WP (MD) No.5119 of 2020 dated 23.08.2021 and consequently set aside the last portion of the Judgment passed in the above Writ Petition i.e., directing the Petitioner bank to return the entire considereation tendered by the 8th Respondent unto him before the next auction is conducted.

Prayer in WP(MD). 5119/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records relating to the order dt. 15.02.2020 passed by the Debts Recovery Tribunal-II at Chennai in Appeal No.14 of 2019 in D.R.C.No.211 of 2007 and quash the same and thus render justice.

For the Petitioner : Mr.V.Raghavachari
for Mr.K.R.Lakshmanan
For the Respondents : Mr.P.T.S.Narendravasan
for respondents 1 to 6
: R-7 Tribunal
: Mr.S.Sethuraman
for Mr.V.Karthikeyan
for respondent No.8

ORDER

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

This review application pertains to a common order dated August 23, 2021 by which WP (MD) Nos.1113 of 2020 and 5119 of 2020 were disposed of. Both petitions were filed by the borrowers who had defaulted in making payment to the respondent bank. The review has been filed by the bank.

2. The solitary ground raised in the review is that while passing the order dated August 23, 2021, this court observed that the matter would be governed by the order passed by the Debt Recovery Appellate Tribunal and the Recovery Officer would be permitted to sell the property at an auction, though the records would reveal that the sale had already been concluded in March, 2020 in favour of the auction-purchaser who was also impleaded in both the writ petitions disposed of on August 23, 2021.

3. Following the debt due to the respondent bank being adjudicated by the Debts Recovery Tribunal-II, Chennai in proceedings under Section 19 of the then Recovery of Debts due to Banks and Financial Institutions Act, 1993, recovery proceedings were initiated. On or about March 30, 2016, the Recovery Officer of the Debts Recovery Tribunal-II, Chennai conducted an auction. The third respondent in either writ petition, S.V.Gandhi, was the highest bidder and quoted an amount of Rs.6.61 crore for the property. A sum of Rs.66 lakh had been deposited by way of earnest money and the would-be purchaser remitted a further 15 per cent amounting to Rs.99,25,000/-. However, despite demands by the Recovery Officer to pay the balance amount of Rs.5,02,36,010/-, the highest bidder did not take appropriate steps. That culminated in the Recovery Officer forfeiting the amount deposited by an order dated April 12, 2016.

4. It may be noticed that even before the auction was conducted on March 30, 2016, the borrowers had filed WP (MD) No.6240 of 2016 before this court and, for reasons that are not clear from the relevant order, obtained an order on March 29, 2016 to the effect that the auction could go on but the confirmation of the sale would remain stayed until further orders. It appears that since the sale could not have been confirmed, the highest bidder was not keen in

depositing such a huge sum which would remain blocked, while the borrowers, true to the Indian style, made the creditor run around in circles. The appeal preferred by the highest bidder against the Recovery Officer's order dated April 12, 2016 by which a sum in excess of Rs.1.65 crore was sought to be forfeited was dismissed by the relevant Debts Recovery Tribunal on November 7, 2017. Against such order, the highest bidder carried MA No.20 of 2018 to the Debt Recovery Appellate Tribunal in Chennai. During the pendency of such appeal, the Recovery Officer issued a further auction notice for sale of the same property. The reserved price was enhanced to Rs.8,77,37,000/-.

5. It may be mentioned that, in the meantime, on September 28, 2016, WP (MD) No.6240 of 2016 was withdrawn by the borrowers upon seeking liberty to proceed before the appropriate Debts Recovery Tribunal. As a consequence, the order of March 29, 2016 staying the confirmation of the sale stood vacated. It is evident that the purpose of filing the writ petition was merely to interdict the auction that was to be conducted by the Recovery Officer and once the purpose was served in the highest bidder failing to pay the balance consideration in view of the stay and the Recovery Officer forfeiting the substantial payment already tendered, the borrowers did not proceed with the writ petition.

6. In the appeal carried by the highest bidder before the Debt Recovery Appellate Tribunal, such Appellate Tribunal noticed that the borrowers had abused the writ jurisdiction of this court. Paragraph 9 of the relevant order dated January 2, 2020 is apposite in the context :

> "9. The DRT as well as Recovery Officer both have failed to appreciate the fact situation that borrower has misused the writ jurisdiction of Hon'ble High Court and used the order in casual manner. On comparing the bonafides of auction purchaser and borrower both together, there appears to be no hesitation to set aside the impugned order and order dated 12.04.2016 of Recovery Officer. Resultantly, appellant/ auction purchaser will be entitled to receive the amount deposited in compliance of impugned orders. Nothing shall prevent the bank to go for auction afresh according to law."

7. In point of time, next came the order passed by the Debts Recovery Tribunal in an appeal arising out of another order of the Recovery Officer by which the forfeited amount of Rs.1,65,25,000/- was directed to be remitted in the government account. In the relevant order of February 15, 2020, the Debts Recovery Tribunal noticed the Debt Recovery Appellate Tribunal's order of January 2, 2020, particularly paragraph 9 thereof. The Debts Recovery Tribunal was aware that a fresh auction notice had been issued by the

Recovery Officer and that the reserve price had by then been enhanced to an amount in excess of Rs.8.77 crore.

8. Upon noticing the dishonest and harassing conduct of the borrowers and the fact that the highest bidder at the auction of 2016 had suffered sufficient prejudice, the Debts Recovery Tribunal allowed such highest bidder to match the reserve price indicated in the auction notice issued by the Recovery Officer to entitle such bidder to obtain the immovable property at such price. Such bidder accepted the order dated February 15, 2020, tendered the enhanced amount and became entitled to the relevant property.

9. Again, the borrowers challenged both the order dated January 2, 2020 passed by the Debt Recovery Appellate Tribunal and the order dated February 15, 2020 passed by the Debts Recovery Tribunal in the hope that one or the other would fetch them a favourable order to keep the bank and the auction-purchaser at bay while the borrowers continued merrily to be in default.

10. Such writ petitions of the borrowers were dealt with by the common order under review herein dated August 23, 2021 where, the court made a mistake in requiring the auction to be conducted without noticing that by virtue of the DRT order dated February 15, 2020, the sale stood confirmed in favour of the highest bidder at the 2016 auction for the sum of Rs.8,77,37,000/-. Indeed, the sale certificate was issued by the Recovery Officer pursuant to the order dated February 15, 2020 on February 28, 2020 and such certificate was made over to the auction-purchaser on March 1, 2020. Due intimation in such regard was also issued to the office of the relevant Sub-Registrar by the Recovery Officer for registration of the sale.

11. The present petition for review has been opposed by the borrowers. The borrowers suggest that in view of the clear order of the Debt Recovery Appellate Tribunal passed on January 2, 2020 for a fresh auction, the Debts Recovery Tribunal could not have overridden such order and allowed the transfer of the immovable property without a further auction being conducted.

12. The undeserving merriment and mirth for the borrowers has gone on for far too long. Buoyed by the needless order of March 29, 2016 passed by this court on the initial writ petition, the borrowers have used their litigative resourcefulness in playing the bank against the auction-purchaser and the auction-purchaser against the Recovery Officer so that all the other dramatis personae ran around in circles while the borrowers did not have to repay the debt and the secured asset remained in a limbo.

13. Nothing in the order dated January 2, 2020 passed by the Appellate Tribunal can be seen to be a direction for the conduct of a fresh auction for the sale of the immovable property. The relevant

paragraph has been quoted and it merely gives liberty to the bank to take steps for a fresh auction to be conducted in accordance with law.

14. The Debts Recovery Tribunal noticed such order and perceived - and rightly so - that in the circumstances, both the bank and the highest bidder at the 2016 auction had suffered enough and since the reserved price indicated by the Recovery Officer had been agreed to be met by the highest bidder at the 2016 auction, there was no impediment to the sale being confirmed in favour of such person at the enhanced price.

15. As a consequence, there was little scope on the part of this court in interfering with either the order dated January 2, 2020 passed by the Debt Recovery Appellate Tribunal or the order dated February 15, 2020 passed by the Debts Recovery Tribunal. Accordingly, the final paragraph of the order dated August 23, 2021 is modified by deleting the second and third sentences therefrom. In other words, paragraph 7 of the relevant order, upon reviewing the same, will now read as follows:

> "7. In view of the above order passed in W.P. (MD) No.1113 of 2020 against the order passed by the DRAT, no further order need be passed on the other writ petition. W.P.(MD) No.5119 of 2020 is disposed of. There will be no order as to costs. W.M.P. (MD) Nos.4466 and 7304 of 2020 are closed".

16. To repeat, neither order challenged by way of W.P.(MD) No.1113 of 2020 and W.P.(MD) No.5119 of 2020 called for any interference and such orders are left untouched. As a consequence, the sale in favour of the third respondent in either writ petition as evidenced by the issuance of the sale certificate dated February 28, 2020 will also be left undisturbed as a consequence.

17. Review Application (MD) No.83 of 2021 is allowed as above. There will be no order as to costs. Consequently, connected Mps are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To:

The Recovery Officer,
Debt Recovery Tribunal No.2,
Fourth Floor, Dewa Towers,
770-A, Anna Salai,
Chennai 600 002.

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-31120[F] dated 04/10/2021)

+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-31065[F] dated 04/10/2021)

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-31299[F] dated 05/10/2021)

Rev. Aplw. No.83 of 2021
in WP (MD) No.5119 of 2020
01.10.2021

DJ(CO)
GC(27.10.2021) 6P 5C