



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2021

CORAM :

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THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE  
AND  
The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. (MD) No.11660 of 2019

and

W.M.P (MD) .No.8872 of 2019

K.Abdul Sukkoor

.. Petitioner

Vs

1.The Registrar,  
Debt Recovery Appellate Tribunal,  
Chennai.

2.The Registrar,  
Debt Recovery Tribunal,  
Madurai.

3.The Authorized Officer,  
State Bank of India,  
Zonal Office, Region 1,  
Madhura Complex,  
No.2, Dr.Ambedkar Road,  
Madurai-2,

4.The Branch Manager,  
State Bank of India,  
Madura ADB.

5. A.Ghouse Ali

6. K.Nazrine

7. Gulam Thasthageer

8. A.Badrudeen

9. A.Usman Ali

10.A.Rahina Begum

11.A.Humayun Kabeer Ali

12.Jawahar Ali

..Respondents

(Respondents 1 and 2 deleted from the array of  
parties vide this order)

**PRAYER:** Petition under Article 226 of the Constitution of India  
seeking issuance of a writ of Certiorari, calling for the records



relating to the impugned order passed by the first respondent in his proceedings No.RA(SA)-122/2014 dated 27.02.2019 and quash the same as illegal in so far as it grants one time settlement is concerned.

For Petitioner : Mr.Ajmal Khan  
Senior Counsel for  
Ajmal Associates  
For Respondents : R1 and R2- No appearance  
Mr. C. Karthick  
For R3 and R4  
Ms. A.L. Ganthimathi  
For R5 to R12

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**ORDER**

**[Order of the Court was made by The Hon'ble CHIEF JUSTICE]**

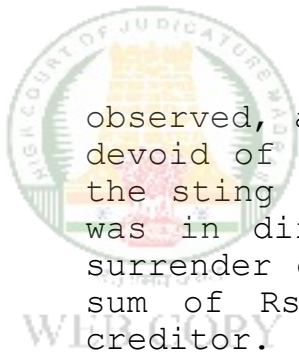
The petition is directed against that part of an order passed by the Debt Recovery Appellate Tribunal that prejudices the petitioner and has the effect of undoing a concluded sale.

2. At the outset, it must be recorded that the pernicious practice of impleading adjudicatory bodies when no personal allegations are levelled against them must be stopped as of yesterday. For far too long, Arbitrators, Tribunals and officers of such Tribunals have been needlessly impleaded and harassed for no rhyme or reason. The effect may be perceived if, in course of an appeal, learned lawyer who had argued for the respondent in the first Court is impleaded as a party.

3. The names of the first two respondents are deleted from the array of parties. The previous orders in such regard passed both here and at the Principal Bench should be taken note of by the Department and advocates advised accordingly, though the Department may not have any right to ask for deletion of names since that would require the exercise of judicial authority.

4. The grievance of the petitioner herein is confined to the direction issued by the Debt Recovery Appellate Tribunal in its order of February 27, 2019 undoing the sale of an immovable property which had been concluded upon the issuance of a sale certificate on April 20, 2014 and the registration of the sale being completed on May 30, 2014. The challenge to the sale was repelled by the appropriate Debts Recovery Tribunal on July 17, 2014 and the order impugned herein has been passed on the fifth respondent's appeal before the Debt Recovery Appellate Tribunal against such order of July 17, 2014.

5. It is evident from the order impugned that the Appellate Tribunal found no merit in the claim of the appellant before it and



observed, at paragraph 17 of the impugned order, that the appeal was devoid of substance. Even the impugned order was affirmed. However, the sting in the tail as far as the present petitioner is concerned was in directing the effective cancellation of the sale and the surrender of possession of the immovable property upon deposit of a sum of Rs.40,30,000/- by the fifth respondent with the secured creditor.

6. In such context, the petitioning auction-purchaser relies on a Supreme Court judgment reported at 2018 (3) CTC 877 (*Dwarika Prasad v. State of Uttar Pradesh*). The Court observed, upon referring to Rule 13(8) of the Security (Enforcement) Rules, 2002, and recognising the general law as enunciated in Section 60 of the Transfer of Property Act, 1882, that the mortgagor's right to redemption remains alive till the sale is completed; and, once the sale transaction is completed, and even the registration of the document effected, the mortgagor has no right of redemption as the same would have been extinguished upon the sale being completed.

7. The matter may be seen from a different perspective. It was perfectly open to the petitioner herein to sell the property to a third party a day after the registration of the sale was recorded in his favour. If the mortgagor in this case could not have chased the petitioner's purchaser, by a parity of reasoning, upon the registration of the sale being completed, the mortgagor could not have obtained an order for the sale being undone as the mortgaged asset stood inextricably alienated upon the sale being completed and the registration being concluded.

8. The Debt Recovery Appellate Tribunal clearly fell into error by being swayed by the valuation of the property as indicated by the fifth respondent herein. It may also be recorded that though the fifth respondent herein forwarded a demand draft for the amount of Rs.40.30 lakh to the secured creditor on or about March 20, 2019, the instrument has since been returned, albeit a year later, by the secured creditor.

9. Accordingly, W.P.(MD) No.11660 of 2019 is allowed by setting aside the relevant part of paragraph 16 of the order dated February 27, 2019 passed by the Debt Recovery Appellate Tribunal, Chennai, by which the concluded sale was sought to be reopened.

10. To clarify, the direction contained in paragraph 16 for permitting the fifth respondent herein to make a deposit and for the secured creditor to refund the sale consideration to the petitioner herein for possession and title of the property to revert to the fifth respondent herein, stands set aside. The sale stands confirmed in favour of the petitioner herein with no right to any of the borrowers to redeem the mortgage as such right stood extinguished upon the sale being completed and the registration in respect of



11. W.M.P(MD).No.8872 of 2019 is closed. There will be no order as to costs.

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Sd/-

Assistant Registrar (AD-II)

/ /2021

Sub Assistant Registrar(CS)

mnr

*Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To:

1.The Registrar,  
Debt Recovery Appellate Tribunal,  
Chennai.

2.The Registrar,  
Debt Recovery Tribunal,  
Madurai.

3.The Authorized Officer,  
State Bank of India,  
Zonal Office, Region 1,  
Madhura Complex,  
No.2, Dr.Ambedkar Road,  
Madurai-2,

4.The Branch Manager,  
State Bank of India,  
Madura ADB.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-27243[F]  
dated 25/08/2021)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-27231[F]  
dated 25/08/2021)

W.P.(MD) No.11660 of 2019

24.08.2021

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