



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.12852 of 2022

and W.M.P.No.12310 of 2022

N.Prakash

.. Petitioner

vs

1. Indian Overseas Bank,
Pollachi Branch, Represented by its Branch Manager,
New Scheme Road, Coimbatore.

2. Mrs.K.Muthulakshmi

3. The Registrar,
Debts Recovery Appellate Tribunal,
Chennai - 600 008.

4. The Registrar,
Debts Recovery Tribunal, Coimbatore.
Coimbatore - 641 018.

5. The Recovery Officer,
Debts Recovery Tribunal, Coimbatore,
Coimbatore - 641 018.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the impugned order dated 03.03.2021 passed in M.A.No.3 of 2021 on the file of the third respondent and quash the same.

For the Petitioner : Mr.Om Prakash, SC
for Mr.S.K.Chandra Kumar

For the Respondents : Mr.F.B.Benjamin George
For R.1

: Mr.V.Kadhirvelu
For R.4 and R.5



ORDER

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

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The writ petition has been filed to challenge the order dated 03.03.2021 passed by the Debt Recovery Appellate Tribunal (in short 'the DRAT') at Chennai. The learned Tribunal has given a complete history of the case and various litigations at the instance of the borrower and even the petitioner and finding that the challenge to the show cause notice for eviction in the hands of the petitioner was not tenable and otherwise, on merits the petitioner has no case, the DRAT dismissed the appeal.

2. The learned counsel for the petitioner submits that the petitioner is the legal heir of the guarantor and is willing to satisfy the entire due amount, yet, ignoring the aforesaid, the sale was confirmed and interference in the show cause notice for eviction has not been made by the Debts Recovery Tribunal (DRT) and the DRAT and thus, the writ petition has been filed with a prayer to set aside the order of the DRT and DRAT as well as the show cause notice for eviction.

3. The factual issue has been considered by the learned Appellate Tribunal and the various litigations taken by the petitioner have also been dealt with. Instead of repeating all the facts and the litigations in this writ petition, it would be appropriate to refer those paragraphs of the order of the Appellate Tribunal and accordingly, paragraphs 9 to 20 are quoted hereunder:-

"9. On 24.04.2009, the property was sold in public auction to the sole bidder for a sum of Rs.20.25 lakhs. It is pertinent to note that before the sale of the subject property, IA 2113/2008 for the Schedule I property be taken up for auction on the first instance as per the DRT Procedure and permit the Petitioner to pay the balance amount after adjusting the sale proceeds of the Schedule I property on Rs.20,35,823.72p and IA-522/2009 to stay all further proceedings pertaining to Schedule II property alone, pending disposal of the above appeal, filed by the Appellant before the Recovery Officer and the Presiding Officer respectively had been dismissed. Meaning thereby, the Appellant was in notice and knowledge of the sale.

10. Perusal of the record reveals that the DRT dismissed the IA 522/2009 on 24.04.2009. After the dismissal of the said IA, the Recovery Officer had



proceeded to conduct the auction sale of the subject property and the Respondent No.2 was declared as a successful bidder.

11. The conduct of the Appellant if examined, in a nut shell, it is seen that on 22.05.2009, the Appellant filed an Appeal in MA-278/2010 challenging the Order passed by the DRT, before this Tribunal. This Tribunal had granted interim stay on condition of deposit of Rs.4 lakhs with the Respondent No.1 Bank. The said contention was complied with by the Appellant.

12. In the meanwhile, the Recovery Officer, by mistake issued Sale Certificate on 20.07.2009 in favour of the Respondent No.2, overlooking the stay Order passed by this Tribunal. However, upon realizing the mistake, the Recovery Officer had cancelled the Sale Certificate on the next date.

13. Thereafter, on 13.06.2011, this Tribunal disposed of MA-278/2010, directing the DRT to dispose of the Appeal No.1/2009 as expeditiously as possible and interim stay was ordered to continue till the disposal of the said Appeal. Subsequently, the Appellant had withdrawn the deposit of Rs.4 lakhs made before the Respondent No.1, pursuant to the Order passed by this Tribunal on 22.05.2009.

14. On 13.03.2012, the DRT directed the Appellant to deposit a sum of Rs.5 lakhs on before 31.03.2012 and thereafter within 60 days to deposit the entire balance dues with the Respondent No.1. However, the said Order was passed without hearing the Auction Purchaser, Respondent No.2 herein. As per the above direction, the Appellant deposited Rs.5 lakhs on 28.03.2012.

15. Pursuant to the Order dated 13.03.2012, the Auction Purchaser filed two Applications namely, one to implead her in the Appeal before the DRT and another to review the Order by the DRT on 13.03.2012. The impleading Application was ordered in the presence of the Counsel for the Appellant and notice was ordered in the Review Application. During the hearing on the said day, the Counsel for the Appellant sought suspension of the second portion of the Order dated 13.03.2012, directing the Appellant to deposit the entire balance dues within 60 days.

16. Aggrieved by the Order passed by the DRT, on 26.04.2012, the Appellant filed Writ Petition in WP No.11113/2012 before Hon'ble High Court of Madras



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seeking for a Writ of Mandamus forbearing the DRT from hearing the Appeal No.1/2009. The Hon'ble High Court after hearing all the parties had transferred the Appeal No.1/2009 from the file of the DRT, Coimbatore to DRT-II, Chennai. Pursuant to the said Order of Hon'ble High Court, the Appeal was renumbered and taken on the file of DRT-II, Chennai in Appeal No.16/2012. In the said Appeal, the Appellant filed IA-34/2013, seeking to defer further proceedings in the matter and also filed IA-82/2013 seeking to redeem the mortgage properties.

17. On 30.04.2013, the Appellant filed Writ Petition in WP No.6679/2013, before Hon'ble High Court of Madras to direct the DRT-II, Chennai to decide the IA 34/2013 and IA-82/2013 filed in Appeal No.16/2012, before hearing the main Appeal. The Hon'ble High Court had disposed of the said Writ Petition directing the DRT to decide the said IAs along with Appeal No.16/2012.

18. The DRT vide Order dated 27.08.2013, dismissed both the Appeal No.16/2012 and IA-82/2013 thereby giving findings that the prayer in the Appeal is not maintainable and also that the Appellant has already lost his right of redemption. Consequently, on 04.09.2013, the Recovery Officer had issued the Sale Certificate in favour of the Respondent No.2, the Auction Purchaser and immediately thereof the Eviction Show Cause Notice dated 06.09.2013 was issued to the Appellant.

19. Thereafter, the Appellant filed two Appeals before this Tribunal challenging the Orders passed by the DRT in MA-130/2013 and MA-67/2014 respectively and the same were dismissed by this Tribunal vide Order dated 06.05.2014 confirming the Orders passed by the DRT.

20. The Appellant, on 08.12.2014, again filed Writ Petitions challenging the Orders passed by this Tribunal in WP Nos.13854 & 13855/2014. The Hon'ble High Court after hearing both the parties had dismissed both the Writ Petitions for want of compliance of the provisions of Rules 60 and 61 of the II Schedule to the Income Tax Rules, by the Appellant. As against the said Order passed by the Hon'ble High Court, the Appellant filed Special Leave Petitions in SLP Nos.15115/2016 and 15116/2016 before Hon'ble Supreme Court and the Hon'ble Supreme Court vide Order dated 01.07.2016, dismissed the said SLPs."



4. The paragraphs aforesaid show that the petitioner lost the case for challenge to the action taken by the respondent Bank for recovery of the amount and even in regard to the auction sale. The challenge to the issuance of sale certificate after conducting the auction sale was also addressed by the DRT and DRAT in the respective orders. The challenge to the auction sale was not accepted rather the appeal and the subsequent litigation in that regard by the petitioner was also not accepted. The matter in that regard was even taken up to the Supreme Court through SLP Nos.15115 and 15115 of 2016 where the SLP was dismissed on 01.07.2016.

5. In view of the above, the challenge to the auction sale and the confirmation remained adverse to the petitioner and as a consequence of it, the show cause notice for eviction was issued and challenged by the petitioner as a last approach by making an appeal before the DRAT. The DRAT earlier dismissed the appeal finding no substance therein to cause interference in the order of the DRT on challenge to auction notice and even that order was upheld by the Supreme Court finding no valid ground for causing interference in the auction sale and even the issuance of sale certificate. The notice of eviction was given thereupon. Therefore, the petitioner has no ground to challenge it.

6. A right of redemption claimed by the petitioner was not recognised on the facts given above and that too when the petitioner lost all the litigations for challenge to the process by the bank. The notice for eviction was nothing but the consequence of the confirmation of the sale and dismissal of the appeal to challenge the auction sale along with the confirmation. Thus, we do not find any ground to cause interference in the order passed by the DRAT.

The writ petition fails and is dismissed. No costs. Consequently, W.M.P.No.12310 of 2022 is closed.

Sd/-

Deputy Registrar (CS)

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Sub Assistant Registrar

sra



To:

- 1.The Branch Manager,
Indian Overseas Bank,
Pollachi Branch,
New Scheme Road, Coimbatore.
- 2.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai - 600 008.
- 3.The Registrar,
Debts Recovery Tribunal, Coimbatore.
Coimbatore - 641 018.
- 4.The Recovery Officer,
Debts Recovery Tribunal, Coimbatore,
Coimbatore - 641 018.

+1cc to Mr.S.K.Chandra Kumar, Advocate SR. No. 35481
+1cc to Mr.F.B.Benjamin George, Advocate SR. No. 36125

W.P.No.12852 of 2022

CA (CO)
PR (22/06/2022)