



WP No.17553 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No.17553 of 2015
and
MP.No.1 of 2015

1. Naaz Akber
2. Nasreen Haroon Akber
3. B.Zain Akber
4. C.Nabeel Ahmed
5. Suny Akber
6. Sama Akber

.. Petitioners

Versus

1. Vijaya Bank
Moore Street
Chennai - 600 001.
 2. The Registrar
Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
Ethiraj Salai, Chennai.
 3. The Recovery Officer, DRT - II
4th Floor, Spencer Tower
Anna Salai, Chennai 600 002
- Respondents

..

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the order passed by the Debt Recovery



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Appellate Tribunal, Chennai in R.A.No.26 of 2012 dated 05.03.2015 confirming the order passed by the Debt Recovery Tribunal - II, Chennai in A.P.No.19 of 2010 dated 20.02.2012 and quash the same.

For Petitioners : Mr. Zaffarullahkhan
For R1 : Mr. Ilaya Rajkumar
for M/s. Ramalingam Associates

ORDER

(Order of the Court was made by R. MAHADEVAN, J)

Challenging the order dated 05.03.2015 passed by the Debt Recovery Appellate Tribunal, Chennai in R.A. No. 26 of 2012, confirming the order dated 20.02.2012 passed by the Debt Recovery Tribunal - II, Chennai in A.P.No.19 of 2010, the petitioners have come up with this writ petition.

2. According to the petitioners, the property situated at Door No.105, Harrington Road, Chetpet, Chennai - 600 031 originally belonged to their grand mother Mrs.Dur-E-Shawar. She had executed a Settlement Deed bearing Doc. No.1103 of 1998 in favour of the petitioners in respect of half undivided share of land together with the superstructure on the Ground floor. After the death of Mr. Akbar Pasha, who is the father of the petitioners 1 and 2 and grandfather of the petitioners 3 to 6, Mrs. Dur-E-Shawar made a Hiba in respect of the remaining half share together with the superstructure on the First floor in favour of the petitioners on 01.02.1999 and the same was recorded on



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05.02.1999. Thus, as on 01.02.1999, the ownership rights in the entire property vested with the petitioners. While so, the first respondent-Bank has initiated Recovery proceedings against M/s. Akbar Leather Limited before the Debts Recovery Tribunal and has obtained an order of attachment in respect of the first floor of the property together with half undivided share of land. Based on the order passed by the Debts Recovery Tribunal, the Recovery Officer, DRT-II, issued Auction Notice for sale of the property being the half undivided share of land together with superstructure on the first floor at Door No.105, Harrington Road, Chennai.

3. The petitioners further stated that they are neither borrowers nor guarantors in respect of the loan availed by M/s. Akbar Leather Limited. Therefore, the petitioners have filed petition before the Debt Recovery Tribunal, objecting to the auction sale of their property. On the basis of the objections raised, the Recovery Officer by order dated 16.09.2010, deferred the auction sale, however, directed the petitioners to approach the Civil Court and till then, the property shall remain under attachment as per the order passed by the Tribunal. Challenging the order dated 16.09.2010 passed by the Recovery Officer, the Bank filed A.P.No.19 of 2010 before the DRT-II, Chennai. Whereas, the petitioners filed Civil Suit No. 1057 of 2010 before this Court to



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declare that they are the absolute owner of the plaint schedule property and to set aside the order of attachment dated 16.09.2010 passed by the Debts Recovery Tribunal, Chennai, in M.A. No. 116 of 2010. By order dated 20.02.2012, the appeal filed by the Bank was allowed by setting aside the order dated 16.09.2010 and remitted the matter to the Recovery Officer for fresh disposal. The first respondent bank entered appearance through their counsel in the suit filed by the petitioners and also filed R.A. No. 26 of 2012 before the Debt Recovery Appellate Tribunal, Chennai, against the order dated 20.02.2012 passed in A.P. No. 19 of 2010 on the file of Debt Recovery Tribunal, Chennai. The Appellate Tribunal, without considering the claim of the petitioners, has passed a cryptic order dated 05.03.2015 permitting the first respondent Bank to proceed further with the order of attachment. In those circumstances, the petitioners have come forward with this writ petition seeking to quash the order dated 05.03.2015 passed by the Debt Recovery Appellate Tribunal, Chennai.

4. We have heard the learned counsel for the petitioners as well as the learned Standing counsel for the first respondent-Bank and perused the materials placed on record.



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5. It is evident that the first respondent Bank has initiated the proceedings to recover the loan amount from the borrower viz., M/s. Akbar Leather Limited and obtained an order of attachment of the secured asset. According to the petitioners, they are neither borrowers nor guarantors for the loan facility availed by the borrower, while so, the attachment of their property is not proper. On the other hand, the fact remains that the petitioners have already filed a comprehensive suit before this Court in C.S. No. 1057 of 2010 to declare that they are the owners of the property in question *inter alia* to set aside the order of attachment dated 16.09.2010 passed by the Recovery Officer, Debt Recovery Tribunal-III, Chennai, in M.A. No. 116 of 2010. In the said suit, the first respondent Bank has entered appearance and also filed their written statement. When the very same property covered in this writ petition, is the subject matter of the suit in C.S. No. 1057 of 2010 filed by the petitioners and it is pending, this Court is not inclined to entertain this writ petition as it is settled law that a party cannot be permitted to pursue two proceedings simultaneously. However, it is open to the petitioners to prosecute the suit filed by them in C.S. No.1057 of 2010 in a manner known to law.

6. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.



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[R.M.D., J.] [M.S.Q., J.]

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Index : Yes / No
Internet : Yes / No
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