



W.P.No.11795 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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M.Revathy

.. Petitioner

Vs

- 1.Debt Recovery Tribunal-III,
rep. by its Registrar,
6th Floor, Sastri Bhavan,
Haddows Road,
Chennai – 600 006.
- 2.State Bank of India,
Stressed Assets Management Branch,
rep. by its Assistant General Manager,
Red Cross Buildings, II Floor,
No.32, Montieth Road,
Egmore, Chennai – 600 008.
- 3.M/s.Leather Leader Company Private Limited,
Having its Registered Office at
No.114/2, Anna Salai Extension,
Nagaikeni, Chrompet,
Chennai – 600 044.



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4.A.E.S.Ravi
5.Josephraj
6.D.Mohanraj
7.V.Shankar

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the first respondent pertaining to order dated 1.4.2023 in Appeal S.R.No.14746 of 2022 and quash the same, number the appeal in S.R.No.14746 of 2022 in M.A.No.522 of 2022 in DRC No.34 of 2020 in O.A.No.690 of 2014 and dispose the same on merits, in accordance with law.

For the Petitioner : Mr.Srinath Sridevan
Senior Counsel
for M/s.L.Thiyagaiya

ORDER

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

M.Revathy, wife of Mohanraj, a resident of No.9, Gangai Street, Kalashetra Colony, Besant Nagar, Chennai-90, has filed this writ petition challenging the impugned order dated 1.4.2023 passed by the Debts Recovery Tribunal-III, Chennai in Appeal S.R.No.14746 of 2022 and to direct the first respondent to number



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the Appeal S.R.No.14746 of 2022 in M.A.No.522 of 2022 in DRC No.34 of 2020 in O.A.No.690 of 2014 and dispose of the same on merits and in accordance with law.

2. Mr.Srinath Sridevan, learned senior counsel appearing for the petitioner, submitted that the petitioner is a third party to the Debt Recovery Certificate/Original Application, namely DRC/OA proceedings and she is the wife of D.Mohanraj, who has been arrayed as fourth defendant in O.A.No.690 of 2014. He would submit that during the pendency of the mortgage with Yes Bank, the property in question was settled by the petitioner's husband in favour of the petitioner and the settlement deed was subsequently cancelled by the petitioner's husband. However, after settling the loan account with Yes Bank, the petitioner's husband again settled the property in question in favour of the petitioner on 22.8.2019 under a registered settlement deed. Therefore, the decree dated 1.1.2020 passed by the Debts Recovery Tribunal-III, Chennai in O.A.No.690 of 2014 against the petitioner's husband in respect of the property in question will not have any legal sanctity so long as



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the property absolutely belongs to the petitioner. Hence, the Recovery Officer has no legal right to pass any restraint order.

3. Arguing further, learned senior counsel contended that if there is any iota of evidence showing that the subject property attached by the Recovery Officer belongs to the petitioner's husband, who has been arrayed as defendant No.4 in O.A.No.690 of 2014, the petitioner cannot have any say. However, by overlooking the aforesaid vital facts, the Recovery Officer has wantonly attached the property in question when it absolutely belongs to the petitioner. Since the petitioner's property is in noway connected with the debt or noway connected with the security given by her husband at the time of borrowing loan from the respondent bank, the Recovery Officer has no legal right to attach the property of the petitioner. Therefore, the petitioner has filed the appeal in Appeal SR No.14746 of 2022 before the Debts Recovery Tribunal-III, Chennai. But the appeal has been returned by the Registry of the DRT-III compelling the petitioner to pay 50% of the amount as per Section 30A of the Recovery of Debts and Bankruptcy Act, 1993.



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Learned senior counsel would submit that even though it was submitted before the Registry that Section 30A of the Act cannot be applied, the said contention has not been considered by the Registry of the DRT-III and the matter is not listed for maintainability before the Presiding Officer of the DRT for substantiating the claim of the petitioner. As a result of non-listing of the matter before the DRT, the petitioner stands remediless, he pleaded.

4. According to learned senior counsel for the petitioner, there is no need to deposit 50% of the due amount as mandated by Section 30A of the Act, inasmuch she is a third party to the proceedings. Hence, in view of the peculiar facts and circumstances of the case, the petitioner has been constrained to file the present writ petition.

5. We find that the petitioner is the wife of the sixth respondent, Mohanraj, who is the fourth defendant in O.A.No.690 of 2014, which was allowed on 1.1.2020 by the DRT-III, Chennai,



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thereby decreeing that the respondent bank is entitled to recover a sum of Rs.19,45,03,266.52 due under various credit facilities less Rs.5,09,78,243/- realized through sale of application 'A' schedule property and items 1 and 2 of 'B' schedule properties and various amounts paid between 3.1.2015 and 2.4.2016 together with pendent lite and future interest at 14.50% per annum from the date of filing of the application till the date of realisation in full from the defendants jointly and severally.

6. It appears that the Recovery Officer has passed a restraint order dated 28.4.2022 in I.A.No.522 of 2022 in DRC No.34/2020 in O.A.No.690 of 2014 from entering into any transfer or charge or alienation in respect of the property in question by anybody without prior and express permission of the DRT. The petitioner has filed a claim petition against the restraint order dated 28.4.2022 passed by the Recovery Officer taking a legal plea that her property cannot be attached or sold by the Recovery Officer.

7. Firstly, even though the Assistant Registrar had directed



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the appeal filed by the petitioner to be listed before the Presiding Officer, repeatedly the Registry has returned the matter without the Presiding Officer taking any decision in the matter. Secondly, it is clear from the recovery certificate that the petitioner is not a party or judgment-debtor and therefore, the Registry of DRT-III, Chennai cannot insist on payment of 50% dues for numbering the appeal.

8. Therefore, we direct that the appeal filed by the petitioner in Diary No.14746 of 2022 shall be numbered, if it is otherwise in order and taken up for hearing on merits by the DRT-III.

9. With the above direction, the writ petition is allowed. There will be no order as to costs. Consequently, W.M.P.Nos.11691 and 11692 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
20.04.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

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THE HON'BLE ACTING CHIEF JUSTICE
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