



W.A.No.9 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 21.09.2023

Delivered on: 21.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

W.A.No.9 of 2005
and
W.A.M.P.No.23 of 2005

1.A.Mohamed Ali (Died)

2. Jaitoon Beevi

3.M.Siddique

4.M.Fatima

5.J.Dhil Sukh Begum

6.A.Umar Salma

7.M.Sathiq

8.Mohammed Yusuf

(Appellants 2 to 8

brought on record as LR's of the

deceased sole appellant, vide

Court order dated 06.03.2020

made in Rev.App.No.42 of 2010

in W.A.No.9/2005 in C.M.P.5768/2020)

.. Appellants

Vs.



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1.The Tamil Nadu Industrial
Investment Corporation Limited
KRT Building, II Floor
33, Promenade road
Cantonment, Tiruchirapalli-1

2.Usha Rani

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.33499 of 2002, dated 30.11.2004.

For Appellants : Mr.A.R.Karthik Lakshmanan
for
Mr.C.T.Murugappan

For Respondents : Mr.R.Viduthalai, Senior Counsel
for
Mr.K.V.Sundararajan for R1
Mr.M.Kamalanathan for R2

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful writ petitioner is the appellant in the present writ appeal. The writ petitioner sought issuance of a writ of certiorari seeking to quash the letters dated 05.08.2002 and 09.08.2002 of the 1st respondent, namely, the Tamil Nadu Industrial Investment Corporation



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Limited (TIIC) relating to an auction dated 25.02.2002. The premise on which the writ petitioner approached the Court was that he had given his residential property, namely, D/No.84, Tiruvallur, Papakurichi, Trichy-19 as collateral security for the loan availed of by one Mr.A.Abdul Rahman, Proprietor, Electrical Industries, from the 1st respondent, TIIC. The principal borrower defaulted in payment of the loan and therefore, the proceedings were initiated by the first respondent under Section 29 of the State Financial Corporations Act, 1951. The property of the writ petitioner was sought to be auctioned to recover the dues of the borrower, Mr.A.Abdul Rahman. The second respondent participated in the auction held in 25.02.2002 and his offer being the highest, the property of the writ petitioner was sold to the second respondent. It is the case of the writ petitioner that the sale had not been confirmed and that the writ petitioner continued to be possession of the said residential property. Despite approaching the 1st respondent with a request not to sell the petitioner's property, the attempt did not fructify and the first respondent issued the impugned letters calling upon the writ petitioner to pay the auction amount failing which the sale in favour of the second respondent would stand. Before the Writ Court, the auction purchaser, viz., the second respondent filed a counter stating that she was a



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bonafide purchaser who had parted with the entire consideration. No sympathy can be shown to the writ petitioner who had admittedly offered his property as collateral security for the loan availed of by the principal borrower, Mr.Abdul Rahman. According to the 2nd respondent, auction was conducted in accordance with law and the Act does not bar or prevent the sale of assets of the guarantor.

2. The Writ Court, after hearing the parties, dismissed the writ petition holding that the writ petitioner cannot claim any right to withhold the confirmation of sale in favour of the successful bidder, namely, the 2nd respondent and also held that the 2nd respondent was justified in not paying the balance of the bid amount as the writ petitioner had obtained an interim order from the Writ Court.

3. The said order of the Writ Court, dismissing the writ petition, is under challenge in the present writ appeal. The writ petitioner, as appellant, has raised the grounds that the appellant being only a guarantor, his property could not be brought for sale and no right would accrue to the auction purchaser. It is further contended that being a guarantor, the Writ



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Court ought to have directed the 1st respondent to consider waiver of penal interest. Pending the appeal, the appellant died and his legal representatives have been brought on record as appellants 2 to 9.

4. We have heard Mr.A.R.Karthik Lakshmanan, learned counsel for Mr.C.T.Murugappan, for the appellants, Mr.R.Viduthalai, learned Senior Counsel for Mr.K.V.Sundararajan, for the 1st respondent and Mr.M.Kamalanathan, learned counsel for the 2nd respondent.

5. Before we proceed to adjudicate the writ appeal, it is seen that earlier, a Division Bench of this Court, in and by order, dated 26.09.2008 dismissed the writ appeal, after elaborately considering the submissions of the parties before it. Thereafter, Review Application No.42 of 2010 was filed by the legal heirs of the appellant and the First Bench of this Court restored the writ appeal to be heard and decided on merits, finding that the judgment of the Hon'ble Supreme Court in ***Karnataka State Financial Corporation vs N.Narasimhaiah*** reported in ***(2008) 5 SCC 176*** had not been brought to the notice of the Division Bench at the time of deciding the above Writ Appeal.



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6. We have also perused the records including the earlier order in the review petition and also the material documents available before us.

7. The short point for consideration is whether the judgment of the Hon'ble Supreme Court in *N.Narasimhaiah's* case would have prospective application or retrospective application. The Hon'ble Supreme Court held that the property of the guarantor cannot be proceeded against under Section 29 of the State Financial Corporations Act and that the right under the said Section can only be exercised against the defaulting party. Placing strong reliance on the said decision of the Hon'ble Supreme Court, the counsel for appellants would contend that the appellant (now by his legal heirs) was admittedly a guarantor and his residential property was offered as collateral security. According to the learned Counsel for the appellants, in view of the dictum of the Hon'ble Supreme Court, the writ appeal has to be necessarily allowed, as the ratio laid down by the Hon'ble Supreme Court, would be squarely applicable to the facts on hand.

8. The learned counsel for the appellants would also rely on the



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decision of the Hon'ble Supreme Court in the case of *P.V.George V. State of Kerala* reported in *2007-3-SCC-557* and also in the case of *Manoj Parihar V. State of Jammu & Kashmir* reported in *2020-SC-782*, for fortifying his contention that the decision of the Hon'ble Supreme Court in *N.Narasimhaiah's* case would apply retrospectively and unless the Hon'ble Supreme Court in *N.Narasimhaiah's* case had specifically held that the said decision would be having a prospective overruling effect, it would only have a retrospective effect and would bind the High Court insofar as all the pending matters touching the same issue.

9. Per contra, Mr.R.Viduthalai, learned Senior Counsel appearing for Tamil Nadu Industrial Investment Corporation Limited would contend that the ratio laid down cannot have retrospective operation, but only a prospective operation, ie. from the date of the judgment in the said case. According to him, the property of the appellant was brought for sale even in 2002, much earlier to judgment of the Hon'ble Supreme Court and therefore, the law laid down by the Supreme Court subsequently cannot be applicable to the appellants' case.



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10. The learned counsel for 2nd respondent would also adopt the argument of the 1st respondent and he would further contend that the auction purchaser has a right to get the property which was bid by her successfully in a public auction. He would also further contend that the appellant had not challenged the legality of the auction and attempted to take shelter only after the judgment of the Hon'ble Supreme Court in *N.Narasimhaiah's* case. Mr.R.Viduthalai, learned Senior Counsel would also place reliance on a judgment of a single Judge of the Karnataka High Court, reported in **2023 1 KAR 827**, where the Karnataka High Court referring to the judgment of the Hon'ble Supreme Court in *N.Narasimhaiah's* case held that the said judgment would not apply to a case where the sale deed has been executed in 2006, prior to the judgment.

11. Mr.M.Kamalanathan, learned counsel for 2nd respondent would further submit that the second respondent is a *bonafide* purchaser who not only parted with the entire sale consideration, but, the sale deed has also been executed in her favour and in such circumstances, the writ petitioner's request cannot be entertained and he seeks for dismissal of the Writ Appeal stating that the learned Single Judge has rightly dismissed the Writ Petition.



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12. At the out set, we cannot lightly brush aside the arguments of the learned counsel for the appellants that the ratio laid down by the Hon'ble Supreme Court in *N.Narasimhaiah's* case would have retrospective effect and therefore, would have a bearing on the decision in the present Appeal. Mr.R.Viduthalai, learned Senior Counsel appearing for the Corporation would submit that the ratio laid down in the Hon'ble Supreme Court in *N.Narasimhaiah's* case was applied by a learned Single Judge of the Karnataka High Court, who held that the decision of the Hon'ble Supreme Court cannot have a retrospective effect and affect the documents that were already executed prior to the judgment delivered in *N.Narasimhaiah's* case.

13. We are called upon to now answer this limited, but interesting question as to whether the ratio laid down by the Hon'ble Supreme Court in *N.Narasimhaiah's* case would have a prospective overruling effect or whether it would date back and have a retrospective effect.

14. In order to answer the core issue, we fall back on the decision of the Hon'ble Supreme Court in the said *N.Narasimhaiah's* case. Section 29 of the State Financial Corporations Act, 1951, was the bone of



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contention before the Hon'ble Supreme Court in *N.Narasimhaiah's* case.

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The Hon'ble Supreme Court held that Section 29 does not empower the Corporation to proceed against the surety, even if some of the properties of the guarantor or a surety are mortgaged or hypothecated to it, the right of the financial corporation in terms of Section 29 of the Act must be exercised only against a defaulting party. There cannot be any default as envisaged in Section 29 by a surety or a guarantor. This is in no uncertain terms an interpretation of the statutory provisions of the State Financial Corporations Act. We are unable to notice in the said judgment that the Hon'ble Supreme Court has specifically held that the said judgment would have only a prospective overruling effect. When the Hon'ble Supreme Court has categorically found and held that the statute itself did not contemplate a right of the Corporation to proceed against the surety or guarantor under Section 29 of the State Financial Corporations Act, it is only an interpretation of the statute as it stood on the date of it coming into force. Therefore, there is no gainsaying in contending that the said judgment of the Hon'ble Supreme Court is only having a prospective effect and would not affect the present case. In the decision relied on by the learned counsel for the appellants in *P.V.George's* case as well as *Manoj Patihar's* case, the



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Hon'ble Supreme Court has held that the law declared by the Court will ordinarily have retrospective effect only, unless otherwise stated specifically to be otherwise.

15. We are not in agreement with the ratio laid down by the learned Single Judge of the Karnataka High Court on which reliance is placed by the learned Senior Counsel appearing for the Corporation. The decision of the Hon'ble Supreme Court which has enunciated a principle of law has to be applied to all cases, irrespective of the stage of the pendency of said case, as the ruling of the Hon'ble Supreme Court would amount to a statement of law having an effect from the very inception itself. The only exception to the said Rule is the doctrine of prospective overruling, where the Court, while superseding any law declared earlier and in order to prevent multiplicity of proceedings or avoid reopening of already settled matters, taking into account larger public interest, would have to clearly indicate that it would apply only prospectively. Therefore, where the judgment is silent about the prospective operation, it will not have a prospective overruling effect and the decision of the Hon'ble Supreme Court is binding on us. The declaration of law of the Hon'ble Supreme Court that Section 29 cannot be invoked by the Corporation to proceed against the



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surety or guarantor is certainly one that has to be applied to the facts of the present case, though the matter is pending in appeal and despite the fact that the sale deed has already been executed in favour of the second respondent by the Corporation. Insofar as the arguments of the learned counsel for the respondent Corporation as well as the purchaser that the ratio laid down by the Hon'ble Supreme Court in *N.Narasimhaiah's* case, cannot be applied retrospectively as it would result in unfair consequence to them, we are unable to countenance the said submissions, since in the absence of the Hon'ble Supreme Court specifically indicating in *N.Narasimhaiah's* case that it would have a prospective overruling effect, the decision applies retrospectively and to all pending cases. Therefore, the decision of the Karnataka High Court is not in line with the settled principles of law with regard to the doctrines of *stare decisis* as well as the doctrine of prospective overruling. The Courts do not make law. They only declare law. The Hon'ble Supreme Court has declared the law in respect of Section 29 of the State Financial Corporations Act and it only amounts to interpretation of law as it stands and as such should be understood that such declaration of law by the Hon'ble Supreme Court will have retrospective operation, taking effect from the date of the legislation itself, unless or otherwise the judgment



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specifically and clearly makes it a case of prospective overruling. In a case of interpreting a legislation to be prospective or retrospective, various determining factors would come into play, including the language employed in the legislation / statute, the statute being substantive in nature and whether it affects vested right of the parties etc. However, in the case on hand, it is the applicability of a later judgment of the Hon'ble Supreme Court, which is in contention. Insofar as the field of *stare decisis* is concerned, there is no second opinion and the law is well settled that unless and otherwise the decision itself specifically and in clear terms sets out that the decision will have only prospective overruling, in all other cases, the decision would only have a retrospective operation and binding force, irrespective of the stage of the pendency of the proceedings. Here, admittedly, on the date of the Appeal originally being dismissed by the Division Bench, the decision of the Hon'ble Supreme Court in *N.Narasimhaiah's* case, already held the field. However, without noticing the same, the Writ Appeal was dismissed, which was rightly reviewed in Review Application No.42 of 2010 and the Writ Appeal was restored to file to render a judgment in line with the ratio laid down by the Hon'ble Supreme Court in *N.Narasimhaiah's* case. In fact, the Division Bench, while allowing the Review Application No.42 of 2010,



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dated 06.03.2020, has specifically observed as follows:

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*"7. The aforesaid facts remain unrebutted and in view of the aforesaid judicial intervention already having come into existence, the **Division Bench** having not noticed it, arrived at a different conclusion which is clearly an error apparent on the face of record and therefore, the matter will have to be revisited and the judgment dated 26.09.2008 will have to be recalled. Accordingly, a good ground for review has been made out. We allow this review application and recall the judgment, dated 26.09.2008. No costs."*

(Emphasis supplied by this Court)

16. The respondents were heard before the said order came to be passed and the said order has also become final, since the order in the Review Application has not been challenged by any of the respondents. Therefore, from this angle also, we can only see that the appellants are entitled to relief. It may be entirely different, if the order in the Writ Petition has become final and no Appeal against the same had been filed and in such circumstances, it may be justified in saying that the rights of the parties have stood crystallised already on the date of the judgment rendered by the



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Hon'ble Supreme Court in *N.Narasimhaiah's* case and therefore, under such circumstances, the decision of the Writ Court could not be recalled by filing a belated review application. Unfortunately, in the present case, the decision of the Hon'ble Supreme Court came to be pronounced after the order of the Writ Court and pending this Writ Appeal and therefore, the High Court has no other option but to follow the ratio laid down by the Hon'ble Supreme Court.

17. No doubt, we are also conscious of the fact that the auction purchaser has subsequently paid the balance sale consideration on 12.01.2005 and thereafter, a sale deed has also been executed in her favour on 07.02.2005. However, on the date of filing of the writ petition, three factors were against the Corporation and the auction purchaser namely, (i) the auction purchaser had paid only a token advance towards sale consideration; (ii) the sale deed had not been executed / registered in her favour, and (iii) physical possession was never taken from the appellants. Thus, on the date of filing of the writ petition, there was no occasion for the appellant to challenge the sale deed in favour of the second respondent, which came to be executed only after the disposal of the writ petition. In the



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meantime, the Writ Appeal was filed and was pending.

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18. The Hon'ble Supreme Court has declared Section 29 of the Tamil Nadu State Financial Corporations Act to be available only against the principal borrower and not the guarantors or sureties. In such circumstances, despite the fact that subsequent to the writ petition being dismissed, the Corporation has received the balance sale consideration and executed and registered the sale deed in favour of the second respondent, it would be of no avail, in view of the fact that the order of the Writ Court was promptly challenged.

19. In fine, we are inclined to pass the following order:

(i) the order of the Writ Court, dated 30.11.2004, in W.P.No.33499 of 2002, is set aside.

(ii) the appellants 2 to 8 shall refund the entire sale consideration paid by the second respondent to the first respondent / Corporation together with interest at 12% per annum within a period of four weeks from the date of receipt of copy of this judgment.

(iii) the sale deed executed by the first



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respondent / Corporation in favour of the second respondent shall be cancelled within a period of four weeks thereafter, at the cost of the appellants 2 to 8. It is also made clear that the second respondent shall co-operate with the first respondent / Corporation for cancelling the sale deed as aforementioned, pursuant to receiving the sale consideration together with interest at 12% per annum.

20. Resultantly, the Writ Appeal stands allowed. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

**(D.K.K.J) & (P.B.B.J)
21.12.2023**

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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI,J

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Pre-delivery judgment in
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