



C.R.P(MD)No.1303 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**C.R.P(MD)No.1303 of 2019
and
C.M.P(MD)No.7134 of 2019**

E.Ramkumar

:Petitioner

.VS.

- 1.M/s.Kotak Mahindra Bank Ltd.,
Asset Reconstruction Division,
1st Floor, Ceebros Centre,
No.39, Montieth Road,
Egmore, Chennai-600 008.
- 2.M/s.Getwell Hospital Pvt Ltd.,
Castle Wood, Tirunelveli-627 001.
- 3.Mr.A.Ramakrishnan
- 4.Mr.R.Sundararaman
- 5.Mr.S.Shanmugam
- 6.Mrs.Pazhanimuthu Gmathi Nachiar
- 7.The Sub-Registrar,
Joint I Sub Registration Office,
Tirunelveli,
St.Marks Road,



C.R.P(MD)No.1303 of 2019

Palayamkottai,
Tirunelveli-627 002.

: Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 05.04.2019 made in M.A.No.210 of 2018 passed by the Recovery Officer, Debts Recovery Tribunal-II, Chennai pertaining to raising the order of attachment dated 21.03.2017 made in DRC No.149 of 2015 in DRC No.34 of 2004 in O.A.No.1134 of 2000 before the Recovery Officer, Debts Recovery Tribunal-II, Chennai by allowing the petitioner.

For Petitioner :Mr.K.R.Laxman
For Respondents :No appearance

ORDER

[Judgment of the Court was made by **RMT.TEEKAA RAMAN.,J.**]

The fifth defendant in O.A.No.1134 of 2000 has filed an application in DRC No.34 of 2004 before the Recovery Officer, Debts Recovery Tribunal-II, Chennai, wherein, the personal property of one of the Director of the Certificate Debtor was attached and to raise the attachment, the appellant filed M.A.No.210 of 2018.



C.R.P(MD)No.1303 of 2019

2. After hearing the appellant, we find that at the instance of M/s.Kotak Mahindra Bank Ltd., O.A.No.1134 of 2000 was filed for recovery of money due to the Bank, based upon the loan, which was declared as Non Performing Asset. The said application was allowed. Subsequently, the Kotak Mahindra Bank was merged with the ICICI Bank. They have filed DRC No.149 of 2015 for attachment of the property belonging to the present petitioner. In the said application, it is contended that the mortgaged property was not sufficient enough to realise the amount and therefore, the guarantor property has to be taken into consideration. The said application was allowed and the property of the present petitioner was attached. The petitioner has filed an application in M.A.No.210 of 2018 to raise the attachment and the said application was dismissed by order dated 05.04.2019. Aggrieved against the said order, the petitioner has filed the present revision. The appeal provision is available under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993. Instead of approaching the DRT, the petitioner has filed the present revision before this Court.

3. Be that as it may, the main ground that was agitated before us that the petitioner is the one of the Director of the M/s.Getwell Hospital



C.R.P(MD)No.1303 of 2019

Pvt., Ltd., and the property is a personal property and hence, the personal property of the Director cannot be attached for the debts of the Private Limited Co., and another point is that the attachment proceedings has been initiated after the period of 12 years of limitation. The mortgaged property subject matter of the above O.A.No.1134 of 2000 though attached, went for public auction twice, and the same is still available in the hands of the Bank, whether, under such circumstances, the action of the bank in bringing the person property of the Director is justify or not.

4. After hearing the learned counsel for the petitioner for sometime, we are satisfied that the present application is filed under Rule 66 of the Income Tax Act,1961 and orders have been passed therein. There is an appeal provision available under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993. This Civil Revision Petition appears to have been filed when the Judicial Officer for the said Tribunal is vacant. Now, the Officer is available to decide the issue and hence, on the point of availability of specific statutory appeal remedy under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993, we are not inclined to exercise the power under Article 227 of the Constitution of India.



C.R.P(MD)No.1303 of 2019

WEB COPY

5. Taking into consideration the points that were raised by the learned counsel for the petitioner, we deem it fit to say that the time taken for the litigation of this revision is excluded for the purpose of limitation and 30 days time is granted for presentation of the application. Till such time, status quo shall be maintained.

6. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R.,J.] [P.B.B.,J.]
27.11.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
AM

To
The Recovery Officer,
Debts Recovery Tribunal-II,
Chennai.



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C.R.P(MD)No.1303 of 2019

RMT.TEEKAA RAMAN,J.
AND
P.B.BALAJI,J.

am

C.R.P(MD)No.1303 of 2019

27.11.2023