



C.R.P(MD)Nos.1980 and 1981 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2023

CORAM:

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

C.R.P(MD)Nos.1980 and 1981 of 2023

C.Cycil

... Petitioner/Petitioner/Defendant
in both petitions

-VS-

1.Canara Bank,
Thisayanvilai Branch,
Tirunelveli District,
Through its Branch Manager

... 1st Respondent/1st Respondent/Applicant
in both petitions

2.S.Shanmugam

... 2nd Respondent/ 2nd Respondent/Auction Purchaser
in both petitions

3.The Recovery Officer,
Debts Recovery Tribunal,
Madurai.

... 3rd Respondent in both petitions

[R3 is suo-motu impleaded vide order dated 09.08.2023]



C.R.P(MD)Nos.1980 and 1981 of 2023

PRAYER in C.R.P.(MD)No.1980 of 2023: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the Return Endorsement Order made in I.A.Sr.No.5485 of 2022 in R.C.No.49 of 2021 in O.A.No.1131 of 2015, dated 05.07.2023 and 17.07.2023 on the file of the Recovery Officer (DRT) Madurai and direct the Recovery Officer (DRT) Madurai to take I.A.SR.No.5485 of 2022 in R.C.No.49 of 2021 in O.A.No.1131 of 2015 on file and number and pass final orders within a time frame to be determined by this Court.

PRAYER in C.R.P.(MD)No.1981 of 2023: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the Return Endorsement Order made in I.A.SR.No.4050 of 2023 in I.A.SR.No.5485 of 2022 in R.C.No.49 of 2021 in O.A.No.1131 of 2015, dated 05.07.2023 and 17.07.2023 on the file of the Recovery Officer (DRT) Madurai and direct the Recovery Officer (DRT) Madurai to take I.A.SR.No.4050 of 2023 in I.A.SR.No.5485 of 2022 in R.C.No.49 of 2021 in O.A.No.1131 of 2015 on file and number and pass final orders within a time frame to be determined by this Court.

In both petitions:

For Appellant	: Mr.P.Thirumahilmaran
For R1 & R2	: Dispensed with
For R3	: Mr.K.Govindarajan Deputy Solicitor General of India



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COMMON ORDER

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

Mr.K.Govindarajan, learned Deputy Solicitor General of India takes notice for the third respondent. Notice to the respondents 1 and 2 are dispensed with in view of the order passed hereunder.

2(a). The petitioner herein, who is the borrower of the loan from the first respondent bank has initially filed an appeal against the order of the Recovery Officer in R.C.No.49 of 2021 and also remitted a sum of Rs.12,55,535/- and the same was returned with an endorsement that only an appeal is maintainable under Section 30-A of the Recovery of Debts and Bankruptcy Act, 1993. Subsequently, he has represented the said petition, as, one under Rule 60 & 61 of the Second Schedule of Income Tax Act, 1961, alleging that there is an error in proclamation of the sale notice and there is a defect in the sole notice and the said application was returned with an endorsement.



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2(b). Initially, by a returned endorsement, the said appeal papers were returned for pre-deposit contemplated under Section 30-A of the Recovery of Debts and Bankruptcy Act and the same was also returned with an endorsement as stated *supra*. Finally, the petitioner has decided to change the provision of law under Rule 60 & and 61 of Second Schedule of Income Tax Act, 1961 for recovery proceedings and the said application was returned on the ground that the papers that has been presented as an appeal, has now been changed as I.A., and the same is not maintainable and hence, the above revision.

3. The learned Deputy Solicitor General of India appearing for the third respondent drew our attention to the Judgment of the Hon'ble Apex Court dealing with the rights of DRT, wherein, certain observations have been made in connection with Section 30 of the Recovery of Debts and Bankruptcy Act.

4. The learned counsel for the petitioner also drew our attention to the Judgment of the Hon'ble Supreme Court of India in ***R.S.Infra-Transmission Limited Vs. Saurinindubhai Patel and Others*** reported in III (2022) BC 550 (SC) wherein, at paragraph 3.9, the submissions of the learned counsel therein has



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been summarized. Rule 60 of the Second Schedule of Income Tax Act r/w Rule 53 will attract pre-deposit amount. But Rule 61 stands on different footing. Since the matter has to be adjudicated by the Recovery Officer, hence, we are not expressing any view as to whether pre-deposit is to be made or not, it has to be decided by the concerned Recovery Officer depending upon the facts and circumstances of the case placed before them.

5. The only point that is we are called upon to answer is whether the petitioner which was originally filed as an appeal after return for compliance of certain defects and represented as I.A., is maintainable or not. We have no hesitation to hold that the same is maintainable. Accordingly, we answer the point in aforementioned in favour of the revision petitioner herein. We are not expressing any opinion upon the merits and requirement of pre-deposit amount if any for numbering the case and accordingly, we direct the third respondent/Recovery Officer to take on the file in I.A.SR.No.4050 of 2023 in I.A.SR.No.5485 of 2022 in R.C.No.49 of 2021 in O.A.No.1131 of 2015 and on the point of maintainable only, we decide the issue. However, with regard to the requirement of pre-deposit if any and the amount already deposited has to be



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adjacent or not, we have left it to the judicial discretion of the recovery officer as per rules thereof.

6. The Civil Revision Petitions are allowed as indicated above. No costs.

7. The Registry is directed to return the original papers so as to enable the petitioner to represent within a period of three weeks from the date of receipt of a copy of this order. The Recovery Officer, Debts Recovery Tribunal, Madurai shall decide about the return of excessive Court fee as contended by the learned counsel for the petitioner.

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

06.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

The Recovery Officer,
Debts Recovery Tribunal,
Madurai.



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

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C.R.P(MD)Nos.1980 and 1981 of 2023
and
C.M.P.(MD)No.12488 of 2023

06.10.2023