



W.P.(MD)No.9367 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 31.07.2023

CORAM :

**THE HONOURABLE MR JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR**

**W.P.(MD) No.9367 of 2016
and W.M.P.(MD)Nos.7421 and 12639 of 2016**

Minor N.S.Balaji,
S/o.Late Subraman,
Rep. by his Guardian,
K.S.Sasikala.

.. Petitioner

VS.

- 1.The Presiding Officer,
Debt Recovery Tribunal,
3rd & 4th Floor, Kalyani Towers,
Madurai – Melur Road,
Uthangudi, Madurai – 625 107.
- 2.The Recovery Officer,
Debt Recovery Tribunal,
3rd & 4th Floor, Kalyani Towers,
Madurai – Melur Road,
Uthangudi, Madurai – 625 107.
- 3.Dena Bank,
Madurai Branch,
No.67, Kamarajar Salai,
Madurai by its Senior Manager.



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4. Bharat Overseas Trading Company,
Rep by its partner,
Exports of Spice and Papaads,
No.51-A, Khanpalayam 3rd Street,
Kamarajar Salai, Madurai – 625 009.

5. N.S. Gnaswaran,
Partner, Bharat Overseas Trading Company,
No.51-A, Khanpalayam 3rd Street,
Kamarajar Salai, Madurai – 625 009.

6. N.S. Krishnakumar,
Partner, Bharat Overseas Trading Company,
No.51-A, Khanpalayam 3rd Street,
Kamarajar Salai,
Madurai – 625 009.

7. N.G. Bharathi

8. N.S. Madan Lal

9. Tmt. T.E. Sharmila

10. T.K. Ramesh Babu,

11. P. Mahalingam.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in T.A.No.394/2007 dated 05.02.2009 and the consequential sale certificate issued by the 2nd respondent vide order dated 25.03.2010 and 21.07.2010, quash the same and pass such further or other orders.



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For Petitioner : M/s.Krishnaveni, Senior Counsel for
Mr.R.Ramsundar Vijayraj
For respondents : Mr.K.Ashok Kumar Ram for R1 & R2
Mr.H.Lakshmi Shankar for R9 & R10
No Appearance for R3, R4, R5 to R8 &
R11

ORDER

[Order of the Court was made by ***M.S.RAMESH, J.***]

The brief facts, relevant for deciding the present Writ Petition, are that the third respondent herein had sanctioned the packing credit facility of Rs.25 lakhs and export bill discounting facility of Rs.10 lakhs to the fourth respondent herein. One Mr.N.S.Subburaman, among others had executed deed of guarantee on 18.03.1998 guarantying the due repayment advanced to the fourth respondent company along with the letter of confirmation of guarantee, apart from other documents relating to the immovable properties belonging to N.S.Subburaman. Having defaulted in repayment of the loan, the bank initiated recovery proceedings of the outstanding dues for disposal of the immovable properties offered as security.



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2. The Debt Recovery Tribunal (DRT) at Madurai, had passed final orders on 05.02.2009 in the Transfer Application No.394 of 2007, holding that the defendants 1 to 6 therein including Mr.N.S.Subburaman, were jointly and severally liable to pay the bank a sum of Rs.53,86,563/- together with interest, apart from other default clauses. One of the default clause was, a liberty given to the bank to sell the immovable properties and realize the sale proceeds towards dues. On 26.11.2009, orders came to be passed in the recovery proceedings by the DRT, by permitting for the auction proceedings. Accordingly, the two properties viz., Door No.8-A, First Eastern Downlane, Olai pattinam, Madurai City and New Door No.12A, Old Door No.1694 at Khanpalayam 3rd Street, Madurai City, were successfully auctioned in favour of the respondents 9 to 11 herein and two sale certificates, both dated 25.03.2010 and 21.07.2010, were issued in their favour. These final order dated 05.02.2009 and the two sale certificates dated 25.03.2010 and 21.07.2010 are put under challenge in the present Writ Petition.



3. The petitioner is a minor, who is alleged to be the son of N.S.Subburaman, through the second wife viz., N.S.Anshuya. The affidavit in support of the present Writ Petition is filed by one K.S.Sasikala, who is neither the biological mother of the petitioner, nor any details have been furnished as to how she claims to be the guardian of minor petitioner. The claim in the present Writ Petition is that the properties that were sold in the auction are joint family properties, in which, the petitioner has 1/8th share. It is on this sole basis, the final orders passed by the DRT for recovery and the consequential sale certificates issued in the year 2010 are challenged.

4. The Writ Petition is liable to be dismissed on the ground of maintainability. The Hon'ble Supreme Court has been consistently deprecating the practise of defaulters like N.S.Subburaman in the present case, who invoked Article 226 of the Constitution of India, questioning the proceedings of the DRT or the sale certificate issued pursuant to the orders of the DRT. The rational arrived at in these decisions are that the discretionary jurisdiction under Article 226 of the Constitution of India is not absolute, but to exercise judiciously in accordance with law. It was the



other consistent stand of the Hon'ble Supreme Court is that the Writ Petition under Article 226 of the Constitution of India should not be entertained, if alternate statutory remedies are available except in cases, which fall within the well defined exceptions.

5. In a recent decision in *Phoenix ARC Private Limited vs Vishwa Bharati Vidya Mandir* reported in *2022 5 SCC 345*, the aforesaid dictum were reiterated and further held that Writ Petition against Bank / ARC, is not maintainable. In the said case, when the ARC proposed to take action under the SARFAESI Act to recover the borrowed amount as a secured creditor, it was held that the Bank / ARC had lent money to the borrowers, during the course of a commercial transaction or under contract and therefore, the said activity of the Bank / ARC cannot be said to be performing a public function, which is normally expected to be performed by the State authorities. This apart, it was further held that when Section 17 of the SARFAESI Act provides for an efficacious remedy by way of an appeal, the Writ Petition should not be entertained by the High Court, in view of the alternative statutory remedy available under the Act.



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6. The decision in Phoenix ARC (supra) is squarely applies to the issue involved in the present Writ Petition. When the Bank had approached the Debt Recovery Tribunal and obtained final orders, pursuant to which, an auction was conducted whereby, the immovable properties were also sold in favour of the third parties and sale certificates were issued way back in the year 2010, the present Writ Petition, challenging these proceedings of the DRT, cannot be maintained in the light of the Ruling.

7. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(M.S.R., J.) (M.N.K., J.)
31.07.2023

NCC : Yes/No
Index : Yes/No
Speaking/Non-speaking order
vsm



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M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

vsm

To

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