A.Nos.594 & 4985 of 2011
in CS.No.560 of 2008

RESERVED ON : 07.09.2023
PRONOUNCED ON : 07 .03.2024

A.A.NAKKIRAN, J.

ORDER

These applications have been filed by the Plaintiff to implead the 2nd Respondent therein as additional defendants in CS.No.560 of 2008, which was filed for a personal decree against the 1st Respondent based on a registered mortgage deed, 28.03.2008.

2. The case of the Applicant is as follows:-

(a) A mortgage deed dated, 28.03.2008 was executed by the 1st Respondent in favour of the Applicant for a sum of Rs.1 crore, which was lent to the 1st Respondent. While so, Punjab National Bank made a public notice, announcing auction sale of the property to be held on 29.07.2009 and it was rescheduled to 12.08.2009. But, the same was cancelled. The Applicant approached the Debts Recovery Tribunal in IA.No.2 of 2009 in DRC.No.118 of 2009 in O.A.No.137 of 2003 to declare the mortgage and recovery certificate as nullity and it was dismissed. As per the public notice, the original title deeds of the property were available with the Central Bureau of Investigation (CBI), but it is not so and the original title deeds are available with the Applicant. The said Bank claims first charge over the property.

(b) While so, the sale was held in the meantime and the 2nd Respondent/proposed party in A. No.594 of 2011 became a successful bidder, when the auction was conducted by the Debts Recovery Tribunal in respect of the suit property and he is also claiming third party rights over the property. Hence, unless the 2nd Respondent in both the applications, ie.(i) Mr.K. Dhanapal (in A.No.594 of 2011) and (ii) Punjab National Bank, (in A.No.4985 pf 2011) are impleaded as a party defendant in the suit and as an additional Respondent in the applications, effective adjudication of the matter cannot be done since it will result in multiplicity of proceedings. Hence, these applications have been filed, seeking the reliefs, as stated above.

3.In the counter affidavit filed by the 2nd Respondent/proposed party, in A. No.594 of 2011, it is stated as under:-

(a) The 2nd Respondent is the Public Auction Purchaser of the suit property. The 1st Respondent, being the previous owner of the suit property, executed an equitable mortgage and letters of personal liability on the suit property as a Guarantor (for the loan availed by the borrower V.M.S.Jaffarullah) in favour of Punjab National Bank on 23.04.1998, as security for the repayment of the loan. Since the loan amount was not repaid, the Bank initiated proceedings before DRT-I, Chennai in OA.No.137 of 2003 and an exparte order dated 04-04-2008 was passed in favour of the Bank and the said decree stands till date. Thereafter, in execution of DRC.No.119 of 2009, dated 28.07.2008, the Recovery Officer conducted public sale of the suit property on 27.10.2009. As a successful bidder, the 2nd Respondent paid the sale consideration of Rs.2,02,50,000/- on 27.10.2009 and the sale was confirmed and the sale certificate was issued and registered on 03.03.2010 and it has become final. He became the absolute owner of the suit property and mutation of records was effected in his name and he is in absolute possession and enjoyment of the same. He, after obtaining permission from the concerned authorities for demolition and construction, demolished the old building and constructed a new building in the suit property.

b)The 1st respondent along with other guarantors filed CS.No.796

of 2009 on 27.08.2009 before this court and the same was dismissed on 02.03.2010, which was confirmed by the Division Bench of this court on 30.03.2010 and the same also was confirmed by the Honourable Supreme Court 08.07.2010. Simultaneously, the 1st respondent and other guarantors also filed condone delay petitions to set aside the exparte order dated 04.04.2008 passed in OA.No.137 of 2003 and the said petition was dismissed on 13.07.2010 and the said order was confirmed by Appellate Tribunal on 31.05.2011 and the same order was confirmed by Division Bench of this Court on 03.08.2011 and again the said order was confirmed by the Hon'ble Supreme Court on 12.09.2011, which became final. The 1st Respondent failed in all attempts and lost her title to the suit property and as such the Applicant has no locus standi to seek any relief in respect of the suit property. The Applicant has no lawful right in any court proceedings to unsettle the settled law of the land and therefore, the above suit itself is bad in the eye of law and is to be Dismissed.

c)The Applicant has claimed his rights over his own land, based on the alleged disputed mortgage executed on 28.03.2008. The said mortgage is void-ab-initio, since it was executed on 28.03.2008 after 10 years subsequent to the creation of equitable mortgage on the suit property by the 1st Respondent in the year 1998 in favour of Punjab National Bank who became the Secured Creditor from the year 1998 on the above Suit Property. Hence, admittedly the 1st Respondent has no legal rights, interest or title to execute the alleged mortgage. The 2nd Respondent has filed IA.No.2 of 2019 to reject the plaint in OS.No.3969 of 2019 (C.S.512 of 2016) on the file of this court filed by the Applicant before the VIth Additional City Civil Court, challenging the said DRT Proceedings and it was allowed on 06.01.2021, rejecting the plaint. The Applicant herein, aggrieved against the same, has preferred AS.Nos.266 and 267 of 2021. The Applicant has already preferred an application for the same cause of action in IA.No.2 of 2009 in DRC No.119 of 2009 in OA No.137 of 2003 before the Recovery Officer DRT-1, Chennai and the same was dismissed on 28.08.2009 and as against which, he preferred Appeal No.11 of 2009 before the Presiding Officer, D.R.T-1 Chennai and the same was dismissed and aggrieved against that order, the Applicant filed AIR.229/2015 before DRAT, Chennai and since the Applicant did not Comply with the order of predeposit, the said Appeal was dismissed on 01.08.2017. Therefore, the Applicant lost all his rights of appeal remedy before the appropriate forum. The Applicant exhausted all legal remedies and failed in all before the appropriate forums in all cases filed against the mortgage decree and public sale.

d)When the decree dated 04.04.2008 passed by Tribunal in respect of the suit property stands till date and also the public sale of the said property on 27.10.2009 based on the decree in his favour as a successful bidder stands as on date and when he paid lawful sale proceeds on 27.10.2009 itself and when he being the absolute owner and is in continuous lawful possession and enjoyment of the suit property, no third party in any manner has any legal right on the suit property. In such circumstances, this application is liable to be dismissed with costs.

4.In the counter affidavit filed by the 2nd Respondent/proposed party, in A. No.4985 of 2011, it is stated as under:-

(a) The applicant has already filed an application in I.A. No.2 of 2009 in DRC No.119 of 2009 in OA No.137 of 2003 before the Recovery Officer DRT-1, stating that in view of forging document, Central Bureau of Investigation has initiated criminal proceedings against M/s.Maharaja Timber Traders and others and seized the alleged original title deeds of the properties deposited with the bank, including the title deeds of the subject property. While the matter stood thus, the 1st respondent approached the applicant for a loan against mortgage of property, being Item No.3 in the Auction Sale Notice and described in the schedule to the petition filed along with this application. In order to settle her pressing liability and to meet her financial need for the marriage of her daughter, the applicant has lent the loan said amount by executing a deed of mortgage and depositing original the original title deeds of the property which is subject matter of the application after verifying the original title deeds and parent documents which were in her possession and Encumbrance certificate in which no subsisting mortgage is revealed.

b) The applicant has alleged to have advanced a sum of Rs.1 Crore to the 1st respondent who was in dire financial crisis. It is relevant to mention that the applicant has advanced the alleged amount despite know the fact that the respondent was facing criminal proceedings initiated by CBI with regard to forging of documents. Further, the applicant has filed an Encumbrance Certificate before the Recovery Officer, DRT-I, Chennai which reveals that various court attachments were effected by City Civil Court, Chennai prior to mortgage executed in favour of the applicant. Hence, it is false and baseless to allege that the encumbrance certificate did not reveal any subsisting mortgage over the referred property on the date of mortgage deed but as a matter of fact, the applicant has alleged to have advanced the loan only after noticing the aforesaid Court attachment.

c) The Applicant has already preferred an Appeal No.11 of 2009 before the Presiding Officer, D.R.T-1 Chennai for the same cause of action and hence the above application for impleading the proposed respondent bank in the aforesaid suit does not arise.

d) The 1st respondent and her family members jointly availed the credit facilities for and on behalf of M/s. Maharaja Timber Traders as early as in the year 1998. Since the loan account had become NPA, the proposed respondent bank had filed an O.A. No.137 of 2003 before DRT-I, Chennai for the recovery of the outstanding loan amount in which the 1st respondent and her family members were set exparte since non-appearance of them and the Tribunal passed an exparte decree on 04.04.2008. The said decree has become final thereby the proposed respondent attached the secured properties through recovery officer, to realize the total outstanding loan amount of Rs.7,15,84,847.16/- from the 1st respondent and her family members. Accordingly, the attached properties brought for public auction on various dated and in fact, the suit property was auctioned on 27.10.2009 and the third party auction purchaser, Mr. Dhanapal had remitted a sum of Rs.2,02,50,000/- to the Recovery Officer and subsequently, the sale certificate was issued on 03.03.2010.

e)The 1st respondent and her family members had challenged the exparte decree passed in O.A. No.137 of 2003 before DRAT, Chennai in MA No.471 of 2010 which was dismissed on 31.05.2011 and against which W.P. No.13710 of 2011 was filed before this Court and the same was dismissed on 03.08.2011. Aggrieved by the said order, SLP Nos.24063 and 24064 of 2011 filed by the 1st respondent and her family members also was dismissed by the Apex Court on 12.09.2011.

f)Since the 3rd party purchaser has already purchased the suit property for a lawful sale consideration as early as in the year 2009 pursuant to the Court Auction and the various proceedings initiated by the 1st respondent and her family members were dismised by DRT, DRAT, this Court and the Apex Court, the aforesaid application is not sustainable in the eye of law.

g)If the applicant has really advanced the loan amount, he could very well enforce the personal decree as against the respondent and her other properties and not against the proposed respondent bank. Further, the applicant cannot file any case against the secured creditors/bank before the Civil Court since Section 18 of RDB & FI Act is a statutory bar. Hence, this application is liable to be dismissed. In such circumstances, this application is liable to be dismissed with exemplary costs.

5. The learned counsel for the applicant would submit that the applicant has lent a sum of Rs.1 crore to the 1st respondent by virtue of executing the deed of mortgage and depositing the original title deeds. Since she failed to return the said amount as agreed, the applicant has filed the aforesaid for a personal decree against her. Pursuant to a Public Notice made at the instance of the Punjab National Bank, represented by its Chief Manager, announcing auction of sale of the property and recovery certificate obtained by the said Bank, the applicant approached the Debts Recovery Tribunal in I.A.No.2 of 2009 in DRC.No.118 of 2009 in O.A.No.137 of 2003 to declare the mortgage and recovery certificate as nullity and it was dismissed on the ground of existence of a recovery certificate.

6. It has been further submitted by the learned counsel for the applicant that as per the public notice, the original title deeds of the property were available with the Central Bureau of Investigation (CBI), but it is not so and the original title deeds are available with the Applicant. The said Bank claims first charge over the property and attached the suit schedule property and auctioned the same. The 2nd Respondent/proposed party in A. No.594 of 2011 became a successful bidder, when the auction was conducted by the Debts Recovery Tribunal in respect of the suit property and he is also claiming third party rights over the property. Hence, unless the 2nd Respondent in both the applications, ie.(i) Mr.K. Dhanapal (in A.No.594 of 2011) and (ii) Punjab National Bank, (in A.No.4985 pf 2011) are impleaded as a party defendant in the suit and as an additional Respondent in the applications, effective adjudication of the matter cannot be done since it will result in multiplicity of proceedings. Hence, these applications may pleased be allowed by this Court.

7. The learned counsel for the proposed 2nd respondent in A.No.594 of 2011 would submit that the proposed party purchased the suit schedule property as a successful bidder in the public auction conducted

through DRT-I proceeding on 27.10.2009. On the same day, lawful consideration of sale amount of Rs.2,02,50,000/- was deposited and the suit property was registered on 03.03.2010 after obtaining Sale certificate. After realizing the sale consideration by the Punjab National Bank, the said sale and decree became standstill.

8.It has been further submitted by the learned counsel for the proposed 2nd respondent in A.No.594 of 2011 that pursuant to the sale deed executed in favour of the proposed party, he became the absolute owner of the suit property and mutated the revenue records in his name. Further, after obtaining due permission from Chennai Corporation, the proposed party demolished the old structural building and raised a new structure of building on the suit property in the year 2016 and he is in possession and enjoyment of the suit property till date.

9. The learned counsel for the proposed 2nd respondent in A.No.594 of 2011 would further submit that when 1st respondent executed equitable Mortgage, letters of personal Guarantees on the suit property in favour of Punjab National Bank in the year 2000, she lost her right over the suit

property. While being so, she executed the mortgage deed on the same property in favour of the plaintiff on 28.03.2008 which becomes null and void.

10. It has been further submitted by the learned counsel for the proposed 2nd respondent in A.No.594 of 2011 that the plaintiff having already filed and failed in all cases on the same issues before the appropriate forum in the above said facts and circumstances, has no locus standi to proceed against the proposed party when so far as the decree and sale standstill in his favour on the same suit property. Thus, the plaintiff has no legal right to unsettle the settled law of the land, causing wastage of Courts time. Hence, the application is liable to be dismissed.

11. The learned counsel for the proposed 2nd respondent in A.No.4985 of 2011 would submit that the applicant has advanced the alleged amount despite knowing the fact that the 1st respondent was facing criminal proceedings initiated by CBI with regard to forging of documents. Further, the applicant has filed an Encumbrance Certificate before the Recovery Officer, DRT-I, Chennai which reveals that various court attachments were

effected by City Civil Court, Chennai prior to mortgage executed in favour of the applicant. Hence, it is false and baseless to allege that the encumbrance certificate did not reveal any subsisting mortgage over the referred property on the date of mortgage deed but as a matter of fact, the applicant has alleged to have advanced the loan only after noticing the aforesaid Court attachment.

12. It has been further submitted by the learned counsel for the proposed 2nd respondent in A.No.4985 of 2011 that the Applicant has already preferred an Appeal No.11 of 2009 before the Presiding Officer, D.R.T-1 Chennai for the same cause of action and hence the above application for impleading the proposed respondent bank in the aforesaid suit does not arise. The 1st respondent and her family members jointly availed the credit facilities for and on behalf of M/s. Maharaja Timber Traders as early as in the year 1998. Since the loan account had become NPA, the proposed respondent bank had filed an O.A. No.137 of 2003 before DRT-I, Chennai for the recovery of the outstanding loan amount in which the 1st respondent and her family members were set exparte since they were absent during the course of hearing and the Tribunal passed an exparte decree on

04.04.2008. According to decree, the suit property was brought for public auction on 27.10.2009 and the third party auction purchaser, Mr. Dhanapal had remitted a sum of Rs.2,02,50,000/- to the Recovery Officer and subsequently, the sale certificate was issued on 03.03.2010.

13. The learned counsel for the proposed 2nd respondent in A.No.4985 of 2011 would further submit that the 1st respondent and her family members had challenged the exparte decree passed in O.A. No.137 of 2003 before DRAT, Chennai in MA No.471 of 2010 which was dismissed on 31.05.2011 and against which W.P. No.13710 of 2011 was filed before this Court and the same was dismissed on 03.08.2011. Aggrieved by the said order, SLP Nos.24063 and 24064 of 2011 filed by the 1st respondent and her family members also was dismissed by the Apex Court on 12.09.2011. Under such circumstances, the applicant has filed the present vexatious application to drag on the suit proceedings. Hence, the aforesaid application is not sustainable in the eye of law.

14. Heard both sides and perused the materials available on record.

15. Having considered the facts and circumstances of the case and submissions made by the learned counsel on either side, it is made clear that the applicant has filed various litigation against the proposed parties before the DRT, this Court and the Hon'ble Supreme Court wherein the litigation moved by the applicant failed. Under such circumstances, the applicant has filed these applications to implead the proposed parties mentioned therein is not sustainable after the suit property was purchased by the third party in the public auction. Further, the applicant has suppressed the facts of various legal proceedings between the applicant and the proposed parties as stated by the learned counsel for the proposed parties. Thus, the applicant has not approached this Court with clean hands Hence, this Court is not inclined to entertain both the applications.

16. In the result, these applications stand dismissed. No costs.

07.03.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm/lbm

A.A.NAKKIRAN, J.

Srcm/lbm

Pre-Delivery Order in
A.Nos.594 & 4985 of 2011
in CS.No.560 of 2008

07.03.2024