THE HIGH COURT OF JUD ICATURE AT MADRAS

Dated : 29.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.5412 of 2024
and
W.M.P.Nos.5976, 5970, 5972 & 5974 of 2024

1.M/s.Thirumurugan Properties,
Represented by its Managing Partner,
Mr.K.Ponnusamy,
281/10, Kunnagalpalayam,
Karaipudur Village,
Arulpuram Post, Palladam Taluk,
Tirupur - 641605.

2.K.Ponnusamy
3.K.Arulmurugan
4.K.Kumar
5.P.Maheshkumar
6.C.Madhesh ...Petitioners

Vs.

1.State Bank of India,
Stressed Assets Management Branch,
Rep. by its Assistant General Manager,
No.32, Montieth Road, Red Cross Buildings Egmore,
Chennai - 600008.

2.The Presiding Officer,
The Debts Recovery Tribunal,
Jawans Bhawan, 2nd & 3rd Floor,
27-T.B.Road, Coimbatore - 641 018.

3.The Recovery Officer,
The Debts Recovery Tribunal,
Jawans Bhawan, 2nd & 3rd Floor,
27-T.B.Road, Coimbatore - 641018.

4.M/s.Pioneer Feeds and Poultry Products Pvt. Ltd.,
Rep. by the Official Liquidator,
Corporate Bhavan, 2nd Floor,
Rajaji Salai, Chennai - 600001.

5.P.V.Raghupathy
6.V.Thimmaiyan
7.R.Kalavathy
8.B.Sathya
9.M/s.Pioneer Breeding & Hatcheries Pvt. Ltd.,
Rep. by its Managing Director, Mr.V.Thimmayan,
No.1/15, Trichy Road, Pongalur,
Tiruppur Taluk, Coimbatore - 641667.

10.M/s.Pioneer Hatcheries Pvt. Ltd.,
Rep. by its Managing Director, Mr.Raghupathy,
No.67, Trichy Road, Pongalur, Tiruppur Taluk,
Coimbatore - 641667.

11.M/s.Pioneer Hatcheries Pvt. Ltd.,
Rep. by its Partners, Mr.V.Thimmaiyan,
No.7/446, Trichy Road, Pongalur,
Tiruppur Taluk, Coimbatore - 641667.

12.M/s.Suloor Spinners Pvt. Ltd.,
Rep. by its Director, Mrs.T.Geetha,
No.7/62, Trichy Road, Pongalur,
Tiruppur Taluk, Coimbatore.

13.ICICI Bank Ltd.,
Cheran Plaza, Trichy Road,
Coimbatore - 641 018.

14.Union Bank of India,
Agricultural Finance Branch,
No.29, Chinathamani nagar,
K.K.Pudur, Saibaba Colony,
Coimbatore - 641 038.

15.Punjab National Bank,
Jaya Enclave, 1057, Avinashi Road,
Coimbatore - 641 018.

16.Kamalam
17.Suganya Selvaraj
18.Sumithra Nandakumar
19.Santhosh Leela Krishanan
20.A.Swapna
21.Kavitha
22.Swetha
23.Saira Lakshmi (Minor)
Rep. by her Father Mr.L.Santhosh
24.Kemaya Lakhmi (Minor)
Rep. by her Father Mr.L.Santhosh ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of writ of certiorari, calling for the records of the case related with the impugned final order dated 22.02.2023 passed by Debt Recovery Tribunal, Coimbatore in O.A.No.80 of 2009 and Debt Recovery Certificate dated 07.03.2023 in DRC 06/2023 passed by the Debt Recovery Tribunal, Coimbatore in respect of the petitioner's properties.

For Petitioners : Mr.Srinath Sridevan, Senior Counsel
for Mr.A.Thiyagarajan

O R D E R

(Order of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this petition, at the instance of the third party, is to the Debt Recovery Certificate issued by the Debt Recovery Tribunal.

2.The petitioner would claim that it has purchased the property subject matter of mortgage with the Bank, all original title deeds are available with it and therefore, the alleged equitable mortgage created by the Debtors with the Bank itself is not valid. When the property was sought to be attached in the execution proceedings by the Recovery Officer attached to the Debt Recovery Tribunal, the petitioner filed a claim petition under Rule 11 of Schedule 2 of the Income Tax Act, which provides procedure for recovery of tax, since the Recovery Officer exercises the right of sale under those rules framed under the Income Tax Act.

3.According to the petitioner, on the filing of the petition under Rule 11, the Bank withdrew the attachment proceeding and sought to proceed on the basis of the Recovery Certificate, which directs realization of the amount by way of sale of the property in question. Aggrieved by the said action, the petitioner is before this Court, contending that since Debt Recovery Tribunal is not a Civil Court, Recovery Certificate issued by the Debt Recovery Tribunal cannot direct sale of the property.

4.Mr.Srinath Sridevan, learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in ***Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking Corporation*** reported in ***(2009) 8 SCC 646***. We do not think, we can very conveniently address the issue in this Writ Petition at the instance of a third party. We also find that the remedy of the petitioner under Rule 11 is not lost because of the action of the Bank in withdrawing the attachment application.

5.Rule 11 of recovery of tax rules contained in the 2nd schedule of the Income Tax Act, which has been made applicable to execution proceedings by Debt Recovery Tribunal by virtue of Section 29 of Recovery of Debt and Bankruptcy Act 1993. Rule 11 of the 2nd Schedule to Income Tax Act reads as follows:-

"**Investigation by Tax Officer:**

11.(1) Where any claim is preferred to, or any objection is made to the **attachment or sale of**, any property in execution of a certificate, **on the ground that such property is not liable to such attachment or sale**, the Tax Recovery Officer shall proceed to investigate the claim or objection;

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed."

6.A reading of the rule shows that a claim petition under Rule 11 can be maintained even in the absence of an attachment. The words **or sale of**, obliges the Recovery Officer to decide on the claim or objection when a property is sought to be sold in execution of the certificate issued by the Debt Recovery Tribunal. The maintainability of a petition under Rule 11 is not dependent on whether the property is sought to be attached or not. Even in the absence of a proceeding for an attachment, a person who claims independent title can always maintain a petition under Rule 11.

7.The Hon'ble Supreme Court in ***Babu Lal Vs Rajkumar reported in AIR 1996 SC 2050*** while considering the scope of the proceedings under Order 21, Rules 97 to 100 has held that a petition under Rule 97 to 100 can be maintained in the nature of a caveat even before the person making a claim is dispossessed of the property. The said principle would also apply to the proceedings under Rule 11.

8.Hence, this Writ Petition is **disposed of**, leaving it open to the petitioner to file a petition under Rule 11 of the Income Tax Act making a claim under the execution proceedings before the Recovery Officer. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) **(R.S.V., J.)**
29.02.2024

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Internet: Yes
Index: No
Speaking
Neutral Citation: No

To:-

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The Debts Recovery Tribunal,
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