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CRP(MD)Nos.1389 and 1390 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on 01.08.2024	Orders Pronounced on 30.08.2024
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CORAM

JUSTICE N.SESHASAYEE

and

JUSTICE P.VADAMALAI

C.R.P.(MD) Nos.1389 and 1390 of 2024

and

C.M.P.(MD) Nos.8234 and 8237 of 2024

C.R.P.(MD) No.1389 of 2024:

S.Umadevi

.. Petitioner/Petitioner/
Defendant

Vs

1. Central Bank of India,
K.K.Nagar Branch,
Madurai.
Respondent/Respondent/

.. 1st

Applicant Bank

2. R.Pandivel,
Advocate Commissioner,
Plot No.82, K.K.Nagar,
Lake View Road, (Sundaram Park Road),
Madurai-20.

.. 2nd Respondent/
Respondent/



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Advocate Commissioner

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3.Selvaraj,
Assistant Manager,
Central Bank of India,
KK Nagar Branch,
Madurai.

4.R.Ravikumar,
Manager (Law),
Central Bank of India,
Regional Office,
Madurai.

.. Respondents 3 & 4/
Respondents/
Auction witnesses

C.R.P.(MD) No.1390 of 2024:

1.Sri Venkatesa Spinning Mills,
Partnership Firm,
Rep., by its Partner Sri R.Sathasivam,
333, K.K.Nagar, Madurai-625 0202
and also having unit at
177, SIDCO Industrial Estate,
Kappalur, Madurai District.

2.Sri R.Sathasivam

3.S.Umadevi

4.Sri Balaji Wire Products,
Prop. Sathasivam,
333, K.K.Nagar, Madurai-625 020
and also having unit at
177, SIDCO Industrial Estate,
Kappalur, Madurai District.

.. Petitioners/Petitioners/



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Defendants

Vs

1. Central Bank of India,
K.K.Nagar Branch,
Madurai.
Respondent/Respondent/

.. 1st

Applicant Bank

2. R. Pandivel,
Advocate Commissioner,
Plot No.82, K.K.Nagar,
Lake View Road, (Sundaram Park Road),
Madurai-20.

.. 2nd Respondent/
Respondent/
Advocate Commissioner

3. Selvaraj,
Assistant Manager,
Central Bank of India,
KK Nagar Branch,
Madurai.

4. R. Ravikumar,
Manager (Law),
Central Bank of India,
Regional Office,
Madurai.

.. Respondents 3 & 4/
Respondents/
Auction witnesses

Prayer in both CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 14.02.2024 made in I.A.SR Nos.



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1195 of 2014 and 1196 of 2014 in O.A.Nos.52 of 2010 and 53 of 2010 on the file of DRT, Madurai.

In both CRPs

For Petitioners : Mr.M.C.Swamy

For R1 : Mr.N.Dilip Kumar

For R2 : Mr.R.Pandivel

R3 & R4 : Unserved

COMMON ORDER

N.Seshasayee, J.

These twin revisions are directed against the orders returning proposed interlocutory applications in I.A.SR No.1195 of 2020 in O.A.No.52 of 2010 (which pertains to C.R.P.(MD) No.1389 of 2024) and I.A.SR No.1196 of 2020 in O.A.No.53 of 2010 (which pertains to C.R.P.(MD) No.1390 of 2024).

2. A brief backdrop of these cases may now be provided:

- a) A certain Umadevi commenced a business under the name and style of 'M/s.Sri Venkateswara Weld Tech' in Shed No.177 at SIDCO Industrial



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Estate, Kappalur. She obtained two loans for a total sum of Rs.10.98 lakhs from the first respondent (henceforth would be referred to as the 'bank').

- b) She soon closed her business in Shed No.177, in which her husband Sathasivam commenced a new business in partnership with his wife under the name and style 'M/s.Venkateswara Spinning Mills'. This business also obtained a term loan of Rs.49.5 Lakhs from the bank.
- c) The revision petitioners in both these cases are borrowers of the respondent-bank. The loans were secured both with movable plant and machineries and other immovable assets, and both these loans were eventually declared Non Performing Assets (NPA). The bank instead of invoking the provisions of the SARFAESI Act, 2002, opted to move the Debts Recovery Tribunal with O.A.No.52 of 2010 and O.A.No.53 of 2010 against its two borrowers. During the pendency of these original applications, the bank moved the Debts Recovery Tribunal with applications to appoint a Commissioner to recover the machinery, which is one of the secured assets, and to sell the same. These applications were allowed and the DRT appointed Thiru.Pandivel,



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Advocate as Commissioner.

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- d) What is of interest is that the DRT appointed the second respondent herein as the Commissioner to take possession and for sale of the machineries in Shed No:176 as well as 177. According to the revision petitioners, the order directing the Commissioner to take possession of the assets in shed No.177 was not challenged, whereas that which pertains to shed No.176 was challenged in M.A.Nos.50 and 153 of 2012 before the Debts Recovery Appellate Tribunal (DRAT), Chennai.
- e) In the meantime, the learned Advocate Commissioner took possession of the machineries pursuant to the order of the DRT dated, 21.02.2012, and even the matter was pending before the DRAT, the Commissioner proceeded to issue a sale notice inviting close tenders for the machineries in Shed Nos.176 and 177.

3. Heard both sides. The learned counsel for the revision petitioners provided the backdrop to the present set of revision petitions as below:

- f) The very year Umadevi had borrowed from the bank, her husband and other family members had applied for the shares of the first



respondent-bank and paid a little over Rs.10.0 lakhs towards share price, but the shares were not allotted to them, as a consequence of which, the bank had repaid them Rs.10.28 Lakhs. According to the revision petitioners, this amount was put in a Fixed Deposit with the same bank.

- g) No sooner Umadevi commenced her business 'Venkateswara Weld Tech', she realised that she could not run the business any longer and closed the business. This was intimated to the first respondent with a request to adjust the amount standing to the credit of the Fixed Deposit referred to above against the loan liability. According to the revision petitioners, they are kept in dark by the bank as to whether any adjustment at all has been given to the amount.
- h) Soon both the loans of M/s.Venkateswara Weld Tech as well as M/s.Venkateswara Spinning Mills appear to have been notified as “NPA”. The revision petitioners however were not intimated anything about it. So far as the loans are concerned, the value of the machineries in Shed No.177 that were offered as security were valued around Rs.1.5 crores.



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- i) So far as the loans with the first respondent are concerned, only the assets in Shed No.177 were offered as security for the two loans the revision petitioners had obtained from the first respondent, but not the assets in Shed No.176. In Shed No.176, Sathasivam was running another business under the name and style M/s.Srinivasa Electrodes, for whose purposes he had obtained a loan from M/sCatholic Syrian Bank. For realising the said sum, M/s.Catholic Syrian Bank had instituted O.S.No.517 of 2011 against Sathasivam and the suit came to be decreed. The counsel for the plaintiff in that suit was none other than the Commissioner appointed by DRT in O.A.Nos.52 and 53 of 2010. Whereas the assets of M/s.Srinivasa Electrodes were offered as security for supporting the loan given by the plaintiff in O.S.No.517 of 2011, in the instant case the DRT has allowed the Commissioner to take possession of the machineries in Shed No.176 as well and to sell the same.
- j) In this backdrop, on 29.11.2012, M.A.Nos.50 and 153 of 2012 came to be listed before the DRAT. That indeed was also the date on which the auction was scheduled to take place. When M.A.Nos.50 and 153 of



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2012 reached before the Tribunal, the bank is believed to have informed the Appellate Tribunal that the auction was complete and that the entire sale proceeds have been deposited.

- k) Thereafter it had come to light that as per the minutes of the auction prepared by the second respondent, there were three bidders of whom the third bidder Thiru T.Rajapandi was the highest bidder, and that he had paid the balance sale consideration vide demand draft and the same had been deposited.
- l) In terms of the auction notice, the auction was to take place at 11.00 am on 29.11.2012 and in one stroke, the auction was over even before M.A.Nos.50 and 153 of 2012 could reach for hearing before the Appellate Tribunal. As directed by the DRAT, revision petitioners took out an application in I.A.No.527 of 2014 for impleading the auction purchaser and when notice of the said application was sent to the auction purchaser, it returned with a postal endorsement that the auction purchaser is reported to have died.
- m) It order to ascertain whether the auction was confirmed in favour of a dead person or a person who was alive at the relevant time, they



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wanted the second respondent as well as some of the retired officials of the first respondent-bank to be arrayed as parties. In the mean time, on 13.02.2017, the DRAT had disposed of M.A.Nos.50 and 153 of 2012 directing the revision petitioners to take up the issue before the DRT in the pending original applications.

n) Accordingly, the borrowers/revision petitioners herein have taken out applications to implead the Commissioner as well as some of the staff of the Bank as parties to the proceedings and this was not appreciated by the Debts Recovery Tribunal, which chose to reject the same without entertaining the applications on the ground that their presence is not necessary for deciding O.A.No.52 of 2010 as well as O.A.No.53 of 2010. Instead, the Debts Recovery Tribunal gave the borrowers the liberty to file their objections to the Commissioner's report and to cross examine the Commissioner based on their objections. The approach of the Tribunal apparently is premised on its view that the Commissioner is an Officer of the Tribunal and for impeaching his report, he only needs to be cross examined, more akin to the procedure adopted in civil cases.



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4. While this Court heard the counsel for the Bank (first respondent herein), as well as the Commissioner (second respondent herein) who made his submissions in person, it essentially intends to confine its enquiry to the merit of the submissions made by the counsel for the revision petitioners. After all, the jurisdiction under Article 227 does not give this Court an authority to remote control the proceedings before any Tribunal, unless any decision of the Tribunal shocks its conscience with a potential to shatter the public confidence in the institution of Courts or Tribunals. Whether the perception of the revision petitioners vis-a-vis, the order of the DRT not to take on record the applications taken out by the revision petitioners to implead the Advocate Commissioner (the second respondent) appointed by DRT and other bank officials, is of such nature that it deserves an interference by this Court exercising its extra-ordinary jurisdiction under Article 227 of the Constitution of India? There were allegations regarding the fairness of the auction and about the improbability of it being fair, but these are all the issues which the DRT has to eventually decide, if they are raised before it. However, merely because a notice sought to be issued on the auction



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purchaser was returned with an endorsement that he was dead, does it imply that the Commissioner's conduct should be brought under scrutiny? It should not be forgotten that the auction in the instant case had taken place on 29.11.2012, and notice to the auction purchaser had gone from DRAT sometime in 2014. There is a difference of two years, which confirms that the auction need not have been in the name of the dead person. However, this is an aspect which can be conveniently gone into even without the Commissioner in the party array. It may be that the DRAT might have opined that the Commissioner might have to be impleaded, but then that is not conclusive either. If it is compared with the civil Court scenario, if for instance the auction sale conducted by the bailiff of the Court or any delivery effected by him is challenged before the Execution Court, does it require impleading of the bailiff as a party to the execution proceedings? He is after all an officer of the Court, and whether he has engaged in any practise which might turn out to be fraudulent, can be tested on the basis of the factual aspects. Similarly, the Commissioner appointed by the Tribunal is an officer of the Tribunal, and whether he had sold the property to a dead person and the suspicion of the revision petitioners can be tested on the basis of the death



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certificate of the auction purchaser. After all, if the auction purchaser has to be in the party array, on his death his legal representatives have to be so arrayed. Therefore, ample opportunity is still available for DRT to conclude its opinion on the same and this can be achieved even without the Commissioner and bank officials brought before the Tribunal.

5. This Court has to record that the revision petitioners have engaged themselves in extravagant litigations by instituting the present revisions. As stated early, there is nothing that warrants this Court to interfere with the decision of the DRT under Article 227 of the Constitution. Hence, these revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(N.S.S., J.) (P.V.M.,J.)
30.08.2024

Index : Yes / No
Neutral Citation : Yes / No
CM/ds

To



CRP(MD)Nos.1389 and 1390 of 2024

1.The Debts Recovery Tribunal
Madurai.

2.The Section Officer
VR Section,
Madurai Bench of Madras High Court
Madurai.



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N. SESHASAYEE, J.
and
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