BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2024

CORAM:

THE HONOURABLE **MR.JUSTICE P. VELMURUGAN**
AND
THE HONOURABLE **MR.JUSTICE K.K. RAMAKRISHNAN**

C.R.P.(MD)No.3277 of 2023
and
C.M.P(MD)Nos.16893 & 16894 of 2023
and
W.P.(MD) No. 689 of 2024

C.R.P.(MD)No.3277 of 2023

C. Arjunaraja
S/o. Chellaperumal,
Prop. M/s. .The Correspondent,
No.41, Siva Koil South Street,
Erulappapuram, Nagercoil,
Kanyakumari District. ... Petitioner

Vs.

1. The Authorised Officer,
Karur Vysya Bank Ltd.,
No.16, A.A.Road,
Gayathri Illam, Gnanaolivupuram,
Madurai.

2. S.Sathyamohan ...Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 04.10.2023 passed in RA (SA) No.21 of 2014 on the file of the Honourable Debt Recovery Appellate Tribunal at Chennai reversing the order dated 29.11.2013 passed in SA No.62 of 2011 on the file of Honourable Debt Recovery Tribunal at Madurai and allow the Civil Revision Petition.

For Petitioner	:	Mr.E.O.M.Prakash, Senior Counsel for M/s. Vastlaw Associates
For Respondents	:	Mr. V.Sukumar for R1 Mr.R.Murugan for R2

W.P. (MD).No.689 of 2024:

S.Sathyamohan ... Petitioner

Vs.

1. The Authorised Officer,
Karur Vysya Bank Ltd.,
No.16, A.A.Road,
Gayathri Illam, Gnanaolivupuram,
Madurai.

2. The Divisional Manager,
Karur Vysya Bank Ltd.,
Tirunelveli Divisional Office,
Malti Square No. 10/10,
First Floor North By Pass Road,
Vannarpettai, Tirunelveli.

3. C. Arjunaraja
S/o. Chellaperumal,
Prop. M/s. .The Correspondent,
No.41, Siva Koil South Street,
Erulappapuram, Nagercoil,
Kanyakumari District. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India to issue an order or direction, more in the nature of Writ of Mandamus directing the 1 and 2 Respondents to hand over the physical Covered under possession of the property covered under R.S.No.L-6-7/9, to an extent of 12 cents in Vadiveeswaram Village, Agastheeswaram Taluk, Kanyakumari District in the light of sale certificate dated 13.04.2009 and sale deed dated 21.03.2012 vide Doc.No.1056/2012, by considering the petitioner's representation dated 09.12.2023 within a time frame as may be fixed by this Court.

For Petitioner : Mr.R.Murugan

For Respondents : Mr. V.Sukumar,
for R1 & R2

ORDER

(Order of the Court was made by **P. VELMURUGAN, J.)**

The petitioner is the borrower, the first respondent is the Authorised Officer of the Bank, and the second respondent is the auction purchaser.

2. The petitioner borrowed loan from the first respondent bank. Due to default in payment his account became Non Preforming Asset (NPA) and therefore, the first respondent brought the property of the petitioner for sale by public auction and the second respondent was the highest bidder, who participated in the auction sale and also he deposited the amount and the sale deed was also executed in favour of the second respondent. Challenging the said auction sale, the petitioner filed an application before the Debt Recovery Tribunal, Madurai, in S.A.No.62 of 2011, challening the possession notice dated 18.03.2007, issued by the first respondent bank under Section 13(4) of the SARFAESI Act, and restore possession of Item No.1 of the B schedule mentioned property in the possession notice to the petitioner herein and to declare the proceedings initiated by the first respondent under the Security Interest [Enforcement Rules 2002] under the sale dated 06.03.2009 as invalid and to direct the respondent to restore possession of the above said item mentioned in

the notice dated 18.03.2007, to the petitioner and pay the costs. The Debt Recovery Tribunal after giving opportunity to all the parties and considering the materials placed before it, allowed the SARFAESI application filed by the petitioner herein and ordered for restoration of possession and also the bank was directed to return the amount to the auction purchaser/the second respondent herein with interest applicable to the fixed deposit. Challenging the said order passed by the Debt Recovery Tribunal, the first respondent/Authorised Officer filed an appeal in R.A.(SA) No.21 of 2014 before the Debt Recovery Appellate Tribunal, Chennai. The Appellate Tribunal after giving opportunity to the petitioner, allowed the appeal filed by the first respondent and set aside the order passed by the Debt Recovery Tribunal. Challenging the said order of the Debt Recovery Appellate Tribunal, in the said appeal, now, the borrower has filed the present revision case before this Court.

3. The learned Senior Counsel for the revision petitioner would submit that the Debt Recovery Appellate Tribunal failed to appreciate various grounds raised by the petitioner before the Debt Recovery Tribunal, Madurai. Further, he would submit that the first respondent Bank failed to serve 30 days personal notice to the petitioner herein and the Bank has failed to produce the sale notice and the

acknowledgement received by the petitioner either before the Debt Recovery Tribunal or before the Debt Recovery Appellate Tribunal. Therefore, on the ground of non-service of 30 days notice to the petitioner, the Debt Recovery Tribunal has set aside the possession notice and also directed to restore the possession to the petitioner and finds that the sale itself is ab-initio void, since the mandatory provision of 30 days personal notice was not served to the petitioner. There is no clear proof to show that 30 days notice was served to the petitioner. The sale notice has been published in English and Tamil Daily, but, however, the personal notice was not served to the petitioner. The requirement under Rules 8(6) and 9(1) of the Security Interest Enforcement Rules is mandatory. The Debt Recovery Tribunal, Madurai on the basis of the pleadings of the petitioner has allowed the appeal filed by the petitioner with regard to taking possession of the property and further, he would submit that in order to show his bonafides, and towards his right of redemption the petitioner has also drawn Demand Draft for a sum of Rs.8,55,759/- on 13.08.2018, which was also accepted by the Paid the learned Counsel appearing on behalf of the Bank before the Debt Recovery Appellate Tribunal, Chennai. The Appellate Tribunal failed to consider the said fact that the petitioner paid the outstanding dues by way of demand draft. Though the Debt Recovery Tribunal appreciated the oral and documentary evidence produced by the petitioner and set aside the sale and also the possession notice, the Debt Recovery Appellate Tribunal failed to properly appreciate various grounds raised by the petitioner at the time of arguments and by the written Debt arguments filed along with various judgments. The Debt Recovery Appellate Tribunal, in order to allow the appeal, has failed to note and discuss the other grounds raised by the petitioner before the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal. The appellate Tribunal faile to give proper reasoning for allowing the appeal filed by the bank/first respondent herein. Therefore, the order of the Appellate Tribunal is liable to be set aside and the order of the Dent Recovery Tribunal is to be confirmed and also the learned Senior Counsel placed reliance on the following judgments:

3.1. In the case of ***Mathew Varghese v. M.Amritha Kumar and others*** reported in ***2014-5 SCC 610***

3.2. In the case of ***Bharath Post Graduate College vs. Indiabulls Housing Finance Limited*** reported in ***2018 SCC Online Mad 13300***

3.3.In the case of ***Bombay Mercantile Co-operative Bank Limited vs. U.P.Gun House and others*** reported in ***2024 3 SCC 517***

4. The learned Counsel for the first respondent Bank would submit that the petitioner is a chronic defaulter and he is the proprietor of M/s J.P.A., and Provisional Stores at Nagercoil. He availed credit facilities for a sum of Rs. 4,00,000/-. Since he failed to repay the said loan amount, the first respondent issued notice of demand under Section 13(2) of the Act demanding a sum of Rs. 4.52.860.75/- Subsequently, the first Respondent Bank took possession of the property by obtaining order under Section 14 of the Act and subsequently, issued the possession notice dated 18.03.2007 under Section 13(4) of the Act. The Xerox copy of the possession notice was affixed on the door of the premises of the revision petitioner herein on 18.03.2007. Against the possession notice. the petitioner preferred an appeal before the Debt Recovery Tribunal. Madurai, in S.A.No.2493 of 2008 along with the application to condone the delay of 13 days in filing the appeal. The delay was condoned on condition that the appellant shall pay a sum of Rs. 50,000/- directly in the loan account on or before 08.12.2008. Since the petitioner failed to comply with the conditional order, Debt Recovery Tribunal dismissed above said application to condone the delay vide order dated 23.12.2008.

5.Aggrieved over the same, the learned counsel for the petitioner preferred the appeal under Section 18 of the Act before the Debt Recovery Appellate Tribunal in M.A.(SA) No.376 of 2010. The Debt Recovery Appellate Tribunal by its order dated 07.10.2010 allowed appeal and set aside the order passed by the Learned Debt Recovery Tribunal on 10.11.2008 and 23.12.2008 and remitted the matter back to the Debt Recovery Tribunal for fresh disposal in accordance with law.

6. When the said appeal was taken up for fresh hearing on 23.12.2010 it was informed by the petitioner that the 1st respondent issued a tender/auction sale notice dated 13.01.2009 and conducted the auction sale of the property on 06.03.2009. The said property was already sold and sale certificate was issued on 13.04.2009. Therefore, the petitioner filed an application for amendment in I.A.No. 1024 of 2013 and the same was allowed by the Debt Recovery Tribunal and the petitioner filed the amended appeal also to declare the proceedings initiated by the 1st respondent bank under SARFEASI Act culminating to the sale dated 06.03.2009 as invalid. The 1st respondent Bank did not file any appeal against the order of the Debt Recovery Tribunal in allowing the amendment petition. Notice to the second respondent also was served and he entered

appearance through his counsel and adopted the counter of the first respondent Bank. After the arguments, the Debt Recovery Tribunal, allowed the appeal and set aside the sale held on 06.03.2009 as invalid and also directed to restore the possession of the property in favour of the petitioner and directed the first respondent to return the property. Aggrieved over the same, the first respondent filed the appeal and the same was allowed. Therefore, the petitioner is before this Court.

7. The Counsel for the first Respondent Bank would further submit that the revision petitioner is a chronic defaulter and he failed to pay the dues. All efforts were taken and procedures were duly followed. The possession notice was affixed since the petitioner evaded to receive the notice and also failed to pay the dues in time and also failed to avail the opportunities given to the petitioner, by the Debt Recovery Tribunal and also the Debt Recovery Appellate Tribunal. Therefore, the petitioner has not come to the Court with clean hands. Though the Debt Recovery Tribunal failed to consider the conduct of the petitioner, however, the Appellate Tribunal rightly considered the conduct of the petitioner and also rightly set aside the order of Debt Recovery Tribunal. There is no merit in the appeal. Further, he would submit that the Bank has not received the Demand Draft, as the same was

returned, since the account was already closed, on the date of sending the Demand Draft by the Petitioner. The account was not alive with the Bank and therefore, the petitioner has not made out any ground. Therefore, this revision is liable to be set aside.

8. The learned Counsel for the second respondent would submit that he participated in the auction held on 06.03.2009 after seeing the paper publication and he and since he was the highest bidder, he also deposited the sale consideration and also the sale was confirmed and the sale deed was executed in his favour. Therefore, the revision petitioner knowing full well and only after creating the third party interest, now he cannot file an application to set aside the sale and also since the sale has already been completed, the same was confirmed and also the possession was taken. Though the Debt Recovery Tribunal failed to consider the proceedings followed by the first respondent and all the procedures have been complied with by the second respondent and erroneously set aside the sale, the Debt Recovery Appellate Tribunal has rightly re-appreciated the materials and allowed the appeal and set aside the order of the Tribunal.

9. This Court considered the rival submissions made by the learned Counsel appearing on either side and perused the materials available on record.

10. Admittedly, the petitioner is the borrower (loanee), and the second respondent is an auction, purchaser. Admittedly, the petitioner did not repay the amount and the property of the petitioner went under hammer under the SARFEASI Act. The first respondent bank issued notice of demand under Section 13(2) of the Act, demanding a sum of Rs. 4,52,860.71/-. Subsequently, the Bank took possession of the property by obtaining the order under Section 14 of the Act and also subsequently, issued the possession notice on 18.03.2007 under Section 13(4) of the Act. The possession notice was affixed on the door of the premisses of the first respondent on 18.03.2007 and being aggrieved by the possession notice, the petitioner filed an appeal before Debt Recovery Tribunal, Madurai and got the delay condoned though the same was initially dismissed for non-prosecution. Subsequently, the same was restored and in the meanwhile, when the appeal was taken on file by the Debt Recovery Tribunal, on the date of hearing on 22.12.2010, the bank informed the Tribunal that already the first respondent Bank issued a tender cum auction sale notice dated 30.01.2009 and auction sale was conducted on 06.03.2009 and the property was already sold to the second

respondent and the sale certificate was also issued on 13.04.2009, Therefore, the petitioner filed amendment application before the Debt Recovery Tribunal and the same was allowed by the Debt Recovery Tribunal and the same was not challenged either by the first respondent or the second respondent. The Debt Recovery Tribunal, considered the non-compliance of the mandatory provisions of Rule 8(6) Debt and 9(1) of the Act, that the first respondent Bank failed to affix notice of sale on property as mandated under Section 8(7) of the Rule and also held that the first respondent has not produced any document to show that they have affixed the sale notice on the property and also the sale was conducted without complying of the mandatory provision of Rule 8(7), set aside the sale. Further, the first respondent filed the appeal before the Debt Recovery Appellate Tribunal. The appellate Tribunal set aside the order of the Debt Recovery Tribunal. Therefore, the petitioner is before this Court.

11.On a perusal of the entire materials, it can be seen that the main contention of the petitioner is that the personal auction notice was not personally served to the petitioner and Rule 8(7) mandates that 30 days notice has to be served to the owner of the property. Though the first respondent has stated that they served the notice to the petitioner, but, however the first respondent has not produced any document to show that they have served 30 days sale notice to the petitioner. The non-compliance of the mandatory provision would vitiate the sale. The learned Senior Counsel has placed reliance on the above judgment argned the which clearly show that Rule 8(7) is mandatory and argued that, the Bank has stated that they served it, but they have not produced any documents to show that 30 days sale notice notice was served to the petitioner. Therefore, the Debt Recovery Tribunal held that the violation of the mandatory provision would vitiate the sale and set aside the sale and also the possession notice and directed to restore the possession whereas the appellate Tribunal has not given any reason as to how the first respondent proved the compliance of the statutory provision, namely, Rule 8(7) of the Rules. Though the Bank has specifically pleaded provision of that the sale notice dated 30.01.2009 was duly served on the petitioner 30 days prior to the the auction sale in compliance of provision of SARFEASI Act and Rules, but the same has not been proved and the Appellate Tribunal has erroneously held that the plea was not questioned by the petitioner herein. The bank has stated that the sale notice was published newspapers on 01.02 2009 and 31.01.2009 respectively, that the public auction will be held on 06.03.2009 on 01.00 pm was at KVB Limited premises, Nagercoil Branch and there was clear 30 days gap between the sale notice and the date of auction as seen from the material document and the tender was opened in the presence of the witnesses and the second respondent was the highest bidder and he paid a sum of Rs.3,76,000/- on 06.03.2009 itself and undertook to pay the balance within the stipulated time and therefore, the sale was confirmed. However, the Appellate Tribunal failed to consider that the respondent has not produced any document or evidence to show that they served 30 days notice to the petitioner Service of 30 days notice to the petitioner is mandatory and therefore the judgments referred to by the learned Senior Counsel for the petitioner are squarely applicable to the case on hand. The revision Court cannot sit in the armchair of the Appellate Court and re-appreciate the factual aspects as a Revisional Court and this Court has to see whether there are any procedural violations.

12. The main criteria to be seen is whether there was violation of the mandatory Rule 8(7). The first respondent has to prove that before conducting auction, the mandatory provisions have been duly followed. If the mandatory provision has not been complied with, the sale itself would be vitiated. Therefore, this Court finds that though the Debt Recovery Tribunal rightly appreciated the materials and also considered the grounds raised by the petitioner and set aside the sale, however, the Appellate Tribunal, as a fact finding Tribunal, failed to re-

appreciate the evidence and give a correct finding. Therefore, this Court finds that the finding of the Debt Recovery Appellate Tribunal is perverse and therefore, the same is liable to be set aside.

13. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

(P.V.J.,) & (K.K.R.K.J.)
09.09.2024

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

sbn

1. The Debts Recovery Appellate Tribunal,
   Chennai.
2. The Debts Recovery Tribunal,
   Madurai.
3. The Section Officer,
   VR Section,
   Madurai Bench of Madras High Court, Madurai.

P.VELMURUGAN, J.,
and
K.K.RAMAKRISHNAN, J.,
sbn

Judgment made in

C.R.P.(MD) NO. 3277 of 2023

and

W.P.(MD) No. 689 of 2024

C.M.P.(MD) Nos.16893 and 16894 of 2023

09.09.2024