IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

C.R.P.No.3845 of 2024

1.A.Chittibabu
2.C.Gopinath .. Petitioners

Vs

1.The Authorised Officer,
ICICI Bank Ltd.,
ICII Bank Towers-RMAG,
SP-24, South Phase,
4th Floor, West Wing,
Ambattur Industrial Estate,
Ambattur,
Chennai-600 058.

2.M/s.Jakshan Rubbers,
P.O.Pulikkal,
Malappuram District,
Kerala.

C.Kunhi Maideen (Since deceased)

3.Jhamshad
4.D.Palani Chettiar .. Respondents

Prayer : Petition under Article 227 of the Constitution of India to set aside the order dated 06.07.2023 in R.A.(SA) No.46 of 2013, on the file of Debt Recovery Appellate Tribunal, Chennai, partly modifying the order passed by the learned Debts Recovery Tribunal-III, Chennai in S.A.No.161 of 2012 dated 18.02.2013 and thus render justice.

For Petitioners	:	Mr.B.Thilak Narayanan
For Respondents	:	Mr.S.Suresh for R1 Not ready in notice Reg. R2 & R3 R4- Deceased

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

With the consent of counsels, we took up the petition for final hearing at this stage itself.

2. Petitioners are impugning the order dated 06.07.2023 passed by the Debt Recovery Appellate Tribunal (DRAT).

3. Petitioners had filed securitisation application questioning the possession notice dated 16.02.2012 on the ground that there was no valid security interest created in respect of the schedule properties.

4. According to petitioners they were the owners of the schedule properties, having purchased the same and therefore, alleged mortgage created over those properties cannot be stated to be valid.

5. Petitioners had purchased 24368 sq. ft. covered by two sale deeds dated 13.05.1999 and 24.02.2005. Admittedly, both these sale deeds were prior to mortgage. The borrower, C.Kunhi Maideen, died. Respondent No.3 is the legal heir of C.Kunhi Maideen. Respondents Nos.3 and 4 were the guarantors and mortgaged 51836 sq. ft. with respondent No.1 bank. This 24368 sq. ft. mentioned above formed part of the 51836 sq. ft.

6. Petitioners by two subsequent sale deeds both dated 07.05.2009 purchased 14291.5 sq.ft. from the borrowers/guarantors. These sale deeds

dated 07.05.2009, admittedly were after the mortgage was created.

7. Petitioners challenged the right of interest in the properties of respondent No.1 bank.

8. The SA which was filed before the DRT was opposed by respondent No.1.

9. It was petitioners' case before the DRT that to the extent of 24368 sq. ft. since the sale deeds were executed even before creating the mortgage in the year 2006 those properties belong to petitioners and certainly could not have been mortgaged. As regards the 14291.5 sq. ft., it was petitioners' case that there is no document showing mortgage. Both these submissions despite opposition from the bank were accepted by DRT earlier. By an order dated 18.02.2013, DRT was pleased to set aside the possession notice dated 16.02.2012 and thereby allowed the SA.

10. Against this order respondent No.1 bank preferred an appeal before the DRAT. The DRAT, by its order dated 06.07.2023, was pleased to

dispose the appeal. It is that order that is challenged in this petition.

11. For ease of reference, we feel it would be appropriate to reproduce paragraphs 5, 7, 8, 10 and 11 of the impugned order dated 06.07.2023, which are as under:

> *"5. On the other hand, Advocate for Respondents 1 and 2 submitted that Bank has not produced any document showing the mortgage, and now they cannot be permitted to contend that they have got mortgage over entire extent of 51836 sq.ft. He submitted that without producing any document, Bank is not entitled to proceed against properties. He further submitted that Respondents 1 and 2 have no knowledge about loan and etc., and they came to know only after issuance of Notice under Section 13(4) of SARFAESI Act, 2002. It is submitted, Tribunal below rightly set aside Possession Notice dated 16.02.2012, and that there are no grounds to interfere with Order dated 18.02.2013.*
>
> *7. It is not in dispute that the property originally belonged to Respondent No.5. It is the case of Bank that mortgage is created to an extent of 51836 sq.ft., out of which, an extent of 38659.5 sq.ft., is covered by two Sale Dees dated 13.05.1999 and 24.02.2005, which are prior to mortgage, and remaining extent of 14291.5 sq.ft., is covered by two Sale Deeds dated 07.05.2009, which are subsequent to mortgage.*
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> *8. Out of 38659.5 sq ft., covered by four Sale Deeds, an extent of 14291.5 sq.ft, covering two Sale Deeds executed by Borrower and Guarantors, subsequent to mortgage. Bank cannot*

proceed against an extent of 24368 sq.ft., in respect of which, Sale Deeds are executed even before creating mortgage in the year 2006, because those properties are not available for mortgage. So, Bank can proceed against 27468 sq.ft. (i.e.51836 sq.ft. minus 24368 sq.ft.)

10. Advocate for Respondents 1 and 2 contended that Bank has not produced any documents, showing the mortgage, but same cannot be accepted, because the scope of enquiry for Application filed under Section 17 of SARFAESI Act, 2002, is very limited, and grounds available for aggrieved party is to challenge the Notice issued under Section 13(4) of SARFAESI Act, 2002, are regarding service, affixture and publication.

11. In view of the same, without going into the other aspects, while confirming the Order of Tribunal below for setting aside Possession Notice dated 16.02.2012, liberty is given Appellant Bank to issue a fresh Notice under Section 13(4) of SARFAESI Act, 2002, for the extent of land referred to above, i.e., 27468 sq.ft., (i.e. 51836 sq. ft. minus 24368 sq.ft.).”

12. The DRAT therefore has accepted the DRT's finding in paragraph 8 that the bank cannot proceed against 24368 sq. ft. in respect of which sale deeds were executed even before creating mortgage.

13. The DRAT, however, says that the bank can proceed against

27468 sq.ft. which included 14291.5 sq. ft. which were covered by sale deeds dated 07.05.2009 subsequent to mortgage.

14. The DRAT has, however, not answered petitioners' objections that there was no valid mortgage which was accepted by the DRT. The DRT has given a finding that the mortgagors had no title or possession in respect of 38659.5 sq. ft. (24368 + 14291.5 sq.ft.) which was already assigned to petitioners.

15. The DRT has given a positive finding that bank had no valid right or interest over the property of 38659.5 sq.ft.

16. In the circumstances, we hereby quash and set aside the order dated 06.07.2023 and remand the matter to DRAT to consider *de novo* limited to the extent of 14291.5 sq.ft.-whether there was a valid mortgage in favour of the bank.

16. Petition disposed. There shall be no order as to costs.

(K.R.SHRIRAM, C.J.) (MOHAMMED SHAFFIQ,J.)
05.03.2025

Index : Yes/No
NC : Yes/No
mrn

To:
1.Debt Recovery Appellate Tribunal,
Chennai.

2.Debts Recovery Tribunal-III,
Chennai.

THE HON'BLE CHIEF JUSTICE
AND
MOHAMMED SHAFFIQ, J.

(mrn)

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