IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.10707 and 10708 of 2017
and W.M.P.Nos.11662 and 11663 of 2017

C.Mohan .. Petitioner in WP:10707/2017

M.Vijayalakshmi .. Petitioner in WP:10708/2017

Vs

1. The Authorised Officer
   Allahabad Bank now merged with Indian Bank
   98, Mercricar Road
   R.S.Puram, Coimbatore – 641 002.

2. R.Sadiqulla

3. J.Mohammed Riaz

4. M.Zakkiya Banu

5. The Registrar
Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai, Chennai. .. Respondents

[R1 cause title amended as per
order dated 10.1.2025 in
WMP Nos.27642 and 27646 of 2024]

Prayer : Petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records pertaining to the order dated 4.4.2017 in R.A.(SA) 16 and 15 of 2015, respectively, on the file of the fifth respondent and quash the same.

For Petitioners in both writ petitions	:	Mr.K.J.Parthasarathy
For Respondents in both writ petitions	:	Mr.M.Devaraj for 1st respondent
	:	Mr.R.Nandhakumar for respondents 2 to 4
	:	R5 - Tribunal

COMMON ORDER
(Order of the Court was made
by SENTHILKUMAR RAMAMOORTHY,J.)

These petitions are directed against the order dated 4th April, 2017 of the Debt Recovery Appellate Tribunal dismissing the appeals filed by the borrower and the guarantor.

2. The petitioner in W.P.No.10707 of 2017 availed of the credit facilities from the first respondent bank. The petitioner in W.P.No.10708 of 2017 guaranteed such credit facilities. The borrower failed to service the loan as per terms thereof, and the account became a NPA. Therefore, notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short, *SARFAESI Act*] was issued on 6th December, 2010 demanding a sum of Rs.17,07,909/- as on 30th November, 2010 with further interest thereon. After measures were taken under sub-section (4) of Section 13 of the SARFAESI Act by issuing possession notice dated 7th June, 2011, the guarantor filed S.A.No.89 of 2011 before the Debts Recovery Tribunal, Coimbatore. The guarantor was unsuccessful. The matter was carried in appeal by filing RA (SA) No.131 of 2012 before the Debt Recovery Appellate Tribunal. The appeal was dismissed by an order dated 9th May, 2013.

3. Meanwhile, the bank had issued sale notice dated 22nd November, 2011. Such sale notice was challenged by the borrower before the Debts Recovery Tribunal, Coimbatore in S.A.No.168 of 2011. By the order dated

13th December, 2011, the borrower was directed to pay 50% of the outstanding. The borrower, admittedly, failed to pay such amount. The borrower deposited a sum of about Rs.12.00 lakhs on 23rd January, 2012 and filed RA (SA) No.18 of 2012 before the Debt Recovery Appellate Tribunal. Against the order dated 9th May, 2013 dismissing RA (SA) No.18 of 2012, the borrower filed W.P.No.14670 of 2013 before this Court. By the order dated 7th August, 2013, the order of the Debt Recovery Appellate Tribunal was set aside and the matter was remanded to the Debts Recovery Tribunal, Coimbatore. Thereafter, the Debts Recovery Tribunal, Coimbatore, dismissed S.A.Nos. 89 and 168 of 2011 on 16th December, 2014. The matter was once again carried in appeals before the Debt Recovery Appellate Tribunal. Eventually, the order impugned herein came to be issued on 4th April, 2017.

4. Learned counsel for the petitioners in both the writ petitions submits that a sum of about Rs.14.00 lakhs was deposited by the borrower and the guarantor and that this represents a significant portion of the amount demanded in the notice issued under Section 13(2) of the

SARFAESI Act. He further submits that there were infirmities in both possession notice and sale notice and that these aspects were not duly examined either by the Debts Recovery Tribunal or the Debt Recovery Appellate Tribunal. He also submits that a sale certificate was issued in favour of a person other than the auction-purchaser. For all these reasons, he submits that the impugned order calls for interference.

5. Learned counsel for the respondent bank submits that a sale certificate was issued in favour of agents (power of attorney holder) of the auction-purchaser pursuant to the order of the Debts Recovery Tribunal. He also submits that such sale certificate was registered on 31st January, 2012. He points out that the borrower has retained possession of the property and that the auction-purchaser has been unable to take possession thereof in spite of remitting the total sale consideration about twelve years ago. After taking into account the sale proceeds and the amounts remitted by the borrower/guarantor, learned counsel submits that there is an amount of Rs.21,98,544/- available as surplus. He also submits that the loan account was closed on that basis on 31st December, 2011.

6. The auction-purchaser is also represented by a counsel, who submits that a sum of about Rs.43,06,000/- was paid more than twelve years ago and that the auction-purchaser has been unable to take possession of and enjoy the property.

7. The Debt Recovery Appellate Tribunal has set out the contentions of learned counsel for the borrower/guarantor and learned counsel for the bank extensively at paragraphs 7 to 14 of the impugned order. Thereafter, the Debt Recovery Appellate Tribunal recorded that the auction sale was conducted in accordance with the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002. The operative portion of the impugned order reads as under:

> *"15. On careful perusal of the pleadings of the rival parties and on consideration of submissions and on going through the citations, it appears that whatever representation has been made by the Appellants in response to the notice under Section 13(2) of SARFAESI Act. In my considered opinion, was not a helping document at all to the borrower. In the aforesaid, nothing has been pointed out as an illegality, but it was simply an offer of payment of Rs.1 lakh and was a prayer for extension of time for making repayments. After classifying the account to*

be NPA and after issuance of notice for recovery of Rs.17.07 lakhs, Bank had responded the letter of the borrower in correct manner and it does not create any right in favour of the borrower nor create any illegality against the SARFAESI proceedings of the Bank.

16. In so far as irregularity, illegality regarding auction sale proceedings are concerned, their appears no substance regarding non-compliance of Rule-9(3) of the Security Interest (Enforcement) Rules, 2002. In the given facts and circumstances of this case, auction purchasers have tendered the money in terms of the auction sale only and it suffers no illegality ultimately. Similarly, there appears no force in the contention that there is a lapse or illegality in respective valuation of the property placed for auction sale. In view of the fact that husband and wife respectively were the borrower and the guarantor and were living in the same house and were delaying the recovery by challenging the SARFAESI proceedings after filing Appeal after Appeal and also by filing the Writ jurisdiction in High Court also, it can easily be inferred that they have never tendered any amount voluntarily to the Bank. On the other hand, auction purchasers have participated in the auction proceedings in bonafide manner in good faith.

17. In the impugned order, Ld. PO of Debts Recovery Tribunal has elaborately considered all angles of the dispute and has arrived at correct conclusion. True it is that house in question is residential house. But in such a situation, Appellants deserve no sympathetic consideration on the ground that they have deposited Rs.13 lakhs so far against the debt amount. True only under compulsion and as a last resort. If any sympathy is extended in favour of the Appellants/borrowers for deposit of some more amount, they will again assail it on judicial side on magnitude, quantum etc. Such enrichment litigation should be discouraged. It is against the words and spirit of the Recovery Laws."

8. We find that the Debts Recovery Tribunal dealt with each objection

of the borrower and guarantor extensively. The objection regarding non-compliance with Section 13(3A) of the SARFAESI Act was rejected by holding that the reply dated 4th February, 2011 merely offered payment of Rs.1.00 lakh and sought time to pay the balance and that this was rejected by the bank by an endorsement. The contention regarding the possession and sale notices were rejected by holding that such notices were duly communicated and that publication was also made. The objection regarding valuation was rejected by holding that the valuer is recognised under the Income Tax Act. Finally, the objection regarding the auction-purchaser was rejected by relying on the power of attorney in favour of the third and fourth respondents, who are close relatives of the second respondent/bidder. The Debt Recovery Appellate Tribunal examined and concurred with these conclusions.

9. The borrower and the guarantor have admittedly failed to deposit or pay the total dues so as to redeem the mortgaged asset. Meanwhile, the auction-purchaser remitted the total sale consideration more than twelve years ago. In spite of the same, the auction-purchaser has been unable to

take possession and benefit from the purchase of the property. In the facts and circumstances outlined above, we find no reason to interfere with the impugned order, since the same does not suffer from any infirmity.

10. However, as mentioned earlier, the surplus of about Rs.21,98,544/- is lying with the respondent bank. This amount is liable to be paid to the borrower along with interest at the same rate which was charged to the borrower.

11. In the result, these writ petitions are disposed of on the following terms:

(1) The impugned common order dated 4th April, 2017 passed by the Debt Recovery Appellate Tribunal, Chennai, in RA (SA) Nos.15 and 16 of 2015 is affirmed.

(2) The respondent bank is directed to pay the borrower the surplus amount i.e., Rs.21,98,544/- with interest thereon at the same rate at which the credit facilities were extended to the borrower.

(3) Such payment shall be made within two weeks from the date of receipt of a copy of this order.

(4) The petitioners are directed to hand over vacant and peaceful possession to the auction-purchaser within a period of two weeks from the date of receipt of a copy of this order. In case the petitioners do not hand over possession, the jurisdictional revenue and police officials are directed to extend assistance to ensure that vacant and peaceful possession is handed over to the auction-purchaser.

(5) There shall be no order as to costs.

(6) Consequently, interim applications stand closed.

(K.R.SHRIRAM, C.J.) (SENTHILKUMAR RAMAMOORTHY,J.)
10.01.2025

Index : Yes/No
NC : Yes/No
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   Allahabad Bank now merged with Indian Bank
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