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W.P.No.40745 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2025

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

WP No.40745 of 2025

and WMP Nos.45639 and 45640 of 2025

1. R.Vijayabhaskar
S/o.K.Ramamorthy,
No.57, Rangasayee Street,
Perambur, Chennai-600 011.
2. Ammulu
W/o.R.Vijayabhaskar,
No.57, Rangasayee Street,
Perambur, Chennai-600 011.

Petitioner(s)

Vs

State Bank of India
Anna Nagar West Extension Branch,
W/7, North Main Road, Chennai,
Rep. by its Chief Manager,
Suresh M.Nair

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records of the



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Debt Recovery Appellate Tribunal, Chennai, dated 08.04.2025 made in R.A No.14/2021 and quash the same.

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For Petitioner(s): Mr.G.Jeremiah

For Respondent(s): Mr.M.L.Ganesh
and Mr.S.Arun Kumar

ORDER

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

Seeking issuance of a writ of certiorari to quash the order dated 8.4.2025 passed by the Debt Recovery Appellate Tribunal (DRAT), the present writ petition is filed under Article 226 of the Constitution of India.

2.1. The facts which are essential to be exposited for the disposal of the writ petition are that one B.Subramanyam approached the petitioners herein claiming that he is promoting flats and was agreeable to sell an extent of 633.90 sq.ft. for a consideration of Rs.2,26,800/-, besides offering to construct a flat (E1). The total cost of site and building was Rs.8,21,200/-.

2.2. In furtherance of the above, an agreement of sale dated



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6.11.2005 was executed by B.Subramanyam and Jayalakshmi in favour of the first petitioner. On the same day, a construction agreement was also entered into between B.Subramanyam, as proprietor of R.S.Constructions, and the first petitioner herein. It is averred that, pursuant thereto, B.Subramanyam accompanied the petitioners to the bank for applying for housing loan of Rs.7.50 lakhs and signed various blank forms. It is claimed that unbeknownst to the petitioners, on 7.12.2025, the respondent bank credited the sanctioned loan directly to the bank account of B.Subramanyam, after creating a memorandum of loan agreement and agreement to mortgage.

2.3. The asseverations are to the effect that B.Subramanyam and Jayalakshmi played fraud on the petitioners, as they were not the owners and, in fact, had already sold the said flat (E1) to one Manoj Mathew and his wife Nisha Mathew much earlier, i.e., on 18.2.2004. It is stated that the petitioners persuaded Manoj Mathew and his wife Nisha Mathew and purchased the said flat (E1) from them under a registered sale deed dated 14.7.2006.



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2.4. It is further averred that the respondent bank had neither called upon the petitioners to deposit the title deeds in respect of the property, nor did they demand payment of equated monthly installments, but have filed O.A.No.59 of 2009 before the Debts Recovery Tribunal-III, Chennai (DRT), seeking recovery of a sum of Rs.11,03,325/- with interest at 11.95% per annum.

2.5. The DRT, vide order dated 30.9.2019, allowed the claim of the respondent/bank and directed issuance of a Recovery Certificate as against the petitioners for a sum of Rs.11,03,325/- with interest at 9% per annum. As the appeal filed by the petitioners did not find favour with the DRAT, which, by order 8.4.2025, affirmed the order of the DRT, the present writ petition is filed.

3.1. Learned counsel for the petitioners submits that in the absence of mortgage or charge having been created over the property of the petitioners, the respondent/bank had no legal right



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to proceed against the petitioners. He pleaded that the petitioners are neither borrowers, nor guarantors.

3.2. Learned counsel for the petitioners further submitted that B.Subramanyam in cahoots with the officials of the respondent bank played fraud upon the petitioners and moreover, on 6.11.2005, B.Subramanyam and Jayalakshmi had no valid title over the property and, therefore, the agreement of sale and construction agreement are non-est in law.

3.3. To substantiate his submission that an agreement of sale, *eo ipso*, does not create any interest or charge over the immovable property, nor does it amount to transfer of title, reliance is placed on the decisions of the Supreme Court in (i) *Suraj Lamp and Industries Pvt Ltd v. State of Haryana and another*¹; and (ii) *Indian Overseas Bank v. M.A.S.Subramanian and others*².

4. Per contra, learned counsel appearing on behalf of the

¹ 2011 (6) CTC 90

² 2025 (1) CTC 745



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respondent/bank reiterated the submissions which found favour with the DRT and DRAT, and questioned the maintainability of this writ petition under Article 226 of the Constitution of India seeking quashment of the order passed by the DRAT.

5. Heard learned counsel for the parties and perused the orders passed by the DRT and DRAT.

6. The grounds which have been raised by the petitioners to assail the orders passed by the DRT and DRAT, as can be seen from the records of the case, do not call for interference by this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India.

7. The entire case of the petitioners is based on certain assertions of fact which were gone into by the DRT and DRAT and a finding of fact has been recorded.

8. The petitioners' case that the agreement of sale did not create a valid mortgage in favour of the respondent/bank need not be gone



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into at all, for the reason that the present is not a case where the respondent/bank proceeded to recover the loan amount by taking measures under Section 13(4) of the SARFAESI Act, 2002 as a secured creditor. Certainly, if the respondent/bank would have invoked the provisions of the SARFAESI Act to recover the loan, then the question as to whether the agreement to sell the property by B.Subramanyam and Jayalakshmi in favour of the first petitioner, followed by the construction agreement entered into between B.Subramanyam, as proprietor of R.S.Constructions, and the first petitioner herein, without deposit of title deeds with the respondent/bank, would create a valid mortgage would have arisen.

9. The two decisions, which have been cited by learned counsel for the petitioners, are not applicable in the present case, because it is not necessary for this court to decide the issue, for the reason that the respondent/bank moved the DRT by filing a suit seeking decree of recovery of loan amount. The suit was not based on mortgage. The Original Application filed by the respondent/bank before the DRT seeks an order of recovery of loan amount on the basis of pleadings and evidence that it had advanced loan to the



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petitioners, which remained unpaid and, therefore, the respondent/bank was entitled to recover the same along with interest from the petitioners.

10. The other asseverations in the petition that no loan was obtained from the respondent/bank or that the petitioners never stepped into the bank are all disputed questions of fact and a categoric finding of fact has been recorded by the DRT and DRAT in this regard.

Placing reliance upon the petitioners' own letter, the DRAT has disbelieved the petitioners' case that they have never stepped into the respondent/bank to seek loan. The order proceeds on documentary evidence, which included application for grant of loan by one of the petitioners.

Once there is a finding of fact that the loan was actually advanced on the application made by the petitioners, the entitlement of the bank to recover the money through proper procedure prescribed under law cannot be faulted with.



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11. If the petitioners find that they have been defrauded or cheated by the builder and that the property which no longer belonged to the builder was agreed to be sold to the petitioners under the agreement to sell, the petitioners' remedy lies against the builder, but that cannot be the basis to deny the liability of repayment of loan, as the loan was sought by the petitioners and, as requested by the petitioners, the amount was paid to the builder. The petitioners' remedy as against the builder, both civil and criminal, are still open.

12. The findings which have been recorded by the DRAT are not open to challenge before this court, as this court is not exercising appellate jurisdiction, but only certiorari jurisdiction under Article 226 of the Constitution of India, scope of which was delineated by a Constitution Bench of the Hon'ble Supreme Court, as early as in 1963, in the case of **Syed Yakoob v. K.S.Radhakrishnan and others**³. Justice P.B.Gajendragadkar, in his erudite opinion, expounded the contours of certiorari jurisdiction as below:

³ AIR 1964 SC 477



"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is



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shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (Vide Hari Vishnu Kamath v. Syed Ahmed Ishaque MANU/SC/0187/1954 : [1955] 1 SCR 1104, Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam MANU/SC/0101/1958 : [1958] 1 SCR 1240, and Kaushalya Devi v. Bachittar Singh MANU/SC/0219/1959 : AIR 1960 SC 1168.)



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13. In a recent judicial pronouncement in the case of **Central Council for Research in Ayurvedic Sciences and others v. Bikartan Das and others**⁴, the aforesaid view was reiterated and the legal position has been made clear in this regard. Their Lordships in the Hon'ble Supreme Court, after elaborate discussion and after quoting English laws, held that writ of certiorari is a high prerogative writ and should not be issued on mere asking. In paragraphs 64 and 65, their Lordships held as under:

"64. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not

⁴ (2023) 16 SCC 462



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also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.

65. A writ of certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. We may only say that while adjudicating a writ-application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits. (See: King v. Nat Bell Liquors Ltd., (1922) 2 AC 128 (PC))”



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14. In the absence of there being error of jurisdiction – in the sense that the order is without jurisdiction, or in excess of jurisdiction, or that the Tribunal had failed to exercise jurisdiction as is vested in law, or in exercise of jurisdiction has acted illegally or with material irregularities, or the order suffers from patent error of law or perversity, interference by the writ Court in exercise of certiorari jurisdiction would not be permissible by assuming the role of appellate authority on facts.

For the foregoing reasons, the writ petition is dismissed, sans costs. WMP No.45639 of 2025 filed to permit the petitioners to join together and file a single writ petition is allowed, subject to payment of separate court fee within two weeks. In default, this order shall be applicable only in respect of the first petitioner. The other interim application stands closed.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (G.ARUL MURUGAN,J)
03.11.2025

Index : Yes
Neutral Citation : Yes
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To:

The Chief Manager,
State Bank of India
Anna Nagar West Extension Branch,
W/7, North Main Road, Chennai.



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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

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