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W.P.No.40633 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2025

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.40633 of 2025
and W.M.P.No.45564 of 2025

1.P.Soundarajan
S/o.Purushotaman

2.S.Radha
W/o.P.Soundarajan
Both are residing at
No.37/169, 1st Floor,
Thiruvalluvar Street,
East Tamabaram,
Chennai-600 059.

Petitioners

Vs

The Authorised Officer
Tamil Nadu Mercantile Bank Ltd,
Chitlapakkam Branch,
No.46/87, 1st Floor,
Gayatri Nagar, Hasthinapuram,
Chitlapakkam,
Chennai-064.

Respondent



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PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records relating to the proceedings in R.A.(SA) No.39 of 2020 on the file of the Debt Recovery Appellate Tribunal, Chennai, confirming order in S.A.No.195 of 2018 passed by the Debts Recovery Tribunal and quash, as being arbitrary, illegal without jurisdiction, and in violation of the principles of natural justice, consequently direct the respondent to restore the possession of the secured assets to the petitioner in accordance with law within the stipulated period fixed by this Hon'ble Court.

For Petitioners: Mr.D.Murugan

ORDER

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

Heard.

2. By this writ petition under Article 226 of the Constitution of India, the petitioners have assailed the correctness and validity of the order passed by the Debt Recovery Appellate Tribunal [DRAT], affirming the order passed by the Debts Recovery Tribunal [DRT] in the matter of challenge to the measures taken under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [the Act] by the respondent secured creditor/bank.



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3.1. The first submission of learned counsel for the petitioners is that the overdraft facility allegedly availed by the petitioners is not directed towards settlement of their own loan account, but towards settlement of the loan account of Lakshmi Construction. Therefore, the said amount could not be allowed to be added to the loan liability of the petitioners rendering them liable for repayment as loan liability.

3.2. The second submission of learned counsel for the petitioners is that the RBI Circular, dated 1st July, 2011 and the decision of Chhattishgarh High Court in Writ Appeal No.362 of 2019 [*Shri Mohan Products Pvt. Ltd. and others v. State Bank of India, Stressed Assets Recovery Branch, Raipur and another*] clearly state that when notice under Section 13(2) of the Act was issued by the secured creditor, it will include the principal amount as also interest having become due as on date, but it cannot include any future interest to have it termed as due as on the date of the said notice.

4. We find that both these issues were not raised before the DRT while submitting application seeking to challenge the measures taken by the bank under Section 13(4) of the Act.



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5. As determination of the aforesaid issues would essentially turn on findings based on foundation of facts, which were not pleaded by the petitioners, there was no occasion for the DRT to go into these issues at the instance of the petitioners.

6. When the petitioners filed appeal before the DRAT, they, for the first time, raised an issue with regard to the manner in which the overdraft facility of Rs.19.00 lakhs was utilised. The DRAT, even though held that this issue was not raised before the DRT and is being raised for the first time before the appellate authority, went into the facts of the case and recorded a categorical finding of fact that the overdraft facility was drawn by the petitioners on their own application dated 18.04.2016. It also recorded as a finding of fact that the overdraft facility, which was drawn by the petitioners, was on the basis of their own application and amount was drawn under self cheque. The DRAT recorded and it appears that later on, the petitioners utilised this amount to bail out Lakshmi Construction by making payment to the same through challan. On this factual premise, the appellate authority also came to the conclusion that the amount which was



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drawn by the petitioners under overdraft facility was rightly added to their loan liability.

7. The other issue that the amount due and payable is not as per law and as per the Circular of RBI is being raised for the first time before the writ Court. There is nothing on record and learned counsel for the petitioners failed to satisfy the Court whether in reply to the notice under Section 13(2) of the Act issued to them, any objection in this regard was raised by the petitioners that the total amount due has been wrongly computed. As the petitioners failed to object to the notice issued under Section 13(2) of the Act, particularly with regard to the manner of computation of the amount due and payable to the petitioners, and as this issue was not raised even before the DRT or DRAT, we do not think this can be allowed to be raised for the first time in the writ Court.

8. Upon due consideration, therefore, we are of the view that the order passed by the DRT or DRAT do not suffer from any error of jurisdiction. The submissions which are now raised by learned counsel for the petitioners are for making a roving enquiry or for re-initiating



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the entire proceedings by directing the parties to come out a fresh pleading, rebuttal evidence and recording of finding of fact.

9. It is well settled that certiorari jurisdiction of the High Court in the matter of challenge to the order of the Tribunal could be invoked only on permissible grounds.

10. 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**¹, had examined this issue in detail. Justice P.B.Gajendragadkar, in his erudite opinion delineated the contours of certiorari jurisdiction as below:

"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

¹ AIR 1964 SC 477



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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 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



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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.)

11. In a recent judicial pronouncement in the case of **Central Council for Research in Ayurvedic Sciences and others v. Bikartan Das and others**³, the aforesaid view was also 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

³ (2023) 16 SCC 462



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 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



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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))”

12. 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



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authority on facts.

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13. It is also well settled that even errors of fact, however, apparent, could not be made a ground to invoke certiorari jurisdiction.

14. Finding no merit, the writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15. Before parting, we also note that sale notice, which was under challenge before the DRT, did not fructify for one reason or the other and till date the property has not been sold. The petitioners' right to redeem their property by paying the amount due is still available. Such right of redemption ceases upon valid publication of a composite notice of sale, as held by the Hon'ble Supreme Court in the case of *M.Rajendran v. KPK Oils and Proteins India Pvt. Ltd*⁴.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (G.ARUL MURUGAN,J)
04.11.2025

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