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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.02.2025

PRONOUNCED ON : 22.08.2025

CORAM:

THE HONOURABLE MRS. JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.5840 of 2023
and
W.M.P.(MD)Nos.5400, 5402 of 2023, 4933 and 4935 of 2024

S.Loganathan ... Petitioner

Vs.

1.Recovery Officer II,
Debts Recovery Tribunal III, Chennai,
6th Floor, Additional Office Building,
Shastri Bhavan,
Haddows Road,
Nungambakkam, Chennai-600 006.

2.Assistant General Manager,
State Bank of India, SAMB,
32, Montieth Road,
Egmore, Chennai 600 008.

3.D. Dhanapal,
Advocate Commissioner,
Plot No.22, Nakshatra Nagar Phase II,
Karumandappam,
Tiruchirappalli-620 002.

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4.Sub Registrar,
K.Santhanur SRO,
KK Nagar, Tiruchirappalli-620 021. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari,*** to call for the records of the proceeding of the 1st respondent in DRC No.14 of 2022, dated 13.01.2023 and to quash the same as a lack of territorial jurisdiction.

For Petitioner	: Mr.M.Rajarajan
R1	: Tribunal
For R2	: Mr.N.Dilip Kumar
For R3	: Mr.R.J.Karthick
For R4	: M/s.D.Farjana Ghoushia Special Government Pleader

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ORDER

(Order of the Court was delivered by **S.SRIMATHY, J.**)

The present writ petition is filed for issuance of a Writ of Certiorari, to quash the 1st respondent's proceedings, dated 13.01.2023, passed in DRC.No.14 of 2022 on the question of territorial jurisdiction.

2. (a) The brief facts, as stated in the affidavit, are that the respondent Bank had filed a suit in O.A.No.216 of 2013 and also initiated measures under the SARFAESI Act in S.A.No.213 of 2013 against the petitioner for the default in the

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loan amount.

(b) The petitioner, while challenging the Bank's action, approached the Debt Recovery Tribunal under Section 17 of SARFAESI Act and also contested the suit.

(c) The petitioner contended that the classification of the account as NPA was not in accordance to law and specifically urged that the books of accounts relied upon by the bank were erroneous and, therefore, the alleged debt had not been crystallized.

3. The learned counsel for the petitioner submits that the Debts Recovery Tribunal, upon hearing the matter, found that the respondent Bank had at first denied the very existence of the disputed account; secondly Bank had failed to produce the bank statement for more than 10 years. The said account statement was produced one fine day after a decade. The Tribunal also observed that the very existence of such a disputed accounts and books of accounts maintained by the Bank is contrary to the provisions of the Bankers' Books Evidence Act.

4. According to the learned counsel for the petitioner, the Tribunal allowed the second appeal filed by the petitioner under the SARFAESI Act and

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quashed the measures taken by the respondent Bank. However, the Tribunal proceeded to allow O.A. No.216 of 2013, and rendered a self-contradictory order.

5. It is the submission of the learned counsel for the petitioner that even though the petitioner was aggrieved by the order passed in O.A. No.216 of 2013, the same has been challenged in the present proceedings. The writ petition is confined to questioning the attachment order passed by the Recovery Officer–II, DRT–III, Chennai, on the ground that the same has been passed beyond its territorial jurisdiction, thereby warranting interference of this court under supervisory powers.

6. The contention of the learned counsel for the petitioner is on the following points:-

6.1. The respondent Bank has filed an appeal against the order of the Tribunal passed in O.A. No.216 of 2013 in R.A. No.45 of 2021. In the said appeal, a direction was passed by the DRAT on 22.09.2021 directing the Bank to implead legal heirs of the deceased. However, the Bank has failed to implead the legal heirs of the deceased borrower. Whereas, the Bank allowed the appeal to remain pending without due prosecution. Hence the petitioner has approached this Court under Article 226 of the Constitution.

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6.2. The Recovery Officer had exercised his power is excess of his territorial jurisdiction and he has proceeded to execute the decree in D.R.C. No.14 of 2022, which had been erroneously transmitted to him by DRT–III, Chennai.

6.3. The property in question is situated outside the territorial limits of DRT–III; hence the proceedings suffer from want of inherent jurisdiction.

6.4. Section 19(23) of the Recovery of Debts and Bankruptcy Act, 1993, mandates that where a Recovery Certificate pertains to property outside the territorial jurisdiction of a Tribunal, the same shall be returned to the Tribunal which had issued it.

6.5. In the instant case, the impugned recovery order ie.D.R.C.No.14 of 2022 arises from O.A. No.216 of 2013 dated 16.09.2020 but the said order is already under challenge before the Appellate Tribunal in R.A. No.45 of 2021 and was last heard on 25.06.2021. When the said matter is pending before the Appellate Tribunal, the Recovery Officer, being a subordinate authority, could not have usurped jurisdiction to deal with an issue sub judice before the superior forum.

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6.6. The decree in O.A. No.216 of 2013 was passed for the due amount as prayed for by the Bank. However, the Tribunal had refused to award interest. The Tribunal, having held that the delay was solely attributable to the Bank, had failed to furnish the relevant accounts for over 10 years. Owing to such default, the borrower was compelled to run from pillar to post, approaching multiple forums, including the High Court, the DRT and the Appellate Tribunal.

6.7. It is relevant to state that the Tribunal directed that the loss of interest should be recovered from the concerned bank officials, who were responsible for causing the delay. However, the Bank has proceeded to make its claim as though simple interest is recoverable from the petitioner, whereas, in law, such recovery can only be enforced against the erring officials of the Bank. The claim for simple interest, which ought to have been computed only from the date of the order till recovery, was in fact applied for by the Bank before the Recovery Court belatedly on 30.06.2022.

7. The next contention of the petitioner counsel is that instead of bringing the legal heirs on record as per the direction of the DRAT, the Bank has hurriedly pursued execution before the Recovery Court, which admittedly lacks

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territorial jurisdiction. The Recovery Officer, DRT–III, Chennai, nevertheless dismissed the miscellaneous applications filed by the petitioner in an arbitrary manner, thereby giving rise to the present writ petition.

8. The learned counsel for the petitioner would submit that the Recovery Officer, by order dated 17.11.2022, issued a warrant of attachment without jurisdiction against all three judgment debtors, including Judgment Debtor No.3, who is a deceased person. No steps were taken to implead the legal heirs of the deceased debtor. Consequently, the warrant in D.R.C. No.14 of 2022 stood issued against a dead person.

9. The petitioner challenged the said action by filing M.A. No.999 of 2023, pointing out the inherent lack of territorial jurisdiction of the Tribunal. However, the plea was not duly considered. The Recovery Officer persisted in issuing warrants against the judgment debtors, including the deceased debtor without impleading legal heirs. The challenge to such warrant, made through the aforesaid miscellaneous application, was dismissed mechanically. Only thereafter the Bank moved an application to implead the legal heirs.

10. In the meantime, the Recovery Officer issued a fresh demand notice

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dated 25.11.2022, purporting to invoke Rule 85 of the Second Schedule to the Income Tax Act, 1961. This fresh demand notice had the effect of superseding the earlier demand notice dated 11.01.2022, and was issued against all the judgment debtors, including the legal heirs of the deceased debtor.

11. Aggrieved thereby, the petitioner filed M.A. No.5 of 2023 contending that Rule 85 of the Second Schedule to the Income Tax Act, 1961 could be invoked only if, at the time of issuance of the Recovery Certificate, the judgment debtor was alive. Once again, the petitioner reiterated the plea of inherent lack of jurisdiction. The Recovery Officer, however, dismissed the application.

12. The Recovery Officer travelled from Chennai to Tiruchirappalli, pasted an attachment order on 13.01.2023, and further proceeded to the office of the Sub-Registrar to file the same. Therefore, the petitioner was constrained to file M.A. No.10 of 2023, raising the plea of lack of territorial jurisdiction.

13. The specific contention of the petitioner counsel is that the 1st respondent acted wholly without jurisdiction, and consequently, the orders passed are vitiated and liable to be set aside.

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14. The main ground of attack by the learned counsel for the petitioner is that the Recovery Officer, Chennai, acted arbitrarily and done acts beyond the limits of his territorial jurisdiction. He issued a warrant dated 16.02.2022 against Judgment Debtors 1 to 3, including the deceased debtor. Such a warrant is patently bad in law. Pursuant to the same, the Advocate Commissioner issued an eviction notice dated 24.02.2023 and sought to implead the legal heirs, though the warrant dated 16.02.2022 did not contemplate such inclusion. The Commissioner thereby exceeded the mandate of the warrant and proceeded to schedule a forced eviction on 23.03.2023.

15. The learned counsel for the petitioner contended that as per settled principle, jurisdiction lies with the forum within whose territorial limits the property is situated. In the present case, not even a single property lies within the jurisdiction of the 1st respondent. Consequently, the entire execution proceedings in D.R.C. No.14 of 2022 are void ab initio, lacking jurisdiction and authority of law. Therefore, the petitioner prays to allow the writ petition and set aside the impugned orders of the 1st respondent.

16. The learned Counsel appearing for the 2nd respondent has filed

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written submissions contending that Section 19(23) of the Recovery of Debts and Bankruptcy Act vests discretion with the Tribunal and issued the Recovery Certificate, either to execute it by itself or to transmit it to the Tribunal within whose jurisdiction the property is situated. The requirement to transfer a Recovery Certificate is discretionary and not mandatory and the strict regime of the Civil Procedure Code is not applicable to proceedings before the Tribunal.

17. The learned counsel for the 2nd respondent would submit that the statute itself recognizes the necessity of relaxing technicalities to ensure effective and expeditious adjudication. Section 22 of the Act empowers the Tribunal to regulate its own procedure, including the places where it shall sit. Section 22 expressly provides that neither the Tribunal nor the Appellate Tribunal shall be bound by the procedure prescribed under the Code of Civil Procedure.

18. The learned counsel for the 2nd respondent further submitted that the petitioner has an effective alternative remedy under Section 30 of the Act, since any order passed by the Recovery Officer is appealable before the Tribunal. The impugned order dated 13.01.2023 is an appealable order.

19. It is further submitted by the learned counsel for the 2nd respondent

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that the petitioner had earlier filed M.A. No.999 of 2022 and M.A. No.10 of 2023 in the very same D.R.C. No.14 of 2022 raising the identical plea of lack of jurisdiction. Both applications were dismissed on 17.11.2022 and 03.03.2023 respectively, and those orders have attained finality. The earlier proceedings are related to Schedule "B" property, whereas the present writ petition pertains to Schedule "A" property. Accordingly, the principles of estoppel are attracted, and the petitioner is precluded from re-agitating the same issue.

20. The transfer of proceedings to DRT-III, Chennai, was in fact at the instance of the writ petitioner himself. Originally, O.A. No.202 of 2010 was filed before DRT, Madurai, by the State Bank of India. Pursuant to an order dated 29.12.2012 in M.A. No.2 of 2012, the matter was transferred to DRT-II, Chennai and renumbered as O.A. No.80 of 2012. Thereafter, by order in M.A. No.5 of 2012, the DRAT, Chennai, further transferred the O.A. to DRT-III, Chennai, where it was renumbered as O.A. No.216 of 2013. Thus, it is the submission of the counsel for the 2nd respondent that it is only at the instance of the petitioner that DRT-III, Chennai, assumed jurisdiction, passed the decree in O.A. No.216 of 2013, and issued the Recovery Certificate leading to the present execution. The petitioner cannot now turn around and allege lack of jurisdiction on the part of DRT-III, Chennai.

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21. It is further submitted by the learned counsel for the 2nd respondent that the petitioner has not approached this Court with bona fides. On the contrary, he has adopted dilatory tactics and has thereby disentitled himself from any discretionary equitable relief. The petitioner has filed as many as 49 miscellaneous applications, interlocutory applications, and multiple appeals before DRAT, thereby protracting the recovery proceedings for over 16 years. The loan account was classified as NPA on 17.12.2008, and since then, recovery has been delayed solely on account of the petitioner's delayed tactics. Accordingly, the 2nd respondent submits that the writ petition has no merits.

22. Heard Mr.M.Rajarajan, learned Counsel appearing for the petitioner, Mr.N.Dilip Kumar, the Learned Standing Counsel appearing for the 2nd respondent, Mr.R.J.Karthick, the Learned Counsel appearing for the 3rd respondent and Ms.D.Farjana Ghoushia, the Learned Special Government Pleader appearing for the 4th respondent and perused the records.

23. As far as the submission of the learned Counsel appearing for the petitioner that the impugned order has been passed even against a deceased person and therefore the same is vitiated is concerned, the said issue was considered in

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the case of ***Isha Beevi and Others Vs. Tax Recovery Officer and Others,*** wherein the Kerala High Court has categorically held that if any certificate is issued against dead person, the entire proceeding stands vitiated and the same is liable to be set aside. The relevant portion of the judgment is extracted hereunder:

> *"Now, if the assessee was dead, no amount could be recovered from him, and, therefore, we think that these certificates were not validly issued, at any rate no recovery can be made from the legal representatives, since they are not named in the certificates as persons from whom the tax is to be collected. There is also no provision for issue of certificates in the name of a deceased assessee, and for the Tax Recovery Officer proceeding against his legal representatives in the Income-tax Act, 1922 or 1961. Rule 84 in the Second Schedule to the Income-tax Act, 1961, provides that no certificate shall cease to be in force by the death of the defaulter. Rule 85 says that if, at any time after the issue of the certificate, the defaulter dies, proceedings may be continued against the legal representative of the defaulter, and the provisions of the Schedule shall apply as if the legal representatives were the defaulter. These provisions imply that the certificate must be against a defaulter who is alive-then make provision only for recovery on the defaulter's death after the issue of the certificate. We, therefore, hold that the Tax Recovery Officer cannot proceed to recover the amounts specified in*

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these certificates in pursuance of the attachment."

According to the learned counsel, in the present case also, since the certificate was issued against a deceased judgment debtor without impleading the legal heirs at the relevant stage, therefore, the proceedings are rendered as null and void.

24. It is not in dispute that the 3rd judgment debtor had passed away on 27.07.2021, and the petitioner duly informed the Tribunal about such death on 02.09.2021, during the course of hearing. Notwithstanding the said intimation, the respondent Bank, without impleading the legal heirs, sought issuance of the Recovery Certificate on 07.01.2022, and the same came to be issued even against the deceased debtor. The petitioner, therefore, filed a miscellaneous application challenging such issuance, however the same was dismissed. Subsequently, the respondent Bank taken steps to implead the legal heirs of the deceased debtor, and such impleadment was allowed. Consequent thereto, a fresh demand notice dated 25.11.2022 was issued. The petitioner contends that the issuance of the earlier demand notice dated 11.01.2022 stood waived upon issuance of the subsequent demand notice dated 25.11.2022. After hearing the rival submissions, this Court is of the considered opinion that the petitioner's objections on this score was already heard in MA (miscellaneous application) and the same stood dismissed.

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Moreover,since the respondent bank had taken steps and impleaded the legal heirs on a later date and the legal lacuna was rectified by curing the procedural defect. A Fresh Demand Notice dated 25.11.2022 has also been validly issued against the legal heirs. In such circumstances, the earlier demand notice dated 11.01.2022, read in conjunction with the subsequent demand notice dated 25.11.2922 issued after impleading the legal heirs would lawfully grant the respondent bank to proceed further. Consequently, the petitioner's contention of the petitioner that the recovery order was passed without impleading legal heirs has no ground at all and the said plea ought to be rejected and accordingly rejected.

25. The next contention urged by the petitioner is that the impugned order has been passed without territorial jurisdiction. In response, the learned counsel appearing for the respondent bank submitted that it was at the instance of the petitioner that the case was transferred to Chennai, and therefore, now the petitioner is estopped from raising the issue of territorial jurisdiction.

26. It is seen that originally the case in O.A.No.202 of 2010 was filed before DRT, Madurai by the State Bank of India. At the instance of the petitioner, the said proceedings were transferred to DRT-II, Chennai, vide order dated 29.12.2012 passed in M.A. No.2 of 2012, and the O.A. was renumbered as O.A.

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No.80 of 2012. Again, vide M.A.No.5/2012 DRAT, Chennai the case was transferred to DRT-III, Chennai where it was renumbered as O.A.No.216 of 2013.

27. The contention of the petitioner, however, is of a slightly different nature. The petitioner is not questioning the territorial jurisdiction as raised in the M.A.2 and M.A.5 of 2012. Instead, the grievance is that the DRT-III, Chennai lacks jurisdiction to execute the the Recovery Certificate in respect of properties situated outside its territorial limits.

28. After adjudication in the O.A., the issuance of the Recovery Certificate was well within the jurisdiction of DRT-III, Chennai. However, for the purpose of execution, the Recovery Certificate ought to have been transmitted to the jurisdictional Tribunal at Madurai, where the properties are situated. In other words, once the recovery certificate is issued for execution the said recovery certificate ought to be transmitted to DRT, Madurai for execution and the DRT-III, Chennai cannot execute on its own.

29. It is well settled proposition that the Trial Court within whose jurisdiction the property is situated alone can pass and execute a decree. But if one of the properties are situated beyond the jurisdiction of the Court, then the

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decree ought to be splitted and transmitted to the Court in whose jurisdiction the property is situated, then the said Court in whose jurisdiction the property is situated ought to execute the decree.

30. In the present case the DRT-III was held as having jurisdiction based on the petitioner Miscellaneous Applications and the DRT-III has passed the decree by issuing recovery certificate. Now for executing the recovery certificate, if the property is situated within the jurisdiction of the DRT, Madurai, then the decree ought to be transmitted to DRT, Madurai and then the same ought to be executed by the DRT, Madurai. Accordingly, this Court is of the considered view that the Recovery Certificate issued by DRT-III, Chennai, ought to be transmitted to DRT, Madurai, and it is DRT, Madurai, that is vested with jurisdiction to execute the same.

31. For the foregoing reasonings, the present writ petition is partly allowed as stated supra. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B.,J.] [S.S.Y.,J.]
22.08.2025

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To

1.Recovery Officer II,
Debts Recovery Tribunal III, Chennai,
6th Floor, Additional Office Building,
Shastri Bhavan,
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2.Assistant General Manager,
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3.Sub Registrar,
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KK Nagar, Tiruchirappalli-620 021.

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J.NISHA BANU, J.
and
S.SRIMATHY, J.

Tmg/nvsri

Pre-delivery order in
W.P.(MD).No.5840 of 2023

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