



W.P(MD)No.11148 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 11.06.2025

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**W.P(MD)No.11148 of 2025
and
W.M.P.(MD) No.8310 of 2025**

Nathu K.Patel

... Petitioner

Vs

1. The Recovery Officer,
Debts Recovery Tribunal - II Chennai,
6th Floor, Additional Office Building,
Shastri Bhawan, Haddows Road,
Nungambakkam, Chennai - 600006.

2. The Central Bank of India,
Mid Corporate Branch,
No. 48/49 Montieth Road,
Egmore, Chennai - 600008.

3. R.Ponventhan

... Respondents



W.P(MD)No.11148 of 2025

WEB COPY

PRAAYER: 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 in the order dated 28.02.2025 in M.A. No. 7 of 2025 in D.R.C.No. 472 of 2019 in O.A. No. 433 of 2017 on the file of the 1st Respondent and quash the same and

(b)to issue a Writ of Declaration, declaring that the Notice of Settling Sale Proclamation dated 03.03.2002 issued by the first respondent under Sections 25 to 29 of the RDDBFI Act read with Rule 53 of the Second Schedule to the Income Tax Act, 1961 read with in D.R.C.No.472 of 2019 in O.A.No.433 of 2017 as illegal and without authority or jurisdiction and

(c)to issue a Writ of Certiorarified Mandamus to call for the proceedings of the E Auction of the property No.1 being the vacant land admeasuring Acre 4.32 cents in Mullakadu Village comprised in Survey No.135/3, Tuticorin Circle within the Registration Sub District of Joint 1, Tuticorin in all admeasuring Acres 7.75 Cents or thereabouts sold by the first respondent to the third respondent on 28.02.2025, on the file of the first respondent and quash the same and further forbear the first respondent from issuing the confirmation of Sale/sale certificate with respect to the above property No.1 to the third respondent.



WEB COPY



W.P(MD)No.11148 of 2025

For Petitioner : Mr.N.Ramakrishnan
for Mr.M.P.Senthil,

For Respondent : R1-Tribunal
Mr.N.Dilipkumar (R2)

ORDER

[Order of the Court was made by S.M.SUBRAMANIAM, J.]

The writ petition has been instituted challenging the order passed by the Debt Recovery Tribunal, to declare the sale proclamation as null and void and challenging the e-auction of the subject property described in the writ proceeding.

2.E-auction of the subject property, vacant land admeasuring 4.32 cents in Mullakadu Village comprised in Survey No.135/3, Tuticorin Circle is the subject property.

3.The main ground raised by the petitioner is that the subject property of e-auction situated at Tuticorin and therefore, the Recovery



W.P(MD)No.11148 of 2025

WEB COPY

Officer has not jurisdiction to conduct auction and on that ground the present writ petition is to be considered.

4.It is not in dispute between the parties that the subject property situated at Tuticorin is the subject matter of the original application decided by the Debt Recovery Tribunal at Chennai. A decree also has been passed by the Tribunal including the property situated in Tuticorin. That being so, the writ Court cannot interfere with the e-auction scheduled to be conducted by the Recovery Officer.

5.The learned Counsel for the second respondent would submit that the property is the subject matter of the decree passed by the Debt Recovery Tribunal, Chennai and therefore, the ground raised after issuing auction notice is not entertainable.

6.May that as it be, if at all a grievance exists to the petitioner, he has to approach the tribunal for redressal of his grievances.



WEB COPY

7.The maintainability of the writ petition in respect of the proceedings initiated under the Recovery of Debts and Bankruptcy Act as well as SARFAESI Act, the Supreme Court has settled the principles in the case of ***Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others*** reported in ***(2024) 2 SCC 1*** held that the High Court was not justified in exercising the writ jurisdiction under Article 226 of Constitution of India, since efficacious alternative remedy is contemplated under the provisions of SARFAESI Act. Paragraph Nos. 97, 98, 110 and 110.1 would be relevant in this context and have been extracted herein:-

“97.This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act. This Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] made the following observations : (SCC pp. 123 & 128, paras 43-45 & 55)

“43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the High Court will ordinarily not entertain



WEB COPY



W.P(MD)No.11148 of 2025

a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any



WEB COPY



W.P(MD)No.11148 of 2025

Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT



WEB COPY



W.P(MD)No.11148 of 2025

Act and the Sarfaesi Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

98.In *CIT v. Chhabil Dass Agarwal* [*CIT v. Chhabil Dass Agarwal*, (2014) 1 SCC 603] , this Court in para 15 made the following observations : (SCC p. 611, para 15)

“15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal* case [*Thansingh Nathmal v. Supdt. of Taxes*, 1964 SCC OnLine SC 13] , *Titaghur Paper Mills* case [*Titaghur Paper*



WEB COPY



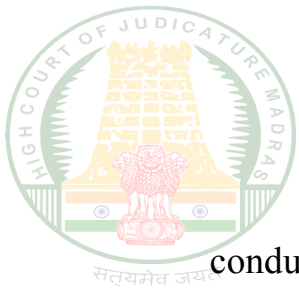
W.P(MD)No.11148 of 2025

Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

110.We summarise our final conclusion as under:

110.1. The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.”

8.The learned Counsel for the petitioner would submit that under Order 21 Rule 3 of C.P.C, the Recovery Officer has no jurisdiction to



conduct e-auction in respect of the property situated at Tuticorin.

WEB COPY

9.The issue has been decided by the Hon'ble Division Bench of Bombay High Court in the case of ***Tushar P.Shah Vs. International Asset Reconstruction Company Private Limited***, reported in ***Manu/MH/1265/2012***. The relevant portion is extracted as follows:

"7 . Counsel for the petitioner has contended that the property to be auctioned and sold in execution of recovery certificate is situated beyond the jurisdiction of DRT-II Mumbai, the recovery certificate should be transferred to DRT Ahmedabad within whose territorial jurisdiction the property in question is situate. It is further contended that the Presiding Officer DRT-II Mumbai relying on the provisions under Section 19(23) of the RDDB & FI Act has held that both the DRTs i.e. DRT Ahmedabad and DRT-II Mumbai have jurisdiction to get the recovery certificate executed by their Recovery Officers. It is contended that the view expressed by the DRT-II Mumbai is erroneous and unsustainable since it is not in conformity with the provisions of Section 19(23) of the RDDB & FI Act. It is contended that the provisions of Section 19(23) of the RDDB & FI Act does not deal with the situation where the property involved in recovery proceedings



WEB COPY



W.P(MD)No.11148 of 2025

exclusively situate within the jurisdiction of another DRT than the DRT who has issued recovery certificate. It is contended that Section 39(1)(c) of the Code of Civil Procedure (Code) contemplates that where the decree directs the sale or delivery of immovable property situated outside the local limits of the jurisdiction of the Court which has passed the decree, the court which has passed the decree may transfer the same to the court for execution within whose jurisdiction the property is situated. It is contended that after the amendment to Section 39 of the Code, clause (4) was added which specifically provides that where a decree to be executed against the property which is situated outside the local limits of the court which has passed the decree, the court which has passed the decree cannot execute the decree. Counsel for the petitioner therefore contended that it is well settled that where a decree is to be executed in respect of the property situated beyond the jurisdiction of the court which has passed the decree, the court which has passed the decree has no power to execute the decree and has to transfer the decree to the other court for execution within whose jurisdiction the property is situated. Counsel for the petitioner further contended that same analogy is applicable in respect of the jurisdiction of the Tribunal in case of execution of recovery certificate. In order to substantiate his



WEB COPY



W.P(MD)No.11148 of 2025

contention, reliance is placed on the decision of the Apex Court in case of Mohit Bhargava vs. Bharat Bhushan Bhargava & Ors. [MANU/SC/7320/2007 : (2007) 4 SCC 795]. The relevant observations are in paragraph 7, which reads thus :

There cannot be any dispute over the proposition that the court which passed the decree is entitled to execute the decree. This is clear from Section 38 of the Code which provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 42 of the Code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing that decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is confined to the assets within its own jurisdiction or as authorised by Order 21 Rule 3 or Order 21 Rule 48 of the Code or the judgment-debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor. But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, some courts taking the view that the court which passed the decree and which is approached for execution cannot proceed with execution but could only



WEB COPY



W.P(MD)No.11148 of 2025

transmit the decree to the court having jurisdiction over the property and some other courts taking the view that it is a matter of discretion for the executing court and it could either proceed with the execution or send the decree for execution to another court. But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1.7.2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the Code shall be deemed to authorise the court to proceed with the execution. In the light of this, it may not be possible to accept the contention that it is a matter of discretion for the court either to proceed with the execution of the decree or to transfer it for execution to the court within the jurisdiction of which the property situate.

8. ..

9. ..

10. ..

11. It is no doubt true that sub section (23) of Section 19 of RDDB & FI Act as well as Section 38 of the Code provides that a decree may be executed either by the court which has passed it or by the court to which it is sent for execution. Whereas Section 39 of the Code lays down the condition under which the decree can be sent. Section 39(1) reads:

The Court which passed a decree may, on the application of the decreeholder, send it for execution to



WEB COPY



W.P(MD)No.11148 of 2025

another Court of competent jurisdiction.

The plain reading of the provision would show that the use of the word "may" in Section 39(1) of the Code demonstrates that in a given case the court which has passed a decree may send it for execution to another court of competent jurisdiction if the application is submitted in this regard by the decree-holder. However, it will be appropriate, at this stage, to consider the provisions of sub section (4) of Section 39 of the Code, which reads :

Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

The provisions of sub section (4) of Section 39 of the Code makes it explicitly clear that the court which has passed a decree in respect of the property situated outside the local limits of its jurisdiction does not have power to execute the same in relation to such property.

12. ..

13. We concur with the view expressed by the Gujarat High Court. The contention of the petitioner that term "may" used in sub section (23) of Section 19 of the RDDB & FI Act should be read as "shall" suffers from lack of merit in view of the legislative intent and objective to be achieved by RDDB & FI Act. The Act has

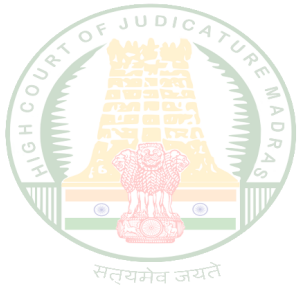


WEB COPY



W.P(MD)No.11148 of 2025

been introduced to provide speedy remedy for recovery of debts. The legislature, therefore, in its wisdom thought it expedient to provide special remedy for recovery of debts. The prime object of the establishment of Debts Recovery Tribunal is to provide expeditious adjudication of recovery of debts due to banks and financial institutions, therefore, Section 22 of the RDDB & FI Act has clothed the Tribunal with the power to regulate its own procedure guided by the principles of natural justice and is not bound by the procedure laid down by the Code of Civil Procedure. It is no doubt true that there is no bar for the Tribunal to take recourse to the procedure laid down by the Code, however, as per the provisions of Section 22 of the RDDB & FI Act it is not bound by the procedure laid down by the Code and therefore the contentions canvassed by the counsel for the petitioner even on this count must fail and the decision in case of Mohit Bhargava cited by the petitioner does not further the case of the petitioner. In view of this legal position, the contentions canvassed by the counsel for the petitioner have no force and the findings recorded by the DRAT Mumbai are just, proper and sustainable in law. For the reasons stated herein above, petition suffers from lack of merits. Same is dismissed. No order as to costs. In view of the dismissal of the petition, civil application does not survive, same



W.P(MD)No.11148 of 2025

WEB COPY

is also dismissed.

10. With the said liberty, this writ petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[S.M.S., J.] [A.D.M.C., J.]
11.06.2025

Index: Yes/No
Internet: Yes/No
NCC: Yes/No

LR

To

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

2. The Central Bank of India,
Mid Corporate Branch,
No. 48/49 Montieth Road,
Egmore, Chennai - 600008.



WEB COPY



W.P(MD)No.11148 of 2025

S.M.SUBRAMANIAM, J.
and
DR.A.D.MARIA CLETE, J.

LR

W.P(MD)No.11148 of 2025

11.06.2025