courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 07/09/2026

(2007) 11 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No''s. 29611 of 2005 and 25382, 25383, 26631 and 27557 of 2007, M.P. No''s. 1 of 2007 and W.P.M.P. No. 35458 of 2005

Indian Bank, Esplanade Branch — APPELLANT

Vs

Mona Packaging Products and Others
ICMC Packings Ltd. Vs Mona Packaging Products and Others
Mona Packaging Products Vs The Recovery Officer, Chennai Debts Recovery Tribunal-II and Indian Bank, Esplanade Branch — RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:
Income Tax Rules, 1962 — Rule 2

Citation : (2007) 6 MLJ 1557

Hon'ble Judges : S.J. Mukhopadhaya, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : Jayeesh Dolia, for Aiyar and Dolia in W.P. Nos. 27557 and 26631 of 2007, Narmada Sampath, in W.P. Nos. 25383 and 25383 of 2007, A. Muralidharan, for Menon and Goklaney Associates in W.P. No. 29611 of 2005, for the Appellant; A.Muralidharan, for Menon and Goklaney Associates for RR-1 to 4 in W.P. Nos. 27557, 26631, 25382 and 25383/07 and Jayeesh Dolia, for R-2 in WP 29611/05, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—As all these writ petitions arise out of a common proceeding initiated by the Debts Recovery Tribunal (hereinafter

referred to as ''DRT''), they were heard together and disposed of by this common order.

2. In two writ petitions, W.P. No. 27557/07 (petitioner M/s.Indian Bank) and W.P. No. 25382/07 (petitioner M/s.ICMC Packaging Ltd.), the

petitioners have challenged order dated 1st March, 2007, passed by Debts Recovery Appellate Tribunal, Chennai, (hereinafter referred to as

''DRAT'') in M.A. No. 214/06. Further prayer has been made to direct the concerned respondents 1 to 4 to hand over vacant possession of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-bank-esplanade-branch-...

property and the movables sold.

Aforesaid two petitioners, M/s.Indian Bank and M/s.ICMC Packaging Ltd., are also petitioners in W.P. Nos. 26631 and 25383/07. In these

cases, they have challenged order dated 23rd May, 2007, passed by DRAT, Chennai, in I.A. No. 450/07 in I.N. No. 307/07 with further prayer

to direct respondents 1 to 4 to hand over vacant possession of the property and movables sold.

W.P. No. 29611/05 has been preferred by M/s.Mona Packaging Products (Borrower), challenging auction sale notice issued under the Recovery

of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as ''RDDB & FI Act'') fixing auction sale of said petitioner''s

property comprised of land and building in Chettiar Agaram Road and Village, No. 95, Siva Boodham Village, Vanagaram, Saidapet Taluk,

Chengai MGR District, covering an extent of 7,269 sq.ft., comprised in survey No. 40, new survey No. 40/4, constituted within the Sub-

Registration District of Saidapet and Registration District of South Madras. Further prayer has been made to direct the 2nd respondent of the said

case (M/s.Indian Bank) to extend the time for petitioner to pay the sum of Rs. 19 Lakhs under the one time settlement as was earlier sanctioned by

the said 2nd respondent Bank.

3. By impugned order dated 1st March, 2007, in M.A. No. 214/06, having noticed that the borrower, M/s. Mona Packaging Products and 3

others, who were appellants before DRAT, Chennai, had deposited a sum of Rs. 40 lakhs, they were granted opportunity to prosecute the

application, which were pending before DRT, Chennai and the appeal was allowed. The auction purchaser, i.e., M/s.ICMI Packaging Ltd., who is

the petitioner in other two cases, has been allowed to withdraw the amount already deposited by it.

By subsequent order dated 23rd May, 207, in I.A. No. 450/07 in I.A. No. 307/07, DRAT, Chennai, at the instance of the borrower, M/s.Mona

Packaging Products and 3 others, granted interim stay of further proceeding on the condition that the appellant (borrower) shall deposit a sum of

Rs. 10 lakhs with the bank in an interest earning no lien account on or before 8th June, 2007.

4. The case having a chequered history, it is desirable to notice relevant facts

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-bank-esplanade-branch-…

and the manner in which the parties acted and the case proceeded.

M/s.Mona Packaging Produces and 3 others (borrowers), who are respondents 1 to 4, preferred by bank, availed open cash credit facility to the

limit of Rs. 35,000/=; clean supply bill purchase facility to the limit of Rs. 4.75 lakhs and minimum term loan to the limit of Rs. 2,10,626.15 for

which they executed security documents and created the mortgage. On 23rd March, 1995, the aforesaid borrowers (respondents 1 to 4) availed

additional credit facility. Further credit facility was availed by those borrowers from the bank on 19th March, 1988, as acknowledged by the

borrowers.

The 1st respondent, M/s.Mona Packaging Products (petitioner in one of the case) is a partnership firm of which respondents 2, 3 and 4 are the

partners. The 2nd respondent, Mr.M.M.Shahul Hameed is the father of respondents 3 and 4, namely, Mr.M.S.Sheikh Dawood and Mr.M.S.Md.

Al Ameen.

The bank filed a claim case, O.A. No. 2081/01 before DRT-II, Chennai, for Rs. 45,62,659.26 together with interest @ 18.50% p.a. with

quarterly rest from the date of application till the date of realisation in full with cost of the application. Initially respondents 3 and 4 were set ex-

parte on 12th Feb., 2002 and subsequently respondents 1 and 2 were also set ex-parte on 2nd May, 2002. The borrowers, who were defendants

1 to 4, filed I.A. No. 500/02 for setting aside the ex-parte decree, which was dismissed on 15th Sept., 2003 for non-prosecution. O.A. No.

2081/01 was decreed for Rs. 45,62,659.26 together with interest @ 18.50% p.a. with quarterly rest by order dated 11th May, 2004. Defendants

1 to 4, who are respondents 1 to 4 in the connected writ petitions, were also made personally liable with a right to enforce the mortgage. Debt

Recovery certificate No. 83/04 was issued on 13th July, 2004 for Rs. 76,14,942.18, comprising of Rs. 45,62,659.26 as principal amount, Rs.

30,04,277.92 towards interest and Rs. 48,005/= as costs. The Recovery Officer issued notice under Rule 2 of the Income Tax Act on 19th July,

2004 and issued an order of attachment on 21st Dec., 2005. The 23rd of March, 2005 was the date fixed for auction sale, but the said auction

could not take place as the 1st respondent, M/s.Mona Packaging Products filed a writ petition, W.P. No. 9738/04 before this Court and obtained

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-bank-esplanade-branch-…

interim order on 22nd March, 2005. The interim order was passed with a condition to deposit Rs. 20 lakhs within eight weeks. The Court made it

clear that order of injunction shall stand vacated on failure to comply with the Court''s direction. Having obtained injunction order, the 1st

respondent stalled the auction sale, but did not choose to deposit the amount of Rs. 20 lakhs.

Thereafter, another date of auction was fixed, which was scheduled to be held on 14th Sept., 2005. This time, again to stall the auction, the 1st

respondent, M/s.Mona Packaging Products preferred another writ petition, W.P. No. 29611/05 and obtained another interim order on 27th

Sept., 2005, on condition that it will deposit a sum of Rs. 40 lakhs within eight weeks failing with the Bank can proceed with the auction. In this

way, the auction, which was to take place on 14th Sept., 2005, was stalled, but the amount of Rs. 40 lakhs was not deposited by the said

respondent.

The Recovery Officer, thereafter, took steps to bring the property on auction sale on 1st March, 2006. To stall such proceeding of auction sale,

which was to take place for the third time, this time, respondents 1 to 4 (borrowers) preferred I.A. Nos. 98 to 100/06 in O.A. No. 2081/01

before DRT. Prayer was made to set aside the exparte decree dated 11th May, 2004; to condone the delay in filing application and for interim

injunction to restrain the bank from bringing the property for auction on 1st March, 2006. On 1st March, 2006, DRT-II, Chennai, again directed

the borrowers to deposit a sum of Rs. 40 lakhs within 7 days. The Recovery Officer was allowed to proceed with the auction, but it was ordered

not to confirm the sale. After obtaining such order, the respondents 1 to 4 (borrowers) again did not choose to comply with the order nor

deposited the amount of Rs. 40 lakhs. They again filed one I.A. No. 113/06 seeking extension of time till 31st March, 2006, for depositing the

amount. The DRT having noticed the aforesaid fact, by its order dated 20th March, 2006, directed the Recovery Officer to proceed in

accordance with law. The Recovery Officer, accordingly, issued sale certificate on 31st March, 2006 for Rs. 55.10 lakhs, to the auction

purchaser, M/s.ICMC Packaging Ltd. An advocate commissioner was appointed by the Recovery Officer on 22rd March, 2006 to evict

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-bank-esplanade-branch-…

respondents 1 to 4 for giving possession in favour of the auction purchaser.

This time, respondents 1 to 4 moved before DRAT in M.A. No. 214/06 and sought to set aside the order dated 20th March, 2006, passed in I.A.

No. 113/06 with further prayer to grant extension of time to them to comply with the order dated 1st March, 2006. Such prayer was allowed by

DRAT without discussing the aforesaid fact, mainly on the ground that the borrowers have deposited the amount of Rs. 40 lakhs. What is the

effect of the auction sale; whether such auction sale could be set aside without following the provision of law and without asking to set aside such

auction sale, these questions were never discussed nor deliberated by the DRAT.

5. So far as the interlocutory application Nos. 98 to 100/06 and I.A. Nos. 222 and 223/06 are concerned, they were taken up by DRT-II,

Chennai. Having noticed the fact that no explanation for condoning the delay had been given, the Tribunal rejected the application for condition of

delay. Consequent upon I.A. Nos. 98 to 100/06, I.A. Nos. 222 and 223/06 were also dismissed by common order dated 14th May, 2007.

The DRAT, by impugned order dated 23rd May, 2007, in I.A. No. 450/07 in I.N. No. 302/07, passed interim stay of all proceeding on condition

that the borrowers (appellants before DRT) deposit a sum of Rs. 10 lakhs with the bank in an interest earning no lien account on or before 8th

June, 2007.

6. Learned Counsel for the borrowers - petitioner in W.P. No. 29611/05, fairly conceded that in view of subsequent proceeding, including sale

certificate issued on 31st March, 2006, no order passed by DRT, the said writ petition has lost its importance.

Counsel appearing on behalf of the bank and auction purchaser also informed that W.P. No. 27557/07 preferred by bank and W.P. No.

25382/07 preferred by auction purchaser against order dated 1st March, 2007, passed by DRAT, Chennai, have become infructuous in view of

the subsequent order dated 23rd May, 2007.

7. In the present case, the only question that arises for consideration is whether it was a fit case for DRAT to allow and extend further time in

favour of the borrowers to deposit certain amount.

8. In the case of Smt. Periyakkal and Others Vs. Smt. Dakshyani, , the Supreme Court held that for mere asking for extension of time, it should

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-bank-esplanade-branch-…

not be extended ordinarily. It will be granted in rare cases to prevent manifest injustice.

9. It will be evident that the borrowers were not agreeable to pay the amount as decreed. In the writ petition preferred by them, W.P. No.

26911/05, prayer has been made to extend time to pay a sum of Rs. 19 lakhs under the one time settlement. When the original application was

taken up, initially the Tribunal had to set exparte two of the respondents (respondents 3 and 4) in Feb., 2002 and after three months, the other two

respondents (respondents 1 and 2) were set exparte. Though respondents 2, 3 and 4 are blood relations, i.e., father and sons, they acted in the

manner as if the 2nd respondent (father) had no knowledge that the case was set exparte against his sons, respondents 3 and 4. After the decree,

when notice for recovery under Rule 2 was issued on 19th July, 2004, no action was taken by the borrowers. It is only when the date of auction

sale was fixed, a writ petition (W.P. No. 9738/05) was preferred and after interim order was obtained, they allowed cancellation of the date of

auction, but, thereafter, the order of the Court was not complied with; Rs. 20 lakhs was not deposited and the said W.P. No. 9738/05 was

allowed to be made infructuous. Similarly, when the second date of auction was fixed, i.e., 14th Feb., 2005, by filing another writ petition, W.P.

No. 29611/05, the date of auction sale was deferred again by obtaining an interim injunction and again the condition of deposition of Rs. 40 lakhs

was not complied with and the said writ was also allowed to be made infructuous. The modus operandi of the borrowers continued even thereafter

when they moved against the 3rd date of auction. This time, instead of moving before this Court, having moved twice earlier, moved before DRT

by filing IA Nos. 98 to 100/06 and prayed for interim injunction restraining the bank from bringing the property for auction on 1st March, 2006.

This time also the borrower became successful in obtaining a conditional order of depositing Rs. 40 lakhs, but auction sale was allowed to

proceed, and it was ordered not to confirm. Again, after obtaining such order, the borrowers did not choose to deposit the amount of Rs. 40 lakhs

till sale certificate was issued on 31st March, 2006 in favour of the auction purchaser for a sum of Rs. 55.10 lakhs. When the matter was taken up

to give possession of the property in favour of the auction purchaser, a miscellaneous appeal was preferred before DRAT.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-bank-esplanade-branch-…

10. The aforesaid fact clearly shows the intention of the borrowers that they neither intended to pay the amount within the time and always intended

to defer the auction sale taking advantage of interim order passed by one or other court and then to get the cases infructuous.

In the circumstances, on mere asking for time, the DRAT should not have granted time to the borrowers. On the other hand, explanation should

have been asked for from the borrowers as to why it did not choose to deposit the amount within time when the High Court directed to deposit

such amount of Rs. 20 lakhs and Rs. 40 lakhs by its order dated 22nd March, 2005 and 27th Sept., 2005 respectively. Without ascertaining such

position, the Tribunal should not have extended the time, which otherwise amounts to extension of time as was allowed by High Court by its order

dated 27th Sept., 2005. As the borrowers, respondents 1 to 4 in the connected writ petitions had not come earlier with clean hands either before

this Court or before the Tribunal, or before the Appellate Tribunal, it was not a fit case for extension of time.

We, accordingly, set aside the order dated 1st March, 2007 and 25th March, 2007, passed by DRAT and allow the writ petitions, W.P. Nos.

26631 & 25383/07 preferred by the bank and the auction purchaser and dismiss the writ petition, W.P. No. 29611/05 preferred by the

borrowers. W.P. No. 27557/07 preferred by bank and W.P. No. 25382/07 preferred by auction purchaser against order dated 1st March,

2007, passed by DRAT, Chennai, having become infructuous are disposed of. Consequently, connected miscellaneous petitions are closed. In the

facts and circumstances, we impose a cost of Rs. 10,000/= (Rupees Ten Thousand only) on the borrowers to be paid in favour of the Indian Red

Cross Society, Tamil Nadu Branch, Egmore, Chennai 600 008, within two months.

Let a copy of this order of this order be communicated to the Indian Red Cross Society, Tamil Nadu Branch, Egmore, Chennai 600 008, for its

information.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/indian-bank-esplanade-branch-…