(2025) 05 DRAT CK 1004

In the Debts Recovery Appellate Tribunal, Chennai

Case No : Regular Appeal (SA) 101 Of 2017

Indian Bank APPELLANT

Vs

Sri.P.M.Rajasekaran & Anr RESPONDENT

Date of Decision : 13-05-2025

Acts Referred:

Securitisation And Reconstruction Of Financial Assests And Enforcement Of Security Interest Act, 2002 — Section 18

Citation : (2025) 05 DRAT CK 1004

Hon'ble Judges : G. Chandrasekharan, Chairperson

Bench : Single Bench

Advocate : M/s T. Sundar Rajan, Shri V. Purushothaman

Final Decision : Disposed Of

Judgement

G. Chandrasekharan, Chairperson

1. This appeal is filed under Section 18 of the SARFAESI Act against the order passed by Learned Presiding Officer, DRT-II, Chennai passed in SA No.59/2017 dated 28.6.2017.

2. It is submitted that SA 59/2017 was filed by respondents herein, challenging the Sale Notice under Private Treaty dated 4.3.2017 and consequential confirmation of sale in respect of mortgaged property. After contest, the said SA was allowed by Learned Presiding Officer, DRT-II, Chennai primarily on the grounds that,

a) Property was sold for lesser price than the reserve price.

b) One of the mortgagors viz. P.M.Ramesh was dead and Sale Notice was issued to the dead person.

c) Neither sale notice nor any kind of notice was served on the Legal heirs of deceased P.M. Ramesh.

3. It is the further submission of Learned Counsel for appellant bank that applicants in the SA and deceased P.M. Ramesh were the partners of the firm M/s Health Foods. Along with one D. Suresh, the said firm and its partners availed loan to the tune of Rs.6,70,00,000/-. Applicants along with P.M.Ramesh had executed mortgage deed by deposit of title deed on 18.12.2012, as security for the loan availed. Since they have not repaid the loan account, measures under SARFAESI Act, had been taken starting from issuance of demand notice and possession notice. Earlier, public sale was fixed on five occasions and not fructified into sale for the reason that there were no bidders. Ultimately impugned sale notice through private treaty dated 4.3.2017 was issued to the firm and to all the partners. One of the personal guarantors to the loan, viz. Mr. P. Joseph Premkumar and the applicant P.M.Rajasekaran received the notice but the notice sent to others returned unserved. In pursuance of private treaty, sale had taken place on 21.3.2017, sale was confirmed on 30.3.2017 and possession was handed over to the buyer on the same date itself.

4. It is further submitted that appellant had not been informed about the death of P.M. Ramesh and the details of his legal representatives. There is no pleading about his death in the said SA 59/2017. The finding of the Tribunal that property was sold below the reserve price is not factually correct for the reason that reserve price fixed in the sale notice was Rs.2,62,00,000/- and the property was sold for Rs.2,62,10,000/-. Appellant bank has followed the measures in accordance with the provisions of SARFAESI Act and there was nothing illegal in the conduct of the sale. The alleged legal heirs of the deceased P.M.Ramesh have not challenged the impugned sale notice. Without properly appreciating these factual and legal aspects, Learned Presiding Officer, has allowed the SA, therefore, this appeal is filed.

5. It is seen from the proceedings dated 3.3.2025 that despite giving sufficient opportunities and caution that if appeal not is argued on that day by respondents 1 and 2, appeal would be decided on the basis of records and the submissions of Learned Counsel for appellant bank, there was no representation for respondents 1 and 2, therefore, the case was reserved for orders.

6. I have considered the submissions of Learned Counsel for appellant bank and perused the records.

7. It is seen that following are the three grounds on which SA came to be allowed viz.

I) Property was sold for lesser price than the reserve price.

II) One of the mortgagors, viz., P.M.Ramesh was dead and Sale Notice was issued to the dead person.

III) Neither sale notice nor any kind of notice was served on the Legal heirs of deceased P.M. Ramesh.

8. Perusal of Securitization Application shows that there is no pleading with

regard to the death of Shri P.M. Ramesh. It is mentioned in paragraph 20 of the grounds, as follows:

“20. It is submitted that P.M.Suresh who is also one of the owners of the property has died and the respondent bank is aware of the same but without issuing notice to his legal heirs, that respondent conducted the auction, as such, the same is against the statute.”

9. Only during the arguments, it was submitted that P.M.Ramesh was dead and date of his death was 23.5.2016. It appears that death certificate of P.M. Ramesh and Legal Heir certificate have been produced. From the death certificate it is seen that P.M. Ramesh died on 23.5.2016. There is no material produced before the Tribunal below as to the fact of informing the death of P.M. Ramesh and availability of Legal Representatives to the bank. Without information to the bank about his death, bank cannot be expected to issue notice to LRs with regard to the impending sale. Property mortgaged belongs to all the partners, namely, P.M. Rajasekaran, the deceased P.M. Ramesh and P.M. Suresh. Private sale notice had been taken to them. P.M. Rajasekaran received the notice. Notice sent to P.M. Suresh was returned unserved. When notice was taken to the address given in the loan documents, that is sufficient service, even if the notice is returned unserved. Sufficient opportunity was given to the borrowers, including the deceased P.M. Ramesh to redeem the property, but they have not availed the opportunity.

10. So far the submissions of Learned Counsel for appellant bank with regard to fixing of reserve price, this Tribunal finds that private treaty sale notice reflects reserve price as Rs.2,62,00,000/-. The property was sold for Rs.2,62,10,000/-. The necessity for the bank to go for a private treaty sale was that previous five sale attempts had failed. Therefore, the Tribunal’s finding in this regard that property was sold for lesser price than the reserve price was not factually correct.

11. In the said circumstances, this Tribunal finds the order of the Learned Presiding Officer dated 28.6.2017 allowing SA 59/2017 cannot be sustained and is liable to be set aside. Accordingly, the same is set aside.

12. In the result, Appeal RA(SA) 101/2017 is allowed and SA 59/2017 is dismissed, with the costs of the appellant Bank.

13. Pending IAs, if any, stand closed.

