

(2014) 09 MAD CK 0218

In the Madras High Court

Case No : Writ Petition No. 25685 of 2014

Maan Saravoar Properties Development Pvt. Ltd.

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 29

Citation : (2015) 2 BC 210 : (2014) 5 LW 381 : (2014) 7 MLJ 683

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Meenakshi Sundaram
Sathyanarayanan, J

Bench : Division Bench

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner-company availed of a loan from the fifth respondent-State Bank of Travancore, but failed to maintain financial discipline resulting in filing of O.A. No. 197 of 2010 before the Debt Recovery Tribunal by the Bank. The decision was rendered in favour of the fifth respondent-Bank on 17.10.2012 and a Recovery Certificate dated 29.04.2013 was issued for recovery of Rs. 4,53,98,125.57/- as on 23.05.2013 along with interest, costs charges and expenses. The defendants in the proceedings still failed to pay the amount.

2. It appears that the loan was secured by mortgage of immovable property with structures thereon located at Lake Road, Kodaikanal, Dindigul District, and thus a sale proclamation was issued on 20.11.2013 for sale of the property by E-auction on 30.12.2013. There was a single bid for Rs. 7,00,50,000/-, which was accepted, subject to final confirmation.

3. This was in view of the fact that the writ petition bearing No. 34591 of 2013 was preferred before this Court challenging the proclamation of sale and vide order dated 29.01.2014, this Court permitted the auction sale, but confirmation was subject to final disposal of the writ petition. The writ petition was disposed of on 29.1.2014 permitting the Bank to appropriate the dues, but with leave for moving the Recovery Officer, Debt Recovery Tribunal to set aside the auction to the petitioner therein, in accordance with law.

4. The proceedings initiated thereafter before the Debts Recovery Tribunal seeking setting aside of the sale auction resulted in order dated 24.03.2014. A perusal of this order shows that the petitioner herein and other defendants sought to plead they have remitted the entire amount due to the certificate holder bank before the expiry of 30 days so as to seek setting aside of the sale dated 30.12.2013. This amount was stated to have been deposited as per Rule 60(1) including under sub-clause(b) of the second Schedule of the Income Tax Act, 1961. But that sub-Rule actually was not applicable to the present case under the Recovery of Debts Due to Banks and Financial Institutions Act (in short RDDB & FI Act), in view of the observations of the Hon"ble Supreme Court in C.N. Paramshivam and Another Vs. Sunrise Plaza Tr. Partner and Others, . The finding on this aspect was however arrived at against the petitioner, but since the total amount had been paid, the auction sale was set aside. The prayer for refund of Rs. 35,56,809.71/-, was however rejected, being the penalty amount, and only some excess amount was directed to be remitted to the petitioner.

5. We may note that this order appears not to have been assailed as the present writ petition has been filed only seeking a declaration that the applicability of Rule 60(1)(b) of the II Schedule of the Income Tax Act, 1961 to the RDDB & FI Act is arbitrary, unconstitutional and opposed to public policy.

6. In order to appreciate the plea of the learned counsel for the petitioner, we reproduce hereunder Rule 60 of the II Schedule to the Income Tax Act, 1961:-

60(1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing

(a) the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of fifteen per cent per annum, calculated from the date of the proclamation of sale to the date when the deposit is made, and

(b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.

7. The submission of the learned counsel for the petitioner is that the RDDB & FI Act was enacted only to expeditiously adjudicate and recover the dues and does not provide for any penalty on the defaulting borrowers. The auction purchaser cannot be allowed to be unjustly enriched at the cost of the borrower, and in view of the observations of the Hon"ble Supreme Court in C.N. Paramasivam's case (supra), Rule 60(1)(b) of the II Schedule to the Income Tax Act, 1961 can have no application to the proceedings under the RDDB & FI Act.

8. In the aforesaid context, learned counsel for the petitioner has extensively referred to and read out the judgment in C.N. Paramshivam's case (supra), more specifically paragraphs 8 and 21 to 26. This was in the context of Section 29 of

the RDDB & FI Act, which reads as under:-

29. Application of certain provisions of Income-tax Act:- The provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the Assessee shall be construed as a reference to the Defendant under this Act.

In terms of the aforesaid Section, the provisions of the Second and Third Schedules to the Income Tax Act, 1961 have been made applicable as far as possible with necessary modifications. In this context, the Hon"ble Supreme Court observed that this was to take care of situations where certain provisions under the Income Tax Rule may have no application on account of the scheme under the RDDB & FI Act being different from that of the Income Tax Act or the Rules framed thereunder. They are attracted only in so far as the same deal with recovery of debts under the RDDB & FI Act, and thus the modification is that the amount of debt referred to in the Rules is deemed to be one under the RDDB & FI Act. Thus, such Rules would be applicable, which have a role to play in the matter of recovery of debts under the RDDB & FI Act, and not as if there is a discretion vested in the Recovery Officer to apply the said Rules or not to apply the same in specific factual situations.

9. The Hon"ble Supreme Court further held that the use of the words as far as possible may be indicative of a certain inbuilt flexibility, the scope of that flexibility extends only to what is not at all practicable. Thus, for a Rule not to apply, it would have been to be proved that the application of that Rule was not at all practicable in the context of RDDB & FI Act. This was in the context of observations made in *Osmania University Vs. V.S. Muthurangam and others*, .

10. We fail to appreciate how this judgment comes to the aid of the petitioner. It cannot be said that the application of the Rules is impracticable. The applicability of the Rules infact gives an opportunity to the holder of the property to still evade the consequences of an auction sale, even though somebody may have bid for it validly, and that auction was the direct result of the failure to clear the dues. That is the reason why within the stipulated period of 30 days, the amount due, which is sought to be recovered through sale, has to be deposited, apart from 5% penalty. The penalty partakes of the character of compensation to the auction purchaser, who has participated in the bid and deposited the amount. The auction purchaser does not make a bid for fun of it and it has financial consequences, apart from loss of opportunity cost. It cannot be said that the amount of such compensation would be undue enrichment for the auction purchaser. In fact, the petitioner was quite conscious of this fact and thus deposited the full amount.

11. We are of the view that there is no reason for Rule 60(1)(b) of the II Schedule to the Income Tax Act to be made non-applicable to the provisions of RDDB & FI Act, as it addresses the concerns of a bonafide purchaser, being a third party to the proceedings before the Tribunal, who is successful in the public auction. There is no impracticability in applying this clause to the provisions of RDDB & FI Act. The auction purchaser was thus rightly entitled to receive the compensation of 5% penalty on the purchaser value. The petitioner having failed to comply with its financial obligations and having dragged the Bank through all the proceedings, as well as the auction purchaser through the process of auction seeks to raise a plea of equitable relief when he is fully responsible for the position at hand. We find this petition wholly devoid of merits and accordingly dismiss the same. No costs.