(2004) 11 MAD CK 0123

In the Madras High Court

Case No : Review Application No. 34 of 2004, C.M.P. No. 4278 of 2004 and V.C.M.P. No. 15572 of 2004

Theatre Mathi and Others — APPELLANT

Vs

Indian Bank and Suguna — RESPONDENT

Date of Decision : 29-11-2004

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 114

Citation : (2005) 1 MLJ 101

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; T. Nityanandan and King and Partridge for 1st respondent, for the Respondent

Final Decision : Dismissed

Judgement

S. Sardar Zackria Hussain, J.—This Review Application is filed to review the order of this Court dated 3.2.2004 and made in C.R.P. No. 2214 of 2002.

2. The revision petition has been filed to strike out O.A. No. 236 of 2002 on the file of the Debt Recovery Tribunal, Coimbatore filed by the first respondent bank u/s 31A(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Act") to issue a Recovery Certificate for Rs. 78,84,755.11 arrived at as per the preliminary decree dated 31.12.1996 passed by the learned Second Additional Subordinate Judge, Madurai in O.S. No. 123 of 1990 with future interest from 1.2.2002 and also for issuance of certificate to Recovery Officer for the realisation of the amount specified in the certificate by sale of the movable and immovable properties described in the Schedules therein.

3. The review applicants filed the revision petition in C.R.P. No. 2214 of 2002 that the application in O.A. No. 236 of 2002 filed by the first respondent bank is barred by time, since the application is not exempted from the purview of the limitation, whether in the form of a certificate or the final decree and inasmuch

as the said application was filed on 28.1.2002, despite the fact the preliminary decree was passed on 31.12.1996 granting time till 30.6.1997 and as such, the said application could have been filed within 3 years and on or before 30.6.2000.

4. The first respondent bank also filed appeal in A.S. No. 404 of 1998 in this Court in respect of the interest disallowed by the Second Additional Sub Court, Madurai in O.S. No. 123 of 1990.

5. The revision petition was contested by the first respondent bank and this Court after considering the rival submissions made by both the counsel, held that as per the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which came into force on 24.6.1993, all proceedings u/s 31A(1) of the Act, have to be initiated only in the Debt Recovery Tribunal constituted. As per the Act, the application in O.A. No. 236 of 2002 has been filed by the first respondent bank in the Debt Recovery Tribunal for the issuance of certificate u/s 31A(1) of the Act in the nature of final decree application and since the final decree application is to be made within 3 years from the date of granting time in the preliminary decree i.e., on or before 30.6.2000, but the above application has been filed only on 28.1.2002 and as such, this Court allowed the first respondent bank to move necessary application to condone the delay in filing the application u/s 31A(1) of the Act for issuance of necessary certificate to recover the due and directing the Debt Recovery Tribunal to issue necessary certificate as contemplated u/s 31A(1) of the Act, if such application is filed and disposed the revision petition accordingly.

6. Heard the learned counsel for the review applicants and the learned counsel for the first respondent.

7. The learned counsel for the applicants argued that inasmuch as this Court has pointed out in the order dated 3.2.2004 and made in C.R.P. No. 2214 of 2002 that the application in O.A. No. 236 of 2002 ought to have been filed within 3 years from the time granted for payment in the preliminary decree i.e., on or before 30.6.2000, the revision petition should have been allowed instead of permitting the first respondent bank to file necessary application to condone the delay.

8. The learned counsel for the first respondent bank argued that inasmuch as the appeal in A.S. No. 404 of 1998 has been preferred by the first respondent bank in respect of the interest disallowed by the Subordinate Judge, the time begins to run only from the date of Appellate Court decree and inasmuch as the appeal in A.S. No. 404 of 1998 is pending in this Court, the application in O.A. No. 236 of 2002 filed to recover the amount pursuant to the preliminary decree is in time. In support of his contention, the learned counsel relied on the decision in GOUR CHARAN v. MOHUN SAHU reported in 1944 (Vol.XXIII) The Indian Law Reports 635 (Patna Series), in which it is held:-

"The right to make an application for a final decree on a mortgage within the meaning of Article 181, Limitation Act, 1908, accrues on the date fixed by the preliminary decree, but if the preliminary decree is appealed from then the time begins to run from the date of the appellate court decree."

9. The preliminary mortgage decree was passed on 31.12.1996 in O.S. No. 123 of 1990 on the file of the Second Additional Sub Court, Madurai granting six months time and as such, the application for passing of final decree is to be filed on or before 30.6.2000. During the pendency of the suit, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 came into effect on 24.6.1993, but despite the said fact, the suit was not transferred to the Debt Recovery Tribunal, but tried in the said Court in which, the preliminary decree was passed on 31.12.1996. It appears, no application was also filed by the borrowers, viz., the applicants or by the first respondent bank for transfer of the suit to the Debt Recovery Tribunal for disposal. No doubt, the application in O.A. No. 236 of 2002 u/s 31A(1) of the Act, which is more or less in the nature of final decree application came to be filed on 28.1.2002 and after the time allowable, viz., after 30.6.2000. As per Section 22 of the Act, the Debt Recovery Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice. It is not in dispute that to determine the amount due and payable as per the preliminary decree, inasmuch the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 came into effect on 24.6.1993 and even during the pendency of the suit, the first respondent bank has filed the application in O.A. No. 236 of 2002 u/s 31A(1) of the Act for issuance of the certificate of recovery of debts within the meaning of Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. After passing of preliminary decree, the amount payable is to be determined by formally making application for passing of final decree and deducting the amount, if any, paid after passing of such preliminary decree. Therefore, no hardship will be caused to the applicants, viz., debtors, if the amount payable is determined for issuance of certificate of recovery u/s 31A(1) of the Act. Further, considering the fact that the application so filed u/s 31A(1) of the Act, being in the nature of final decree application, this Court permitted the first respondent bank to move necessary application to condone the delay in filing such application to meet the ends of justice.

10. Admittedly, appeal in A.S. No. 404 of 1998 filed by the first respondent bank in respect of the interest disallowed, is pending in this Court and as such, it is clear that the time is to be counted from the date of the decree of this Court to be made in A.S. No. 404 of 1998, for filing the application for passing of final decree on the mortgage as per Article 181 of the Limitation Act, 1908. Even in that context also permission granted by this Court for filing necessary application u/s 31A(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, for condoning the delay for issuance of necessary certificate to recover the amount due, is very much justifiable. There is no scope to review the order of this Court dated 3.2.2004 and made in C.R.P.(P.D.)No. 2214 of 2002. Accordingly, this Review Application deserves to be dismissed.

11. In the light of the discussions made above, this Review Application fails and is dismissed. No costs. Consequently, the petitions in C.M.P. No. 4278 of 2004 and V.C.M.P. No. 15572 of 2004 are closed.

