IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 20th of December, 2024

PRESENT: Hon'ble Mr. *Justice* G. Chandrasekharan
CHAIRPERSON

R.A (SA): 165/2018
And
RA (SA): 178/2018
(SA No. 155/2013 on the file of DRT – III, Chennai)

RA (SA) 165/2018

Between

Mirra & Mirra Industries,
Rep. by its Proprietor,
Mr. S. Shankar,
No. 5-A, D'Silva Road,
Mylapore,
Chennai – 600 004.

... Appellant

And

1. Mrs. B. Usha Rani,
   W/o K.G.Baskaran,
   No. 33, West Mada Church Street,
   Royapuram,
   Chennai – 600 012.

2. Indian Bank,
   ARM Branch Chennai- 8,
   Rep. by its Authorised Officer & Chief Manager

... Respondents

Counsel for Appellant	: M/s. G.Vijay Anand Associates.
Counsel for R1	: S. Pugaleanthi
Counsel for R2	: T. Sundar Rajan

RA (SA) 178/2018

1. Indian Bank,
   ARM Branch,
   Now called as
   Stressed Assets Management Branch,
   Chennai North, Krest Building, 3rd Floor,
   No.2, Jehangir Street, Chennai – 600 001
   Rep.by its Authorised Officer & Chief Manager

... Appellant

And

1 Mrs. B. Usha Rani,
  W/o K.G.Baskaran,
  No. 33, West Mada Church Street,
  Royapuram,
  Chennai – 600 013.

2. Mirra & Mirra Industries,
   Rep. by its Proprietor,
   Mr. M. Shankar,
   No. 5-A, D'Silva Road,
   Mylapore,
   Chennai – 600 004.

Counsel for Appellant : T. Sundar Rajan
Counsel for R1 : S. Pugaleanthi
Counsel for R2 : M/s. G.Vijay Anand Associates

DEBT RECOVERY APPELLATE TRIBUNAL CHENNAI

COMMON ORDER

1. These Appeals arose out of the order dated 28.09.2018, passed by Learned Presiding Officer, DRT-III, Chennai, in SA 155/2013.

Appeal in RA (SA) 165/2018 is filed by the Auction Purchaser and Appeal in RA (SA) 178/2018 is filed by the Bank.

2. Learned Counsel for Appellant in RA (SA) 165/2018 submitted that, in January, 1991, the 2nd Respondent Bank, sanctioned loan to the tune of Rs.13.50 Lakhs to the Borrower, one Mr. Raju. The 2nd Respondent Bank sanctioned another loan to the said Raju. In consideration of said loans, one Ms. D. Ratchaka, stood as guarantor and she offered her property covered under guarantee, as mortgage. Later, Ms. D. Ratchaka and 1st Respondent herein, namely Ms. B. Usha Rani, had entered into an Agreement of Sale in respect of mortgage property, on 08.09.1991. In the said

Sale Agreement, there is a specific clause, which stipulates as under:

> *" (5) The Vendor assures to clear the aforementioned mortgage before the completion of the sale."*

This clause makes it clear that, the 1^{st} Respondent knew about the loan availed from the 2^{nd} Respondent Bank and the mortgage.

3. Claus 6 of the said Sale Agreement, stipulates as follows:-

> *"Time for completion of the sales is fixed as 3 (three) months from the date of this AGREEMENT."*

This clause fixed time for the completion of sale as three months.

4. Since the Borrower has not repaid the amount, the Bank filed a Suit in OS No.9216/1995, on the file of City Civil Court, Chennai, for recovery of Rs.6,19,495.45p. This Suit was decreed on 10.07.2001. In the said Suit, the 1st Respondent herein, is also a party to the proceedings. Suppressing the decree obtained on 10.07.2001 by the Bank, 1st Respondent herein filed a Suit in OS No. 118/2007, nearly after 17 years, on the basis of Sale Agreement dated 08.09.1991, seeking a relief for specific performance of the contract against Ms. D. Ratchaka. In the said Suit, neither the Bank nor the Borrower was made a party to the proceedings. It is a collusive Suit between Mrs. B. Usha Rani and Ms. D. Ratchaka and Mrs. B. Usha Rani was able to get an *ex parte* judgement in her favour. This Suit was decreed *ex parte* in favour of 1st Respondent, on 06.09.2008. Based on the *ex parte decree*, a Sale Deed was executed in favour of 1st Respondent herein, on 28.10.2009.

5. The Bank proceeded to take measures under SARFAESI Act, 2002, by selling the property mortgaged. The auction

sale was fixed on 21.01.2010. The upset price was fixed at Rs.2.25 Crores. The Appellant was declared as the highest bidder for Rs.3.22 Crores. Sale was confirmed in favour of Appellant, the Auction Purchaser, and Sale Deed was registered. Thereafter, 1st Respondent filed two Securitisation Applications in SA 154/2013 and SA 155/2013. SA 154/2013 was filed challenging the Possession Notice dated 09.09.2008 and subsequent Sale Notice dated 15.10.2008. Learned Presiding Officer, DRT-III, Chennai, gave a finding that the 1st Respondent is neither a Borrower nor a Guarantor, and based on the judgement of Hon'ble Supreme Court in **Harshad Govardhan Sondagar Vs. I.A.R.C. Ltd. & Ors.**, reported in *2014 (2) DRTC 1 (SC)*, dismissed the Application.

6. SA 155/2013, which was filed to set aside the Sale held on 21.01.2010, pursuant to the Sale Notice dated 12.12.2009, Learned Presiding Officer, while upholding that the 1st Respondent had no right to challenge Sale scheduled

on 21.01.2010, proceeded to make certain observations as follows:-

i) Respondent Bank did not choose to establish its actions as warranted under the law and did not file either their counter confirming their actions or documents establishing their actions under SARFAESI Act, but have only filed documents to prove their debt due and recoverable from the borrowers/ guarantors and also adjustment of sale proceeds.

ii) Though Appellant is not competent enough to seek the relief of setting aside the entire sale notice scheduling sale to 21.01.2010, at the same time, it is not equally possible to hold the actions of the Respondent Bank as valid and correct in case where they did not establish the same.

iii) Consequently, this Tribunal is constrained to allow the appeal not to the advantage of the appellant but for the Respondent Bank to establish its SARFAESI actions while concluding the sale in favour of the auction purchaser in accordance to law.

iv) It is made clear that this order allowing appeal does not ensure to any benefit or advantage to the contentions of the appellant, but that the same was constrained only owing to the in action of the Respondent Bank and nothing more.

7. Learned Counsel for Appellant submitted that these observations made contrary to facts and law, for the reason that, Counter of the Bank was filed, and it is produced at page 156 of the Memorandum of Appeal, for perusal of this Tribunal. In para 3.0 of the impugned order, it was referred that, the 1st Respondent Bank filed typed set of documents and did not choose to file any counter. In fact, the

Respondent Bank had filed counter along with documents. The observations made that Respondent Bank did not file counter confirming their actions or documents establishing their actions under SARFAESI Act, is contrary to the facts. Therefore, the observations made in paras 6.6 and 6.7 are totally not in tune with the facts of this *lis*.

8. Further, it is brought to the notice of this Tribunal, the judgement of Hon'ble Supreme Court in Contempt Petition (C) Nos. 158-159/2024 in Civil Appeal Nos. 5542 – 5543/2023, in the case of **Celir LLP Vs. Mr. Sumati Prasad Bafna & Ors.**, for the proposition that, any sale by auction or other public procurement methods once it is confirmed or concluded, ought not be set aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding. Therefore, Learned Counsel for Appellant prayed for setting aside the order allowing the Appeal and seeks for dismissal of the SA 155/2013.

9. Learned Counsel for 1st Respondent submitted that the property mortgaged was for the loan obtained by one Mr. Raju. The 1st Respondent had entered into an Agreement of Sale with Ms. D. Ratchaka, in respect of said property and OS No. 118/2007 filed for specific performance of the contract, and got an *ex parte* decree in favour of her. Even though the Bank was not a party to the Suit, the loan amount was wrongly appropriated towards one Mrs. Santhammal. In fact, 1st Respondent had filed an Appeal against the Order of the Tribunal. Unfortunately that Appeal got dismissed for non-prosecution.

10. Learned Counsel for Respondent No.2 Bank drew the attention of this Tribunal to the observations of Tribunal below in para 6.4 of the impugned order that-

> *"................It is rightly submitted by the Ld. Counsel for first respondent bank that a decree obtained*

by concealing material information relating to the adjudication of the lis and also not adding the required parties tantamounting to non-joinder of parties, which all acts, lead to playing fraud on the court, eventually make the decree nullity in the eyes of law and the consequent execution of such a decree in the form of obtaining a registered sale deed executed by the Court will also be null and void and does not confer any additional right on such a party."

This finding was not challenged by 1st Respondent, and thus, he prays for setting aside the order allowing the SA, and dismissal of SA 155/2013.

11. This Tribunal finds merits in the submissions of Learned Counsel for Appellant that OS No. 118/2007 is a collusive Suit between the 1st Respondent, Mrs. B. Usha Rani and the Guarantor, Ms. D. Ratchaka. The Guarantor, Ms. D. Ratchaka conveniently remained *ex parte*. Neither the Bank

nor the Borrower was shown as Defendant in the said Suit. It is quite obvious that the property mortgaged was sold to 1st Respondent, pending the proceedings initiated by the Bank under SARFAESI Act, 2002. Thus, any sale, on the basis of collusive, that too, when the Bank is not a party to the Suit, will bind neither the Bank nor the purchaser, who purchased the property through auction sale.

12. This Tribunal also finds merits in the submissions of Learned Counsel for 2nd Respondent Bank that when the Counter was filed along with documents, the observation made by Learned Presiding Officer that counter was not filed confirming their actions or documents establishing their actions under SARFAESI Act, 2002, is also a wrong observation by Learned Presiding Officer, and the decision made on the basis of a wrong observation to allow the SA, is not correct, and contrary to the law.

13. In view of above, this Tribunal set aside the observation made by Learned Presiding Officer, DRT-III, Chennai, in para 6.6, that "Respondent Bank did not choose to establish its actions as warranted under the law and did not file either their counter confirming their actions or documents establishing their actions under SARFAESI Act", and the observation made in para 6.7 that "it is not equally possible to hold the actions of the Respondent Bank as valid and correct in case where they did not establish the same. Consequently, this Tribunal is constrained to allow the appeal not to the advantage of the appellant but for the Respondent Bank to establish its SARFAESI actions while concluding the sale in favour of the auction purchaser in accordance to law."

14. In view of setting aside of these observations and findings of Learned Presiding Officer, DRT-III, Chennai, the Securitisation Application in SA 155/2013 deserves to be dismissed for the reason that the measures taken by Bank

under SARAFESI Act, 2002, are in accordance with Act and Rules made there under. Accordingly, SA 155/2013 on the file of DRT-III, Chennai is dismissed.

15. In the result, the Appeals in R.A(S.A):165/2018 and R.A(S.A):178/2018 are allowed. Both parties shall bear their own costs. All pending IAs, if any, stand closed.

[Dictated to Athistamani, PS, in open court, transcribed by her, corrected and signed by me this 20th of December, 2024]

Sd/-
CHAIRPERSON
DRAT, Chennai

CERTIFIED TRUE COPY
R. Sathyanarayanan
Registrar
DRAT, Chennai 6/1/2025

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