

(2011) 08 MAD CK 0370

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 5432 of 2008

Indian Overseas Bank

APPELLANT

Vs

The State of Tamil Nadu and
Others

RESPONDENT

Date of Decision: Aug. 24, 2011

Acts Referred:

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 17, 35
- Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 - Section 3

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: V. Sri Balaji, for the Appellant; S. Bharathi for R-1 to R-4, Mr. K.P. Narayana Kumar Government Advocate for R-8 and RR-5 to 7-Notice not Served, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice Vinod K.Sharma

1. The Petitioner Bank has approached this Court with a prayer for issuance of a writ in the nature of Certiorari to quash the order dated 17th October 2007 passed by the Secretary to Government, State of Tamil Nadu, in exercise of powers conferred u/s 3 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997.

2. The only ground of challenge to the impugned order is that the properties sold by the Petitioner to the Respondent No. 8 were mortgaged with the Petitioner by the owners of the properties to secure a loan advanced by the Petitioner Bank.

3. On default in re-payment, the mortgaged properties were taken over under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and put to auction and sold to Respondent No. 8.

4. It is the contention of the Learned Counsel for the Petitioner that the Petitioner was not aware of the attachment, nor any notice was issued to the Petitioner, though the property stood mortgaged with the Bank.

5. In any case, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has an overriding effect over the Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act, 1997, therefore the order of attachment deserved to be quashed.

6. In support of the contention, the Learned Counsel for the Petitioner placed reliance on the judgment of this Court in the case of [Indian Bank Vs. The Chief Judicial Magistrate and Others](#), .

7. Wherein, this Court has been pleased to lay down as under:

31. It may so that under the Code of Criminal Procedure, the criminal court has got jurisdiction and powers to attach any property in status quo for the purpose of completing investigation and to adduce evidence at the time of trial. It is equally so that the Government is also well within their powers to pass an enactment, Pondicherry Protection of Interests of Depositors in Financial Establishment Act, 2004, Act I of 2005, to protect the interests of the gullible depositors and to order attachment of the property under such enactment. However, in view of the clear language of Section 35 of the SARFAESI Act, the proceedings initiated by the bank in respect of the property in question under the SARFAESI Act will have the overriding effect against the impugned orders of attachment insofar as they are related to the property in question. The orders of attachment passed by the Chief Judicial Magistrate and the Government of Pondicherry are inconsistent with the proceedings initiated under the SARFAESI Act. Act I of 2005 came into force on 24.03.2005 whereas the proceedings under SARFAESI Act were initiated much earlier and completed on 24.03.2005. Therefore, I am of the considered view that the said property is to be excluded from the impugned orders of attachment. Accordingly, the attachment in respect of the said property is lifted. To this limited extent, the impugned orders of attachment passed by the Chief Judicial Magistrate and the Government of Pondicherry insofar as it related to the said property are set aside. Needless to mention, it is open to the depositors or their association and/or the competent authority appointed by the Government of Pondicherry under the Act passed to protect the interests of the depositors to file appeal, if they so desire, u/s 17 of the SARFAESI Act.

8. Reliance is also placed on the unreported judgment of this Court in W.P. No. 29773 of 2007 in the case of Bank of India v. Government of Tamil Nadu and Ors. wherein, this Court on 19th November 2008 held as follows:

The prayer in the writ petition is to quash the Government Order passed in G.O. Ms. No. 1156 Home (Court-II-A) Department dated 1.12.2006.

2. The writ petition is filed on the ground that the aforesaid Government Order has been issued while the attachment order issued to the Petitioner through demand notice dated 29.08.2006 was in force and the possession of the property in question was taken over by the Petitioner as early as on 16.11.2006.

3. The Learned Counsel for the Petitioner submits that the SARFAESI Act has an overriding effect over Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act and if the depositors are aggrieved, they are entitled to approach the Debt Recovery Tribunal by invoking the provisions u/s 17 of the SARFAESI Act.

4. The Learned Counsel for the Petitioner as well as the Learned Counsel appearing for the Respondents submitted that the similar issue involved in this Writ petition has already been considered by this Court in the decision reported in [Indian Bank Vs. The Chief Judicial Magistrate and Others](#), and it was also confirmed in Writ Appeal Nos. 1788 of 2005 etc., batch of cases dated 27.03.2007.

5. Therefore, the impugned order of detachment issued by the State Government cannot be sustained. Accordingly, the writ petition is allowed and the impugned order dated 01.12.2006 is set aside. However, it is made clear that if any balance amount is available, it is open to the State Government to proceed against the same. No costs. Consequently, the connected miscellaneous petitions are closed.

9. The contention raised is opposed by the learned Government Advocate, by placing reliance on the judgment of the Honourable Full Bench of this Court in the case of [Mrs. S. Bagavathy Vs. State of Tamil Nadu](#), wherein, the constitutional validity of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 was upheld.

10. The contention of the learned Government Advocate, therefore, is that in view of the Full Bench judgment of this Court, the Petitioner is not entitled to the claimed relief.

11. On consideration, I find that once the Central Act has been given a overriding effect, then the State Act, has to give way.

12. In view of the overriding effect of SARFAESI Act, the impugned order cannot be sustained in law as held by this Court in case of Indian Bank, Main Branch rep. By its Authorised Officer, Mr. N. Jayaraman, M.G. Street, Pondicherry v. Chief Judicial Magistrate, Pondicherry and Ors..(supra)

13. Accordingly, this writ petition is allowed. The impugned part of G.O in respect of properties shown at serial Nos. 1 to 3 and 5 are ordered to be quashed whereas the attachment of the property shown under serial No. 4 of impugned order is upheld.

14. Consequently, connected Mp. No. 2 of 2008 is closed. There is no order as to costs.