

ITEM NO.101

COURT NO.4

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S) . 5935/2007

V.GANESAN

APPELLANT(S)

VERSUS

CANARA BANK & ORS.
(WITH OFFICE REPORT)

RESPONDENT(S)

Date : 06/04/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s)

Ms. Kiran Suri, Sr. Adv.
Mr. B. Rangunath, Adv.
Mr. Sriram P., A Sdv.
Mr./Ms. N.C. Kavitha, Adv.
Mr. Vijay Kumar, Adv.

For Respondent(s)

Mr. Sanjeev Panigrahi, Adv.
Ms. Saumya Mehrotra, Adv.
Mr. Bhargava V. Desai, Adv.

Ms. V. Mohana, Sr. Adv.
Ms. Neha Sharma, Adv.
Ms. Aparna Iyer, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed
order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S) . 5935/2007

V.GANESAN . . . APPELLANT

VERSUS

CANARA BANK & ORS. . . RESPONDENTS

ORDER

1. The respondent No.2 in this appeal is the borrower whose persistent failure to pay the agreed amounts led to the sale of the mortgaged property which was purchased by the appellant in an auction held on 13th December, 2005.

2. On 10th January, 2006, the second respondent filed an application for setting aside the aforesaid sale which was rejected by the Recovery Officer on 20th January, 2006. On the same day, i.e. 20th January, 2006, the sale in favour of the appellant

was confirmed and sale certificate was issued. On the next date i.e. 21st January, 2006, a sale deed was executed in favour of the appellant and the title deeds were handed over to the said appellant. Thereafter on 3rd February, 2006 the respondent No.2 filed another application under Section 27(2) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 seeking leave to deposit the amount at which the property was purchased by the appellant. The said application was once again dismissed.

3. Thereafter, it appears that the second respondent preferred Transfer Petition No.61 of 2006 before the Debts Recovery Appellate Tribunal, Chennai (hereinafter referred to as "the DRAT, Chennai") for transfer of proceedings from Debts Recovery Tribunal, Coimbatore ("DRT,

Coimbatore" for short) where it was pending to Debts Recovery Tribunal, Chennai ("DRT, Chennai" for short) on the ground that the DRT, Coimbatore was not in a position to hear the case due to the absence of a Presiding Officer. During the pendency of the aforesaid Transfer Petition, the second respondent on 19th June, 2006 filed an I.A. under Rule 22 of the DRAT (Procedure) Rules, 1994 seeking the same relief i.e. setting aside of the sale. The aforesaid relief was sought, ostensibly, to secure the ends of justice as according to the said respondent the property in question was the only piece of property left with him. Though the aforesaid prayer was opposed by the appellant, the DRAT, Chennai by order dated 19th October, 2006 allowed the said application and set aside the sale made in favour of the appellant on certain conditions. Aggrieved, the appellant moved

the High Court of Madras by way of a writ petition which was dismissed by the impugned order dated 29th March, 2007. Hence the present appeal.

4. A reading of the order of the DRAT, Chennai as well as the order of the High court would go to show that what had prompted the said authorities to hold in favour of the respondent No.2 was the fact that the property in question was the sole item of property owned by the said respondent and furthermore as the appellant had received the amount paid by him in the auction sale from the respondent No.2.

5. Having considered the matter we are of the view that the said grounds cannot constitute a sufficient basis for setting aside a confirmed sale in favour of the appellant which has also crystallized into execution of a sale deed in his favour.

Even the jurisdiction of the DRAT to pass the impugned order in purported exercise of powers under Rule 22 of the DRAT (Procedure) Rules, 1994 would remain in serious doubt as the DRAT was only in seisin of the issue of transfer of the proceedings from the DRT at Coimbatore to the DRT at Chennai and not the merits of the dispute. The receipt of the money paid by the respondent No.2 to the appellant under the orders of the DRAT cannot also be a sufficient ground for granting relief to the respondent No.2 as apparently from the order of the DRAT, Chennai itself, it appears that the said amount was received by the appellant under protest and without prejudice to his rights. The sale in favour of the appellant having been refused to be set aside by the Recovery Officer on two occasions we do not think that the impugned order passed by the DRAT, Chennai

while in seisin of a transfer petition would be justified in law.

6. Learned counsel for the respondent No.2 has relied on two decisions of this Court in Taherakhatoon (D) by Lrs. vs. Salambin Mohammad¹ and Sukumar De vs. Bimala Auddy & Ors.² to submit that on the ratio of the aforesaid decisions this Court should decline relief to the appellant in view of the peculiar facts of the case, namely, that the property in question is the sole property left with the respondent No.2 and that the amount paid by the said respondent No.2 to the appellant continues to remain with the appellant.

7. We do not consider that in the facts of the case when the sale has been confirmed and the same has been refused to be set aside by the Recovery Officer the exercise of jurisdiction under Article 136

1 [(1999) 2 SCC 635

2 [(2014) 1 SCC 584

of the Constitution of India should be, in any way, inhibited or restrained on the grounds urged.

8. For the aforesaid reasons, we allow this appeal; set aside the order of the DRAT, Chennai dated 19th October, 2006 and the order of the High Court of Madras dated 29th March, 2007 and direct that the possession of the property in question be handed over by the respondent No.2 to the appellant. The appellant shall pay amount of Rs.23,50,000/- received by him under the orders of the DRAT, Chennai to the respondent No.2 with interest at the rate of 6% per annum forthwith. Once the said amount is paid, the property in question, as directed by the present order, will be handed back to the appellant by the respondent No.2 within a period of three months after the payment of amount by the appellant.

9. The appeal is disposed of in the above terms.

.....,J.
(RANJAN GOGOI)

.....,J.
(NAVIN SINHA)

NEW DELHI
APRIL 06, 2017