

ITEM NO.6

COURT NO.12

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

Petition(s) for Special Leave to Appeal (Civil) No(s).8888/2009

(From the judgement and order dated 28/04/2008 in WA No. 462/2008 of The HIGH COURT OF MADRAS)

INDIAN BANK

Petitioner(s)

VERSUS

M.S.GNANASOUNDARI & ANR.

Respondent(s)

(With prayer for interim relief and office report)

Date: 15/02/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Ranjeet Kumar, Sr.Adv.
Mr. Himanshu Munshi, Adv.

For Respondent(s) Mr. P.S. Patwalia, Sr.Adv.
Mr. Benjamin F. George, Adv.
Mr. M.A.Chinnasamy, Adv.

Mr. C.V. Suba Rao, Adv.
Mr. Y.P. Mahajan, Adv.
For Mr. Shreekant N. Terdal, A.O.R.

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

This is a petition for setting aside judgment dated 28.4.2008 of the Division Bench of Madras High Court whereby it dismissed Writ Appeal No.462 of 2008 filed by the petitioner and confirmed the order passed by the learned Single Judge in Writ Petition No.35859

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of 2007 and M.P. No.1 of 2007 directing the Debts Recovery Tribunal-II, Chennai (for short, "the Tribunal") to decide Miscellaneous Application No.82 of 2007 filed by respondent No.1 for extension of time for deposit of the balance amount in terms of award dated 7.2.2004 passed by the permanent Lok Adalat in O.A. No. 474/2001 titled Indian Bank v. Gnanasoundari and others.

On an application made by the husband of respondent No.1 Shri M.J. Durairaj in 1991, the petitioner-bank granted term loan of Rs.72 lakhs and cash credit facility of Rs.25 lakhs to his proprietary concern, namely, Messrs Adam's Barter World. Shri M.J. Durairaj died on 16.10.1993. After five years, the

petitioner filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for recovery of a sum of Rs. 3,59,86,583.07. The same was registered as OA No.474/2001.

During the pendency of the application, the parties appeared before permanent Lok Adalat organised by the Legal Services Committee and agreed for one time settlement, in terms of which respondent No.1 was required to pay Rs.38.5 lakhs on or before 31st March, 2004 and the balance amount of rs.111.5 lakhs on or before September 2004 with interest @ 11.5 per cent on running balance amount from 7.2.2004. The parties also agreed that in case of any default, the petitioner shall be entitled to claim the amount as per O.A. and accordingly an award was passed by the Lok Adalat. Thereafter, the Tribunal passed order dated 26.2.2004

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and allowed O.A. No.474 of 2001 in terms of the award.

In furtherance of one time settlement, respondent No.1 paid Rs.38.5 lacs before the due date i.e., 31.3.2004 but failed to pay the balance amount. Therefore, the petitioner filed I.A. No.37 of 2005 in O.A. No.474 of 2001 for issue of a recovery certificate for a sum of Rs.13,55,99,185.05 together with future interest @ 11.5% from the date of last payment till the date of realization. By an order dated 12.9.2005, the Tribunal allowed the application and directed that recovery certificate be issued for the amount specified in I.A. No.37 of 2005. However, the liability to pay the amount was restricted to respondent No.1. Appeal filed by the petitioner against the Tribunal's decision to absolve other respondents was dismissed by the Debts Recovery Appellate Tribunal.

The petitioner challenged the orders of the Tribunal and the Appellate Tribunal in Writ Petition No.9001/2008.

In the meanwhile, respondent No.1 paid Rs.24 lakhs towards interest in two instalments dated 2.7.2006 and 5.7.2006. However, the petitioner refused to close the matter on the ground that respondent No.1 had failed to abide by the terms of settlement and issued notice dated 24.8.2007 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and called upon respondent No.1 to pay Rs.13,55,99,185.05 with interest. At that stage, respondent No.1 filed Writ Petition No.35859/2007 for

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issue of a mandamus to the Tribunal to decide Application No.82/2007 filed by her for condonation of delay in payment of Rs.111.5 lakhs.

By an order dated 21.2.2008, the learned Single Judge allowed the writ petition and directed the Tribunal to pass appropriate order in Application

No.82/2007. In compliance of that order, the Tribunal passed order dated 10.4.2008 whereby it condoned the delay in payment of Rs.111.5 lakhs by respondent No.1 and terminated the proceedings initiated by the petitioner.

The petitioner challenged the order of the learned Single Judge in Writ Appeal No.462/2008, which was dismissed by the Division Bench along with Writ Petition No.9001/2008.

We have heard learned counsel for the parties at considerable length and perused the record. We have also gone through order dated 10.4.2008 passed by the Tribunal in Miscellaneous Application No.82/2007, a copy of which was produced by the learned counsel for respondent No.1 during the course of hearing. Although, there appears some merit in the argument of Shri Ranjeet Kumar, learned senior counsel appearing for the petitioner that in the absence of a specific challenge to order dated 12.9.2005 passed by the Tribunal in I.A. No.37 of 2005 and notice issued under Section 13(2) of the Securitization Act, the High Court should not have directed the Tribunal to decide Application No.82/2007 filed by respondent No.1 for extension of time, but keeping in view the fact that

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respondent no.1, whose husband died in less than three years after availing cash and credit, had paid Rs.38.5 lakhs before the stipulated date i.e., 31.3.2004 and paid the balance amount in 2006 and also paid interest of Rs.24,00,000/- in the month of July, 2006, we are not inclined to interfere with the impugned judgment. We are also convinced that the reasons assigned by the Tribunal for extending the time for deposit of the balance amount by respondent No.1 do not suffer from any legal infirmity.

The special leave petition is accordingly dismissed.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master