IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 27th of April, 2026

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

RA (SA):46/2013
(SA 161/2012 on the file of DRT-III, Chennai)

BETWEEN

The Authorised Officer
ICICI Bank Ltd.,
ICICI Bank Towers- RMAG
SP-24, South Phase,
4th Floor, West Wing,
Ambattur Industrial Estate,
Ambattur, Chennai – 600 058.

.....Appellant

AND

1. A. Chittibabu
   S/o (Late) D. Aravamudhan
   Old No.5, New No.37,
   Sournambigai Street,
   Kodambakkam
   Chennai – 600024

2. C. Gopinath
   S/o A. Chittibabu
   Old No.5, New No.37,
   Sournambigai Street,
   Kodambakkam
   Chennai – 600024

3. M/s. Jakshan Rubbers
   P.O. Pulikkal,
   Malappuram District,
   Kerala.

4. C. Kunhi Moideen (since deceased)
Pattancherry House,
Nallur P.O., Feroke,
Calicut – 673631, Kerala.

4(a) Mr. Jhamshad,
Pattanchery House,
Nallur P.O, Feroke,
Calicut-673631,
Kerala.

5. D. Palani Chettiar
S/o Dharmalinga Chettiar
No.3/43, Vaniar Street,
Senneer Kuppam, Poonamallee,
Chennai 600 056

....Respondents

Counsel for Appellant : Mr. S. Suresh for M/s. T. Srinivasaraghavan & Associates

Counsel for R1 & R2 : Mr. B. Thilak Narayanan for Mr/ K. Srinivasan

ORDER

1. The Respondents 1 and 2 filed SA 161/2012 challenging the Possession Notice dated 16.02.2012 on the file of DRT-III, Chennai.

1.1 Learned Presiding Officer, set aside the Possession Notice dated 16.02.2012 in respect of an extent of 38,659.5 sq.ft, and restored possession with Respondents 1 and 2/Applicants before Tribunal. Aggrieved against

said order, Appellant, the ICICI Bank Ltd., filed the Appeal in RA (SA) 46/2013.

1.2 Learned Predecessor, on 06.07.2023, upon finding that the sale in respect of an extent of 24,368 sq. ft. covered by two sale deeds dated 13.05.1999 and 24.02.2005, had come into existence prior to creation of the mortgage in favour of the Bank over a total extent of 51,836 sq.ft, held that the Bank cannot proceed against said extent of 24,360 sq. ft. covered by the aforementioned sale deeds. Learned Predecessor also found that the Bank is entitled to proceed against the remaining extent of land measuring 27,476 sq. ft. Thus, confirmed the order of the Tribunal below in setting aside Possession Notice dated 16.02.2012 and granted liberty to the Respondent Bank to initiate fresh measures under Section 13(4) of SARFAESI Act, 2002 in respect of an extent of 27,468 sq. ft.

1.3 Aggrieved by the said order dated 06.07.2023, the Respondents 1 and 2 filed CRP No. 3845/2024 before the

Hon'ble High Court of Madras. Hon'ble High Court observed that this Tribunal has not answered the Respondents' objection that there was no valid mortgage, which contention was accepted by the DRT. The DRT gave a finding that the mortgagors had no title or possession in respect of 38,659.5 sq. ft., which was already assigned to Petitioners/Respondents. In the said circumstances, the order of this Tribunal dated 06.07.2023 was set aside and the matter was remanded to this Tribunal for *de novo* consideration, to the limited extent of 14,291.5 sq. ft., to find out whether there was a valid mortgage existed in favour of the Bank. That is how this Appeal is taken up for hearing.

2. Learned Counsel for Appellant submitted that SA 161/2012 was filed challenging the Possession Notice dated 16.02.2012 in respect of an extent of 51,836 sq. ft. This Application was allowed in respect of an extent of 38,659.5 sq. ft., and restoration of possession was ordered. Respondent No.3, M/s. Jakshan Rubbers is the borrower.

Respondents 1 and 2 are the Applicants before the Tribunal. Respondents 4 and 5 are the guarantors, and Respondent No.5 is the mortgagor cum guarantor. On the death of Respondent No.4, C. Kunhi Moideen, his Legal Representative, Mr. Jhamshad was impleaded as Respondent No.4 (a) in the Appeal.

2.1 It is further submitted that the property concerned in this case was owned by Mrs. Kuppammal, mother of Respondent No.5, D. Palani Chettiar. In the year 1955, Mr. Dharmalinga Chettiar, purchased the said property in the name of Mrs. Kuppammal. Subsequently, in 1985, there was partition in the family and the property in dispute was allotted to Mrs. Kuppammal. On 06.04.2006, Respondent No.3, approached the Bank for Overdraft facility of Rs.1.45 Crores. For the said loan, Respondent Nos. 4 and 5 stood as guarantors and Respondent No.5 stood as mortgagor. Along with them, Mrs. Kuppammal also joined in creation of mortgage over the property. In support of this, D Palani Chettiar and Mrs. Kuppammal

had given a declaration on 06.04.2006, and subsequently, on 29.05.2006, Mrs. Kuppammal gave an Affidavit confirming that she offered guarantee to the loan and her property as collateral security, by producing the title documents.

2.2 The borrower having defaulted in paying the loan amount, the account was classified as NPA, and a Demand Notice under Section 13(2) of the SARFAESI Act, 2002, was issued on 26.10.2009 to the borrower and the guarantors. Thereafter, symbolic possession was taken pursuant to the Possession Notice dated 16.02.2012. Respondents 1 and 2, claiming to be 3rd party purchasers, filed SA 161/2012 stating that they have purchased an extent of 38,659.5 sq. ft. in the disputed property from LRs of Mrs. Kuppammal under four different sale deeds on 13.05.1999, 24.02.2005, 07.05.2009 and 07.05.2009 an extent of 11,713 sq. ft., 12,655 sq ft., 7,546.5 sq. ft., and 6,745 sq ft. respectively.

2.3 It is submitted by Learned Counsel for Appellant that, in pursuance of the mortgage created by Mrs. Kuppammal, the Bank is in possession of the original title documents. The deposit of original title documents and the Affidavit filed by Mrs. Kuppammal are enough to conclude that a valid mortgage by deposit of title deeds was created in favour of the Bank. True it is that, the sale deeds dated 13.05.1999 and 24.02.2005 had been executed prior to the creation of mortgage on 06.04.2006, but, the subsequent two sale deeds dated 07.05.2009 were executed after the creation of mortgage. When there is a valid mortgage exists in respect of the properties sold under sale deeds dated 07.05.2009, those properties remain subject to mortgage in favour of Appellant. Accordingly, the Appellant is entitled to proceed under SARFAESI Act against said properties. Without considering this aspect, Learned Presiding Officer, set aside the Possession Notice in respect of the land to an extent of 38,659.5 sq. ft. Aggrieved by this order, this Appeal is filed.

3. In reply to these submissions, Learned Counsel for Respondents 1 and 2 submitted that no documents have been produced to show that a valid mortgage was created in this case. As Mrs. Kuppammal had only a life interest in the property, she lacked power to execute mortgage. It is the contention of the Learned Counsel for Respondents 1 and 2 that Mrs. Kuppammal used to sign the documents in Tamil, as seen in the sale deed executed by her. However, in the alleged mortgage document, only a thumb impression is seen, and there is no indication as to whose thumb impression it is. There is no proper and valid mortgage have been executed in favour of the Bank. Therefore, the Bank cannot proceed against the property purchased by the Respondents. Thus, Learned Counsel for Respondents 2 to 6 prayed to confirm the order of Learned Presiding Officer, DRT-III, Chennai.

4. Considered the rival submissions and perused records.

5. As per the direction of Hon'ble High Court of Madras in CRP No. 3845/2024, this Tribunal has to consider as to whether a valid mortgage was created in favour of the Bank in respect of 14,291.5 sq. ft, in view of the positive finding given by the DRT that the Bank has no valid right or interest over the property measuring 38,659.5 sq. ft.

6. A perusal of the order passed by the DRT in SA 161/2012 shows that the Learned Presiding Officer found that the mortgagor has neither title nor possession in respect of 38,659.5 sq. ft. which had already been sold through four sale deeds. In this view of the matter, the Possession Notice dated 16.02.2012 was set aside in so far as it related to an extent of 38,659.5 sq. ft.

In the Appeal, this Tribunal found that two sale deeds executed on 07.05.2009 for 14,291.5 sq. ft. had come into existence subsequent to the mortgage. Though the Bank cannot proceed against an extent of 24,368 sq. ft. sold through two sale deeds executed prior to the mortgage, it

can proceed against the remaining extent of 27,468 sq. ft. (i.e. 51836 sq. ft. minus 24368 sq. ft.). Accordingly, the Bank was given liberty to issue fresh Notice under Section 13(4) of SARFAESI Act, 2002 in respect of an extent of 27,468 sq. ft. As already stated, the Hon'ble High Court directed this Tribunal to consider as to whether there existed a valid mortgage in favour of the Bank.

7. With regard to the mortgage, the Bank filed a Declaration given by D. Palani Chettiar and Mrs. Kuppammal on 06.04.2006. This Declaration has signature of D. Palani Chettiar and a thumb impression also available in the Declaration. In the guarantee document, apart from the signature of D. Palani Chettiar, another thumb impression is available. There no specific mention in the guarantee document and Declaration that the thumb impression belongs to Mrs. Kuppammal. In the guarantee document, the husband's name of Mrs. Kuppammal was shown as Mr. Sundaram Chettiyar, in the Schedule. However, in all other documents, such as sale

deed executed by her, Affidavit filed by her, allegedly to confirm the guarantee dated 29.05.2006, her husband's name is shown as Dharmalinga Chettiar. Further, Mrs. Kuppammal's age is stated as 62 years in the guarantee document, whereas in the sale deed dated 24.02.2005, her age was shown as 88 years.

8. It is an admitted case that, on 13.05.1999, an extent of 11,713 sq. ft. was sold by Y. Padmaja Das in favour of the first Respondent, A. Chittibabu. On 24.02.2005, an extent of 12,655 sq. ft. was sold by Mrs. Kuppammal and others to the first Respondent, A. Chittibabu. A total extent of 24,368 sq. ft. was sold to 1st Respondent, A. Chittibabu, through these two sale deeds. Despite these sales, the Bank claimed to have created mortgage over the total extent of 51,836 sq. ft. subsequent to these sales. Obviously, the claim of the Bank that the mortgage was created in respect of an extent of 51,836 sq. ft., could not have been true, for the reason that, prior to the mortgage

on 06.04.2006, an extent of 24,368 sq. ft. had already been sold.

9. As already stated, there is doubt created with regard to the execution of alleged guarantee deed and Declaration for offering the property as security by the deceased Mrs. Kuppammal. The reasons are that the thumb impression available in these documents was not attributed to her. There is discrepancy in mentioning her husband's name and age, and these discrepancies are not cleared by the Appellant by examining the person who saw the affixture of thumb impression attributed to Mrs. Kuppammal. Despite giving sufficient time to clear these doubts with regard to execution of guarantee/mortgage by Mrs. Kuppammal, the Bank has failed to avail the opportunity.

10. From the documents available, it can only be concluded that the Bank has miserably failed to prove that Mrs. Kuppammal had stood as a guarantor, executed mortgage, and deposited the title documents with the

intention to create mortgage. Thus, this Tribunal finds that the Appellant failed to establish a valid mortgage in respect of the property mortgaged. Therefore, the Securitisaton Application stands allowed.

11. In the result, the Appeal RA (SA):46/2013 is dismissed. Both the parties shall bear their own costs. All pending IAs, if any, stand closed.

[Dictated to Athistamani, PS, transcribed by her, corrected and signed by me this 27th of April, 2026]

[*Justice* G. Chandrasekharan]
CHAIRPERSON