

Fair Order



IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI

DATED THIS 08th DAY OF JULY, 2026

PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

Appeal No.05/2017

Mr. T.AjiKumar,
S/o. Thakappan,
Thavalthottum, Painkulam Post,
Kanyakumari – 629 173.

.... Appellant/Auction Purchaser

Vs

1. Central Bank of India,
PWD Road, Kunjanadar Complex,
Nagercoil-629 173,
Rep. by its Senior Manager. 1st Respondent/Decree Holder
2. M/s. Sree Kailash Cashews,
Vattakottai, Mangarai Post,
Kanyakumari - 629 157.
3. Mr. S.Ajayakumar,
S/o. R.Sekharan Nair,
No.15/138, Jalaja Bhavan,
Thavalthottam, Painkulam post,
Kanyakumari 629 188.
4. Mr. S.Sreeju,
S/o. R.Sekharan Nair,
No.15/138, Jalaja Bhavan,
Thavalthottam, Painkulam post,
Kanyakumari 629 188.
5. Mr. S.R.Haridas,
S/o. Ramachandran,
No.24/19/1, Erattanvilai,
Vellicode Post, Kannanoor Desam,

Veyyannor Village, Kalkulam Taluk,
Kanyakumari-629 188.

.... Respondent 2 to 5/Petitioners

6. Mr. Thambiraj,
S/o. Muthayyan Nadar,
Kanakkapillaivilai, Painkulam Post,
Kanyakumari District.
7. Mr. Sreedharan Nair,
S/o. Narayanan Thambi,
Kalladam Thottam, Painkulam Post,
Kanyakumari District,
8. Mr. Mathavan Nair (**Deceased**),
S/o. Neelakandan Thampi
Thavalthottam, Painkulam post,
Kanyakumari District.
9. Mr. Gopalakrishnan,
S/o. Palaiyan,
Kanchimadam Thoppuvilai,
Kattathurai Post,
Kanyakumari District. Respondent 6 to 9/Third Parties
10. Mrs. Imavathi
W/o. Late Mathavan Nair,
Thavalthottam, Painkulam post,
Kanyakumari District.
11. Mrs. Suni,
D/o. Late Mathavan Nair,
Thavalthottam, Painkulam post,
Kanyakumari District.
12. Mr. Sunu,
S/o. Late Mathavan Nair,
Thavalthottam, Painkulam post,
Kanyakumari District. Respondents 10-12/Legal Heirs of R8

Appearance of Advocates:

Mr. S.Suresh

--- Counsel for the Appellant

Mr. R.Pandivel

--- Counsel for the Respondent Bank

Mr. K.Harikaran

--- Counsel for the Respondent-6, 9 to 12

Respondent – 2 to 5, 7 set Ex-parte.

This Appeal was heard in the presence of Counsels for the Appellant and the Respondents and fixed for passing order before me and upon hearing the arguments of the Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

ORDER

1. This Appeal has been filed under Section 30(1) of the Recovery of Debts and Bankruptcy Act, 1993 by the Appellant, praying that this Hon'ble Tribunal may be pleased to set aside the order passed by the Learned Recovery Officer in I.A. Nos. 229 (set aside) & 230 of 2015 (stay) and I.A. Nos. 473 (set aside) & 474 of 2017 (stay) in R.P. No. 12 of 2014 in DRC No. 12 of 2014, dated 23.10.2017, and to direct the Recovery Officer to issue the Sale Certificate in favour of the Appellant in terms of the auction sale conducted on 09.01.2015, and thus render justice.

2. The brief averments of the Application filed by the Appellant is as follows:-

- a) The counsel for the Appellant submitted that, the Applicant Bank filed Original Application in O.A. No. 28 of 2008 against Respondents 2 to 5 herein, who were the Defendants in the Original Application, for recovery of a sum of Rs. 34,27,275/- with subsequent interest at the rate of PLR + 4% (17%) p.a., with monthly rests, from the date of the application till realization, along with costs.
- b) It is further submitted that, this Hon'ble Tribunal passed the final order in the Original Application on 21.12.2013, allowing the Original Application with interest at the rate of 15% p.a. with monthly rests (compounded) from the date of application till realization, along with costs. Pursuant thereto, a DRC was issued in DRC No. 12 of 2014, and recovery proceedings were initiated in R.P. No. 12 of 2014, wherein an Auction Sale Notice was published

on 28.11.2014 by the Learned Recovery Officer of this Hon'ble Tribunal, fixing the date of sale on 09.01.2015. In the said auction sale, the Appellant was declared the successful bidder for a sum of Rs. 45,14,000/-, and the Appellant paid the entire bid amount as per the terms and conditions stipulated in the Auction Sale Notice.

c) It is further submitted that, in the meantime, i.e., on 04.12.2014, a Lok Adalat was conducted by this Hon'ble Tribunal, and the case in O.A. No. 28 of 2008 was also listed, even though the final order had already been passed in the said Original Application, a DRC had been issued, recovery proceedings had been initiated, and the property had also been brought to auction sale. As per the Legal Services Authorities Act, only pending cases can be referred to the Lok Adalat and not the cases in which a final order has already been passed. It is pertinent to point out that, in the said Lok Adalat, certain third parties, who were not parties to the proceedings in O.A. No. 28 of 2008, participated, and the Respondent/Applicant Bank also agreed to a settlement with those persons for a sum of Rs. 47,80,000/- and as per the terms of the settlement, the first instalment of Rs. 10,00,000/- was to be paid on or before 31.12.2014, and the remaining balance was to be paid on or before 04.06.2015. It was further agreed that no interest would be payable up to 04.03.2015 on the agreed amount, and that simple interest at the rate of 10% per annum would be payable on the balance amount from 05.03.2015 onwards. The Appellant further submitted that the Lok Adalat award itself is a nullity, since the same was passed without jurisdiction.

d) It is further submitted that, even the said Award was not complied with by the signatories in its letter and spirit, as they committed default in the payment of the first instalment itself. Consequently, the Learned Recovery Officer conducted the auction sale as

scheduled on 09.01.2015, wherein the Appellant was declared the successful bidder and paid the entire sale consideration. Thereafter, Respondents 6 and 9 paid a sum of Rs. 10,00,000/- on 02.02.2015, a further sum of Rs. 3,00,000/- on 28.03.2015, and the remaining sum of Rs. 24,80,000/- on 31.03.2015 towards the Lok Adalat Award. However, they did not pay the interest on the balance amount at the rate of 10% p.a. as stipulated in the Lok Adalat Award. Hence, the Lok Adalat Award was not complied with in its letter and spirit.

- e) It is further submitted that, respondents 2 to 9 had filed I.A. Nos. 229 & 230 of 2015 and I.A. Nos. 473 & 474 of 2017 in R.P. No. 12 of 2014 in DRC No. 12 of 2014. In the said petitions, the Appellant was not impleaded as a party, even though the Appellant was the successful bidder, had paid the entire sale consideration, and the Petitioners were aware of the said auction sale. Hence, the Appellant filed I.A. No. 872 of 2017 before the Learned Recovery Officer, and the same was allowed on 31.07.2017. Thereafter, the Appellant filed a counter in the above petitions, and after hearing the arguments of all the parties, the Learned Recovery Officer passed orders in the said petitions, cancelled the E-Auction Sale Notice dated 17.11.2014 issued by him in respect of the auction held on 09.01.2015, and directed to refund of the auction amount to the Appellant herein, and further directed the 1st Respondent/Applicant Bank to act in terms of the Lok Adalat Award. Aggrieved by the said order of the Learned Recovery Officer, the Appellant has preferred the present Appeal on the following grounds.

- The Learned Recovery Officer ought to have seen that, as per the Legal Services Authorities Act, only pending cases can be referred to the Lok Adalat and not cases in which a final

order has already been passed. Therefore, the Lok Adalat had no jurisdiction to entertain the case and pass the Award, and hence the Award is non est in the eye of law.

- The Learned Recovery Officer ought to have seen that, even assuming that the Lok Adalat Award is valid, the same was not complied with by the signatories in its letter and spirit, as they committed default in the payment of the first instalment itself. Consequently, the Learned Recovery Officer conducted the auction sale as scheduled on 09.01.2015, wherein the Appellant was declared the successful bidder and paid the entire sale consideration.
- The Learned Recovery Officer ought to have seen that, in the Lok Adalat, certain third parties, who were not parties to the proceedings in the Original Application in O.A. No. 28 of 2008, had participated, and the Respondent/Applicant Bank had also agreed to a settlement with those persons for a sum of Rs. 47,80,000/-. The Lok Adalat Award itself is a nullity, since the same was passed without jurisdiction.
- The Learned Recovery Officer ought to have seen that the first and third conditions of the Lok Adalat Award were not complied with by the signatories.
- The Learned Recovery Officer erred in cancelling the E-Auction Sale Notice dated 17.11.2014. Once the sale was conducted, the Appellant was declared the successful bidder, and he paid the entire sale consideration, the Recovery Officer became functus officio and could not cancel the Sale Notice, as the sale had already been held pursuant to the said Sale Notice.

- The Learned Recovery Officer, even though he had mainly discussed the payment of the first instalment of Rs. 10,00,000/- within the time stipulated under the Lok Adalat Award, was not able to give a correct and concrete finding on that aspect. The fact remains that the 9th Respondent/Petitioner himself had admitted that the first instalment amount was paid belatedly. Unfortunately, the Learned Recovery Officer lost sight of the above crucial fact, which is the most vital fact for deciding the case.

The Appellant has submitted the following List of documents in support of his claim in the SA, which are as follows:

S.No.	Date	Description of Documents
1.	27.12.2013	Final order of OA.No 28/2008
2.	****	Paper publication of Sale Notice issued by DRT, Madurai
3.	04.12.2014	Lok Adalat Award
4.	01.03.2017	Affidavit and Set aside Petition
5.	01.03.2017	Stay Petition
6.	18.08.2017	Counter Affidavit
7.	18.08.2017	Additional Counter Affidavit
8.	23.10.2017	Order issued by the Recovery Officer

3. On the other hand, the counsel for the 6th, 9th to 12th Respondent submitted that, the 9th Respondent is the owner of the properties comprised in Painkulam Village, admeasuring 60.5 cents in S. No. 190/3, 15 cents in S. No. 190/4B, 1.5 cents in S. No. 190/4C, 7 cents in S. No. 190/4D, 7 cents in S. No. 190/7, and 6 cents in S. No. 190/8, aggregating to 97 cents. The said properties were purchased by him jointly with one Thambiraj under a registered Sale Deed bearing Document No. 1318 of 2005, dated 29.06.2005. From the date of purchase of the said properties, they have been in possession and enjoyment thereof. At the time of purchase of the said properties, he verified the records with the Registration Department by obtaining an Encumbrance Certificate from the concerned department. On verification

of the Encumbrance Certificate, it was revealed that the properties did not have any subsisting encumbrance whatsoever. Only after satisfying myself with the documents, the Sale Deed was executed by him upon payment of the sale consideration to the concerned parties. After purchasing the said properties, the patta was transferred in their names, and They have been paying the taxes regularly to the Government in respect of the said properties. In the meantime, They were shocked to see the publication of Sale Notice released in Dina Thanthi on 28.11.2014 stating that the 2nd Respondent had proposed to bring the said property for public auction on 09.01.2015 at about 11.00 a.m. Since the survey numbers of the property purchased by him as well as the property proposed to be sold in the public auction coincided, He approached the 2nd Respondent. On verification, it was revealed that the said property was alleged to have been mortgaged in favour of the Respondent Bank for the loan obtained by M/s. Sri Kailas Cashews. However, no such entry was available with the Registration Department, inasmuch as the same had not been registered with the concerned department, even though the alleged mortgage had taken place on 21.09.2004.

- a) It is further submitted that, immediately upon coming to know of the same, as well as the Original Application No. 28 of 2008 pending before the Debts Recovery Tribunal, Madurai, They approached the Hon'ble Debts Recovery Tribunal, Madurai. When they approached the 2nd Respondent Bank, they were instructed to approach the Debts Recovery Tribunal, Madurai. Pursuant to the same, they approached the Debts Recovery Tribunal, Madurai and expressed our willingness to settle the matter. Accordingly, the matter was referred to the Lok Adalat. Before the Lok Adalat, the case was taken up as D.R.T./MDU/LA-19/2014 on 04.12.2014. After due deliberations and discussions, it was agreed that a sum of Rs. 47,80,000/- had to be settled by him, Ramachandran, Thambiraj, and Ajithkumar.

- b) It is further submitted that, during the course of the negotiations, the 2nd Respondent Bank informed them that a sum of Rs. 34,27,275/- was due and payable by M/s. Sri Kailas Cashews. It was agreed by them to pay a sum of Rs. 47,80,000/- in full and final settlement of the amount due from M/s. Sri Kailas Cashews. It was also agreed that the first instalment of Rs. 10,00,000/- had to be paid on or before 31.12.2014 and the balance amount of Rs. 37,80,000/- on or before 04.06.2015. The Respondent also agreed that no interest would be levied up to 04.03.2015 on the agreed amount, and that simple interest at the rate of 10% would be levied from 05.03.2015 onwards. Upon agreeing to the terms and conditions, They were directed to deposit the amount in an account to be opened by them with the Respondent Bank. However, the Respondent made every effort to protract the proceedings and did not accept the amount whenever they approached the Bank to receive the same, with an ulterior motive.
- c) It is further submitted that, as per the instructions of the Appellant Bank, they opened an account in the name of Mr. Thambiraj bearing A/c. No. 3419039884 and deposited a sum of Rs. 50,000/- on 23.12.2014, Rs. 2,25,000/- on 24.12.2014, and Rs. 7,25,000/- on 14.01.2015. As such, the entire amount constituting the first instalment agreed upon by them was deposited with the 2nd Respondent Bank. Even after receiving the said amount, and despite being a party to the settlement wherein the outer time limit for payment had been extended up to 04.06.2015, the Respondent Bank attempted to dispose of the property to third parties without considering the agreement entered into before the Lok Adalat and in violation of the Award passed by the Lok Adalat on 04.12.2014. As such, the Respondent Bank is trying to breach the Award of the Lok Adalat.
- d) It is further submitted that, the provisions of Section 21 of the Legal Services Authorities Act, which is usefully extracted as follows:

..."21. Award of the Lok Adalat: (1) Every award of the Lok-Adalat shall be deemed to be a decree of a Civil Court or, as the case may be, an order of any other Court and where a compromise or settlement has been arrived at, by a Lok-Adalat in a case referred on it under Court Fee paid in such case sub Section (1) of Section 20 the shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

2. Every award made by a Lok-Adalat shall be final and binding on all the parties to the dispute, and no appeal shall be Every award made by a Lok-Adalat shall be final and to any court against the award".

- e) It is further submitted that, the Respondent Bank and the Recovery Officer had predetermined the issue and made every effort to sell the property to third parties of their own choice. As, they were always prepared and willing to abide by the Award passed by the Lok Adalat dated 04.12.2014 and to settle the entire amount before 04.06.2015. Accordingly, he approached the Hon'ble Madurai Bench of the Madras High Court by filing W.P.(MD) No. 944 of 2015. On 28.01.2015, when the matter came up before the Hon'ble High Court, the Hon'ble High Court directed him to bring a Demand Draft for a sum of Rs. 10,00,000/- and further directed that, meanwhile, no confirmation should be made pursuant to the auction sale. In compliance with the said direction, he obtained a Demand Draft for Rs. 10,00,000/- on 02.02.2015, and the same was handed over to the counsel appearing on behalf of the Respondent Bank. Further submitted that, as per the Award of the Lok Adalat, he had to settle the entire dues before 04.06.2015. Therefore, in compliance with the Award of the Lok Adalat, he remitted the balance amount of Rs.27,80,000/- to the Respondent Bank on 28.03.2015 and 31.03.2015 respectively. As such, the Award of the Lok Adalat was satisfied by him even before the agreed date, i.e., 04.06.2015. He further submitted that, after settling the entire amount, he approached the Respondent Bank for return of the original Sale Deed, but the same was not considered.

- f) It is further submitted that, the Writ Petition filed by him was taken up for hearing on 08.02.2017, wherein the Hon'ble High Court, after observing that he had settled the entire amount, held that, in the interest of justice, it would be appropriate for the Recovery Officer not to confirm the sale in favour of the 3rd Respondent till he passed an order on the Petitioner's application. he was also directed to file an application within a period of two weeks.
- g) It is further submitted that, in pursuant to the said order, I approached the Hon'ble Tribunal and filed I.A. No. 473 of 2017 (set aside), which was disposed of on 23.10.2017. Recovery Officer No. 2 categorically discussed the provisions of the Legal Services Authorities Act and conclusively held that the E-Auction Sale Notice dated 17.11.2014 issued by the Recovery Officer in respect of the auction held on 09.01.2015 stood cancelled. Consequently, the auction amount lying with the Recovery Officer was ordered to be returned forthwith. It was further directed that the Bank shall file an appropriate petition for recalling the DRC and for release of the title deeds before the competent forum.
- h) It is further submitted that, after the Lok Adalat Award dated 04.12.2014, the auction sale could not have been held, as the final order in the O.A. and the DRC stood settled. Since the auction purchaser cannot claim a right to insist upon confirmation of the sale or grant of a Sale Certificate, as the entire proceedings are non est and illegal, he can only seek return of the purchase money under Rule 64 of the Second Schedule to the Income-tax Act, 1961. The auction purchaser can only seek redress against the Bank for not informing the Recovery Officer about the Lok Adalat Award.
- i) It is further submitted that, it is the duty of the auction purchaser, before participating in the auction, to verify the Encumbrance

Certificate in respect of the property, the actual physical possession, and the revenue records, and to satisfy himself regarding the title and interest over the property which is the subject matter of the auction, in light of the principle of caveat emptor. He had not done so. The revenue records stand in the names of these Respondents, and they have been in actual physical possession of the property since 29.06.2005. Therefore, the auction purchaser cannot claim to be a bona fide purchaser.

- j) It is further submitted that, even assuming that the auction sale is confirmed in favour of the auction purchaser/Appellant in Appeal No. 5 of 2017, these Respondents cannot be dispossessed, nor can delivery of the property be effected, as they are prior title holders and are not bound by the judgment in O.A. No. 28 of 2008 or the DRC in DRC No. 12 of 2014, for the simple reason that they were not parties to the proceedings and the decree cannot be executed against them.
- k) It is further submitted that, these Respondents are purchasers prior to the filing of the O.A., and they were not made parties to the O.A. Consequently, the order passed in the O.A., the DRC proceedings, and the R.P. proceedings are not enforceable against them. The auction purchaser in these proceedings (the Appellant in Appeal No. 6 of 2017), whose auction sale has neither been confirmed nor made absolute and in whose favour no Sale Certificate has been issued, has no rival claim or locus to contest the rights of these Respondents. In fact, these Respondents have a better and vested right than the auction purchaser.
- l) It is further submitted that, these Respondents have paid Rs. 47,80,000/- as per the Lok Adalat Award, whereas the auction purchaser has paid a lesser amount, namely, Rs. 45,14,000/-, in the auction. It is very curious and intriguing as to why the Appellant Bank

would choose to support the auction purchaser, which, in monetary terms, results in a loss to the Bank, rather than these Respondents, who, even though they were not bound by the final order in O.A. No. 28 of 2008, voluntarily came forward to settle the matter.

m) It is further submitted that, the auction purchaser has argued that, in the Lok Adalat Award, the original borrowers had not participated or signed and, therefore, the Award is not valid. This argument is fallacious. Even in the O.A., the principal borrowers/Defendants did not appear and contest the matter. They remained ex parte, which does not render the final order in the O.A. invalid against them. Since these Respondents were not bound by the order in O.A. No. 28 of 2008 and were the actual title holders having subsisting rights, the Bank entered into a settlement with these Respondents before the Lok Adalat. The principal borrower, who had sold the property to these Respondents as early as 29.06.2005, had no interest or claim either on the date of filing of O.A. No. 28 of 2008 or on the date of the Lok Adalat Award dated 04.12.2014. Therefore, their absence is of no legal consequence. The Recovery Officer has considered the legal and factual positions in detail and has passed a reasoned order on the merits.

Therefore, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the above Appeal and thus render justice.

TYPED SET OF DOCUMENTS FILED BY THE DEFENDANT

No.6,9 to 12

S.No.	Date	Particulars
1	18.11.2017	Letter issued by Central Bank of India, Nagercoil Branch for appropriated of the Lok Adalat Award amount which is deposited by subsequent purchasers
2	02.01.2016	Online Encumbrance Certificate (From 01.01.1998 to 01.01.2016)

4. Having heard the learned counsel appearing for both sides and upon perusal of the entire records, I find that Defendant No. 2 is a proprietary concern, Defendant No. 3 is its proprietor, Defendant Nos. 4, 5 and 7 are the guarantors, Defendant Nos. 6, 8 and 9 are third parties, and Defendant Nos. 10 to 12 are the legal heirs of the 8th Defendant. The Defendant Bank had filed O.A. No. 28 of 2008 before this Tribunal for recovery of its dues, and a final order was passed in its favour, pursuant to which a Recovery Certificate was issued in D.R.C. No. 12 of 2014. Thereafter, the learned Recovery Officer initiated recovery proceedings in R.P. No. 12 of 2014 and published an auction sale notice on 28.11.2014, fixing the sale for 09.01.2015. However, in the interregnum, the Original Application was referred to the Lok Adalat on 04.12.2014, wherein Defendant Nos. 6, 8 and 9, though not parties to O.A. No. 28 of 2008, participated in the settlement proceedings and agreed to a compromise. It is pertinent to note that the object of a Lok Adalat is to facilitate an amicable settlement of pending or pre-litigation disputes between the parties to the proceedings and not with third person.

4.1. The Lok Adalat Award dated 04.12.2014 was undoubtedly binding upon the parties; however, its operation was expressly made subject to strict compliance with the Terms of Settlement. Paragraphs 1 and 3 of Lok Adalat award thereof specifically required payment of the first instalment of Rs.10,00,000/- (Rupees Ten Lakhs Only) on or before 31.12.2014 and further stipulated that, in the event of default, the defendants would be jointly and severally liable to pay the entire amount due under the Original Application after giving credit to the amounts already paid. The respondents have themselves admitted that the first instalment was not paid within the stipulated period and that the balance amount constituting the first instalment was paid only on 14.01.2015, i.e., after the auction held on 09.01.2015. Such an admitted default automatically attracted the consequence contemplated under Clause 3 of the Terms of Settlement, thereby entitling the learned

Recovery Officer to proceed with the recovery proceedings under the Recovery Certificate and to conduct the auction sale in accordance with law. The subsequent payments made by the respondents cannot retrospectively cure the admitted breach or invalidate an auction lawfully conducted in terms of the Recovery Certificate.

4.2 However, while cancelling the auction sale, the learned Recovery Officer failed to give due effect to the express consequences of default incorporated in the Lok Adalat Award and proceeded solely on the premise that the award had been passed. Such an approach overlooks the conditional nature of the settlement and defeats the very terms agreed upon by the parties. Once the respondents admittedly failed to comply with the essential condition relating to payment of the first instalment within the stipulated time, the settlement ceased to enure to their benefit, and the Recovery Officer was fully justified in continuing the recovery proceedings. Consequently, the subsequent cancellation of the auction sale on the sole ground of the Lok Adalat Award cannot be sustained in law. The Appellant, having been declared the successful auction purchaser and having complied with the auction conditions, acquired a valuable legal right which could not be defeated by the respondents' belated compliance with the terms of settlement.

4.3 Accordingly, the impugned order dated 23.10.2017 passed by the learned Recovery Officer is set aside. The learned Recovery Officer is directed to verify whether the Appellant has complied with all the terms and conditions of the auction sale and, if any balance sale consideration or other statutory dues remain payable, permit the Appellant to remit the same within the time stipulated by the Recovery Officer. Upon such compliance, the learned Recovery Officer shall confirm the auction sale and issue the Sale Certificate in favour of the Appellant in accordance with law. The 1st Respondent Bank is further directed to refund to the respondents the amounts received pursuant to the Lok Adalat Award

dated 04.12.2014, together with simple interest at the rate of 4% per annum from the respective dates of receipt of each payment until the date of actual refund, within four weeks from the date of receipt of a copy of this order. In this result, the **Appeal No. 05/2017** is allowed.

Dictated to LDC (KK), taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 08th July, 2026.

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER