IN THE DEBTS RECOVERY TRIBUNAL – III, CHENNAI

Dated this the 24th day of October, 2024

Present: SHRI A.S. JAYACHANDRA
Presiding Officer (In–charge)

TRANSFERRED APPLICATION No. 1749 OF 2023

(Originally filed before DRT-II, Chennai and numbered as OA 892/2019 and thereafter transferred to this Tribunal and renumbered as TA 1749/2023)

Indian Overseas Bank
Ashok Nagar Branch
No.9, Dr. Natesan Road
Chennai – 600 083.
Rep. by its Chief Manager ..... Applicant

-Vs-

1. Mrs. D. Kamala,
W/o. Devarajan,
No. 4/11, Saradapuram,
Second Street, Mylapore,
Chennai – 600 004.

2. A. Loganathan,
No. 4/11, Saradapuram Nagar,
Second Street, Mylapore,
Chennai – 600 004. ....Defendants

Counsels on record / appeared:

Counsel for Applicant Bank : K. Radhakrishnamurthy

Defendants were set ex-parte on : 27.07.2021

O R D E R

1. This application is filed by the applicant bank under Section 19 of Recovery of Debts and Bankruptcy Act, 1993 (formerly Recovery of Debts Due to Banks and Financial Institutions Act, 1993) against the defendants for recovery of a total sum of **Rs.39,19,862/-** (Rupees Thirty Nine Lakhs Nineteen Thousand Eight Hundred and Sixty Two only) due under **Housing Loan Facility** repayable together with interest at the rate of 11.95% per annum with monthly rests from the date of

application till the date of realization in full and for sale of schedule mentioned property along with costs of this application.

2. Originally the application was filed before DRT-II, Chennai, assigned OA No.892/2019, and thereafter in pursuance to the notification from Ministry of Finance, DFS dated 04.10.2022, OA No.892/2019 stood transferred to this Tribunal and renumbered as TA No.1749/2023.

3. **Brief facts of the case**:- The 1st defendant approached the applicant bank for a Housing Loan of Rs.20 Lakhs by way of her application dated 15.04.2011. The same was sanctioned on 18.04.2011 under Subha Gruha Housing Scheme for purchase of a Flat. It is the allegation that the entire loan amount was availed by the 1st defendant on 19.04.2011 and the 1st defendant executed Demand Promissory Note, Letter of Undertaking to repay in instalments and also Housing Loan agreement. The loan was to be repaid in 180 equal monthly instalments of Rs.20,885 /- per month from August, 2011. For the above facility availed by 1st defendant, 2nd defendant stood as guarantor and executed a Guarantee Deed on 19.04.2011, guaranteeing due repayment of the amount payable by first defendant.

4. It is alleged that the 1st defendant had deposited the title deeds on 26.11.2011 in token of having obtained the loan and the same was deposited with an intention to create equitable mortgage, which is also registered vide Document No.2706/2011 dated 26.11.2011 before the Sub Registrar, Saidapet Joint II.

5. It is further alleged that the defendants were irregular in payments and the account is classified as NPA on 01.01.2013.

6. Applicant bank also submits that there was a case registered with CBI in RC No.16A 2013 CBI / ACB Chennai and certain documents were seized by the CBI for investigation.

7. Summons were ordered to defendants and the same was returned with remark as 'no such person'. Applicant bank had caused paper publication and filed proof thereof. Defendants remained absent and no written statement was also filed and hence was placed ex-parte on 27.07.2021 by the Ld. Predecessor.

8. IA No.1143/22 was filed by applicant bank to dispense with production of original documents and to adduce secondary evidence on the ground that the same were handed over to Inspector of Police, Anti Corruption Branch, Shastri Bhavan, Chennai by Proceeding No.Rc.No.16A 2013 CBI/ACB/Chennai dated 08.11.2013 and the same was allowed by the Ld. Predecessor on 07.07.2022, subject to replacing the same with originals at the earliest.

9. The applicant bank examined Mrs. Soumyashree Rout, Manager / Constituted Attorney as AW-1 and deposed to the facts of the case. Ex A-1 to Ex A-11 filed by applicant bank were taken on record and marked as secondary evidence.

10. During the course of hearing, applicant bank wanted to rely on the additional evidence and had filed IA No.1811/24 praying to mark photocopies of additional documents as Exh. A-12 to A-17. Ld. Counsel submitted that if the additional evidence is not accepted, the case of the applicant bank would be jeopardized. Applicant bank filed additional proof affidavit of Ms. Dipa Kumari. She is examined as AW-2 and the additional documents are taken on record and marked as Exh.A12 to Exh.A17.

11. Applicant bank had filed additional proof affidavit of Ms. Dipa Kumari, Chief Manager of applicant bank dated 18.09.2024 submitting therein that upon request of 1st defendant, Housing Loan of Rs.20 lakhs was sanctioned, which was availed by 1st defendant after duly executing loan and security documents in favour of applicant bank on 19.04.2011. It is also deposed that thereafter, as defendants committed default in repayment, loan account became NPA on 01.01.2013. It is further submitted that by routine inspection, it was found out that defendants along with other home loan borrowers, with the help of the then Senior Manager and Builders had committed fraud and obtained loans. Upon complaint given by Chief Regional Manager to SP, Anti Corruption Wing, CBI on 20.04.2013 vide letter dated ROII/VIGI/86/2012-2013, CBI had registered the case vide FIR No.RC/16A/2013 (RC MAI 2013 A0016 CBI ACB) dated 20.04.2013 and all the original documents were seized by CBI on 08.11.2013 from the branch and the case is still pending before CBI. It is further submitted that subsequent to filing of OA, applicant bank had sent request letters dated 24.03.2022 and 09.05.2022 requesting CBI authorities to provide certified copies of documents pertaining to the Housing Loans. Applicant bank had enclosed copies of complaint dated 20.04.2013, FIR dated 22.08.2013 and request letters dated 24.03.2022 and 09.05.2022, Proof of disbursement of loan amount, in support of their contentions.

12. With the available material evidence on record, the only point that arises for consideration in this application is:-

> *Whether the applicant bank is entitled for the recovery of the amount claimed in the application from the defendant? If so, what relief?*

13. Heard the Ld. Counsel for the applicant. Perused the OA averments and

the evidence available on record.

14. **Answer to the point:**-

14.1 To prove its claim, the applicant bank examined the above witnesses - AW1 and got marked 11 documents and AW2 and got marked 6 documents respectively. The proof affidavit of the applicant bank remains unchallenged and the say of the witnesses AW1 and AW2 remains unrebutted.

14.2 AW1 in her affidavit had reiterated the facts on oath and she relied on Exh.A1 to A11. **Exh. A1** is Application by 1st Defendant dated 15.04.2011, **Exh.A2** is Sanction Letter by applicant bank dated 18.04.2011, **Exh.A3** is Demand Promissory Note for Rs.20 lakhs dated 19.04.2011 executed by the 1st Defendant, **Exh.A4** is Letter of undertaking and repayment executed by the 1st Defendant dated 19.04.2011, **Exh.A5** is Housing Loan Agreement executed by the 1st Defendant dated 19.04.2011, **Exh.A6** is Guarantee Deed executed by 2nd Defendant dated 19.04.2011, **Exh.A7** is Memorandum of Deposit of Title Deeds executed by the 1st Defendant dated 26.11.2011, **Exh.A8** is Statement of Account, **Exh.A9** is Sale Agreement executed between M.H. Avadhani HUF and Mrs. D. Kamala, the borrower herein dated 10.03.2011, **Exh.A10** is the Construction Agreement between Mrs. D. Kamala and M/s V.V. Home Makers (P) Ltd. dated 10.03.2011, **Exh.A11** is the Sale Deed in favour of Mrs. D. Kamala– Regd Doc No.1130/2011 dated 19.04.2011.

14.3 AW2 in her affidavit had reiterated the facts on oath and she relied on Exh.A12 to A17. **Exh.A12** is Complaint by applicant bank's Head Office dated 20.04.2013, **Exh.A13** is FIR Copy by CBI /ACB dated 22.08.2013, **Exh.A14** is

Request Letter by applicant bank dated 24.03.2022 to The Inspector of Police, CBI Anti Corruption Branch, **Exh.A15** is Request Letter by applicant bank dated 09.05.2022 to The Inspector of Police, CBI Anti Corruption Branch, **Exh.A16** is Proof of SB Account belonging to defendant, **Exh.A17** is Address proof of defendant.

15. This Tribunal has carefully perused the pleadings and also evidence available on record. The allegations found in the OA goes unrebutted. Defendant remained ex-parte. The say of AW1 and AW2 goes unrebutted. Therefore, on careful consideration of proof affidavit along with Exhibits filed on behalf of the applicant bank, the Tribunal is satisfied that the applicant bank has proved the OA claim against the defendant. Thus the point for determination is answered in the affirmative.

16. For the reasons stated as above, that the applicant bank is entitled for Recovery of a total sum of **Rs.39,19,862/-** in respect of Housing Loan facility. As far as the interest lis pendens and future interest is concerned, the same is to be considered in the light of the following circumstances:

(a) This being a Housing Loan, which rate of interest varies from time to time, cannot be lost sight of;

(b) The averments in the OA itself says that there has been some kind of defalcation of funds or fraud having been committed with the help of the then Senior Manager and the builders, for which the defendant cannot be saddled with future interest at the contractual rates.

(c) There has been delay in disposal of the case for nearly five years for various reasons. This Tribunal being vested with additional charge from 11.06.2024 has taken note of that the defendants are not responsible for the delay in disposal of the case.

17. For the above reasons, it is just and necessary that the interest from the date of filing of the OA till the date of realisation on the sum adjudged shall be at the rate of 9% (simple)

18. In the result, application is allowed granting recovery certificate as follows:

(a) The applicant bank is entitled for Recovery of a total sum of **Rs.39,19,862/-** (Rupees Thirty Nine Lakhs Nineteen Thousand Eight Hundred and Sixty Two only) due under **Housing Loan** facility together with further interest @ 9% per annum (simple) from the date of application till the date of realization against the defendants 1 adm 2.

(b) It is further ordered that in case of default of payment by the defendant, the applicant bank is entitled to sell the schedule mentioned property in terms of the order in para (a) supra and appropriate the sale proceeds towards the amount due.

(c) It is further ordered that amount remitted or realized, if any, during the course of the proceedings, shall be given due credit to the loan account of the defendants.

(d) The applicant bank is entitled for costs of this application.

(e) Schedule mentioned in the OA shall form part of this final order

19. The applicant bank is directed to file costs memo within two weeks of the receiptof this order.

20. Issue recovery certificate in favour of the applicant bank in terms of this finalorder.

21. Communicate a copy of the order to the parties concerned in terms of Rule 16read with Rule 2(c) of DRT (Procedure) Rules, 1993.

Sd/-
(A.S.JAYACHANDRA)
PRESIDING OFFICER (In-charge)
DRT-III, CHENNAI

(Dictated to PS, transcribed by her, corrected, signed and pronounced by me on this 24th day of October, 2024)

Annexure:-

1. List of Exhibits marked by Applicant
2. Detailed Schedule of Immovable Property.

Exhibits marked by applicant bank

Sl. No.	Description of Documents	Exhibit No.
	AW-1	
1.	Application by Defendant dated 15.04.2011	A-1
2.	Sanction Letter by Applicant Bank dated 18.04.2011	A-2
3.	Demand Promissory Note for Rs.20 lakhs dated 19.04.2011	A-3
4.	Letter of Undertaking and repayment dated 19.04.2011	A-4
5.	Housing Loan Agreement dated 19.04.2011	A-5
6	Guarantee Deed by 2nd Defendant dated 19.04.2011	A-6
7.	Memorandum of deposit of title deed dated 26.11.2011	A-7
8	Statement of Accounts	A-8
9	Sale Agreement executed between M.H. Avadhani HUF and Mrs. D. Kamala, the borrower herein dated 10.03.2011	A-9
10	Construction Agreement executed between Mrs. D. Kamala and M/s. V.V. Makers (P) Ltd. dated 10.03.2011	A-10
11.	Sale Deed in favour of Mrs. D. Kamala – Doc No.1130/2011 dated 19.04.2011	A-11
	AW-2	
12.	Complaint by Applicant's Head Office dated 20.04.2013	A-12
13.	FIR Copy by CBI/ACB dated 22.08.2013	A-13
14.	Request letter by applicant bank to the Inspector of Police, CBI, ACB dated 24.03.2022	A-14
15.	Request letter by applicant bank to the Inspector of Police, CBI, ACB dated 09.05.2022	A-15
16.	Statement showing proof of disbursement of loan amount of Rs.20 lakhs	A-16
17.	Address proof of defendant	A-17

Sd/-
(A.S.JAYACHANDRA)
PRESIDING OFFICER (In-charge)
DRT-III, CHENNAI

Schedule of immovable property

All that piece and parcel of land and building bearing Flat No. 20, First Floor, measuring 600 sq.ft., along with 1.40% (297 sq.ft) undivided share, out of 21155 sq.ft., land bearing No. 102, Present No. 85, Ramapuram Old No. 102, New No. 85, Ramapuram Village, Annai Sathya Nagar, formerly Saidapet Taluk, Chenngai MGR District, Comprised in S.No. 10/3 Part 10/4, 10/5, 10/6, 10/7B measuring to an extent of 21155 sq.ft., (8.815 grounds) now Ambattur Taluk, Thiruvallur District, And situated within the Sub Registration District of Saidapet Joint II and Registration District of South Chennai.

Bounded on the,

North by	:	Land belonging to Avadhani HUF
South by	:	Road
East by	:	Land belongs to Shantha
West by	:	Land belongs to M.S. Murthy HUF

Sd/-
(A.S.JAYACHANDRA)
PRESIDING OFFICER (In-charge)
DRT-III, CHENNAI