

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M.VENUGOPAL

W.P. No.17183 of 2015 and M.P. No.1 of 2015

T. Ashok Surana

Petitioner

Vs.

1 The Presiding Officer
Debts Recovery Tribunal - II
Spencer Towers, IV Floor
770-A, Anna Salai
Chennai 600 002

2 The Authorised Officer
Indian Bank
Mylapore Branch
No.21, North Mada Street
Chennai 600 004

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus calling for the records relating to the order of the first respondent, quash the same and issue a show cause notice seeking explanation for the inexplicable order made by the Presiding Officer of the Debts Recovery Tribunal-2, Chennai in SARFAESI Application No.86 of 2014 dated 20.01.2015 as being totally perverse, colourable exercise of power in contravention of the SARFAESI Act in particular, used for purposes other than that intended by the statute, made in terrorem, is a nullity and recommend suitable action to be taken by the Hon'ble Chief Justice against the first respondent.

For petitioner Mr. T. Ashok Surana
Party-in-person

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

This writ petition is filed assailing the order dated 20.01.2015 passed by the second respondent, viz., the Debts Recovery Tribunal-II, Chennai (for short "the Tribunal") in S.A. No.86 of 2014.

2 Mr. T. Ashok Surana, the petitioner-in-person submits that when there is a question of malice in facts, the High Court alone has jurisdiction to entertain the petition filed assailing the order passed by the Tribunal.

3 In support of his contention, the petitioner-in-person has relied on the observation made by the Supreme Court in Swaran Singh Chand vs. Punjab State Electricity Board and Others, wherein, after referring to the observation made in Purushottam Kumar Jha vs. State of Jharkhand and Others ¹, the Supreme Court has held as under:

"18. In a case of this nature the appellant has not alleged malice of fact. The requirements to comply with the directions contained in the said circular letter dated 14.08.1981 were necessary to be complied with in a case of this nature. Non-compliance whereof would amount to malice in law. [See Manager, Government Branch Press and another vs. D.B. Belliappa (1979) 1 SCC 477, Smt. S.R. Veenkataraman vs. Union of India and another (1979) 2 SCC 491 and P. Mohanan Pillai vs. State of Kerala and Others, (2007) 9 SCC 497].

19. Thus, when an order suffers from malice in law, neither any averment as such is required to be made nor strict proof thereof is insisted upon. Such an order being illegal would be wholly unsustainable."

4 The petitioner-in-person further submits that that the learned Presiding Judge of the Tribunal has no regard for the judicial pronouncements of the High Court when he is bound by the judicial pronouncements made by the High Courts as well as Supreme Court.

5 Be that as it may, the aforestated contentions can be examined by the Debts Recovery Appellate Tribunal, which is competent to take a decision on the issue, including the allegations levelled by the petitioner-in-person in the instant writ petition.

Accordingly, this writ petition is dismissed, at this stage, reserving liberty to the petitioner-in-person to take recourse to the statutory appellate forum as available under the provisions of law. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

cad

1 (2006) 9 SCC 458

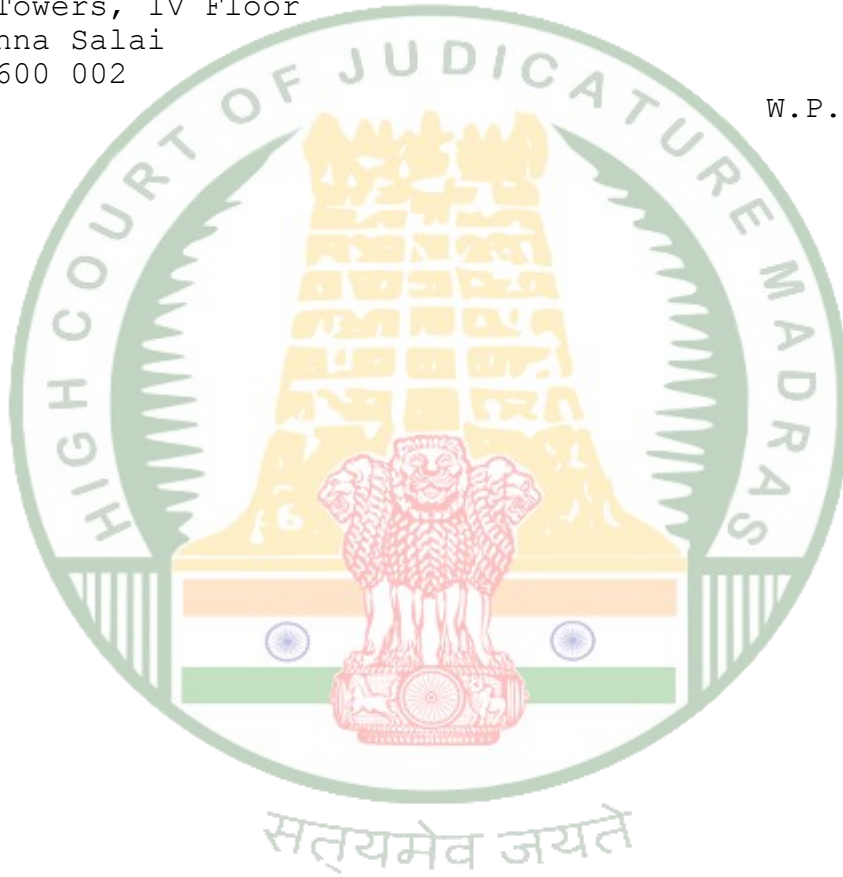
To

1. The Authorised Officer
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2. The Presiding Officer
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