

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.20694 of 2015
and
M.P.No.1 of 2015

T.Ashok Surana

... Petitioner

Vs.

1. The Presiding Officer,
Debts Recovery Tribunal-3,
Chennai,
Spencer Towers, 4th Floor,
770-A Anna Salai,
Chennai-600 002.

2. Indian Bank,
rep by its Authorised Officer,
ARMB 1 Branch,
No.55, Ethiraj Salai,
Madras-600 008.

... Respondents

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the first respondent to entertain the I.A.____ of 2015 in S.A.No.73 of 2011 dated 21.5.2015 which is filed by the petitioner for determination of the compensation payable as per Section 19 of the SARFAESI Act without insisting to comply with costs imposed as per orders passed in SR 3963 of 2015 dated 27.5.2015 and the fee applicable as per Rule 13(e) only.

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

For Respondents : Mr.Jayesh B.Dolia
for M/s.Aiyar & Dolia for R-2

ORDER

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

Assailing the order dated 27th May, 2015, whereunder the Debts Recovery Tribunal-III, Chennai dismissed the application as not maintainable with cost to the tune of Rs.10000/- on the ground that the cause of action and the relief sought for therein was frivolous, vexatious and waging litigation by paying only a formal court fee of Rs.200/- and wasting of time of the Tribunal, Mr.T.Ashok Surana, who is the petitioner-in-person, has filed this writ petition, seeking a direction to the first respondent Debts Recovery Tribunal to entertain the application for determination of the compensation payable as per Section 19 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") without insisting to comply with the costs imposed vide order dated 27th May, 2015 and also the fee.

2. The petitioner herein has filed an application under Section 19 of the SARFAESI Act before the Debts Recovery Tribunal-III, Chennai, seeking direction to the respondent Bank to pay certain amount with interest. It appears that on 21st May, 2015, the application was adjourned for two weeks to enable the petitioner to explain the delay. Subsequently, on 27th May, 2015, the application was dismissed, as aforestated with costs. Questioning the correctness of the said order, the petitioner has preferred the instant petition.

3. Heard Mr.T.Ashok Surana, petitioner-in-person and Mr.Jayesh B.Dolia, learned counsel appearing for the Bank.

4. The learned counsel appearing for the Bank fairly submits that the application ought to have been dismissed with reasons in accordance with the legal provisions and also on merit.

5. We have examined the case from all angles. We are not inclined to express any opinion on the merit of maintainability of the application and also the relief sought for by the petitioner.

6. On careful perusal of the facts, as projected by the petitioner, it is evident that the Tribunal has dismissed the application with costs, without adverting to the averments made by the petitioner in his application. We are of the considered view that if an application is made before the Tribunal, the Tribunal is under an obligation to advert to all averments within the frame work of statutory provisions and take a decision in respect of maintainability as well as on the merit of the case, if such an event arises. The dismissal of the application on the ground of maintainability also requires reasons to be recorded. The learned Tribunal has dismissed the application as not maintainable without assigning reasons in a

casual manner with imposition of costs, which may not be warranted at the admission stage itself. If there was an issue of limitation, the same is also required to be discussed and dealt with in accordance with law and on its own merit, which is also missing in this case.

7. Resultantly, we set aside the order dated 27th May, 2015 passed by the Tribunal in the said application, reserving liberty to the petitioner to make a fresh application on the same, if so advised. In the event an application is made for the same relief, the Tribunal is directed to consider the same in accordance with law and take a final decision. This writ petition stands allowed. No costs. Consequently connected miscellaneous petition is closed.

Vvk

Sd/-
Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To

1. The Presiding Officer,
Debts Recovery Tribunal-3,
Chennai,
Spencer Towers, 4th Floor,
770-A Anna Salai,
Chennai-600 002.

2. The Authorised Officer,
Indian Bank,
ARMB 1 Branch,
No.55, Ethiraj Salai,
Madras-600 008.

+2 C.C. To MR.T.ASHOK SURANA, Advocate in SR.NO.52672

+1 C.C. TO MR.AIYAR & DOLIA, Advocate in SR.NO.52761

W.P. No.20694 of 2015

KU(CO)

sd : 08/10/2015