

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.11.2016
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN
W.P.No.30412 of 2016
and WMP Nos.26362, 30291 and 32232 of 2016

M/s.Malar Energy & Infrastructure (P) Ltd.,
rep. by Director,
No.57, 1st Floor, Pantheon Road,
Chennai - 600 008. ... Petitioner

versus

1. Registrar,
Debts Recovery Tribunal-III, Chennai,
Spencer Tower, V Floor,
770-A, Anna Salai,
Chennai - 600 002.

2. Authorized Officer,
Indian Overseas Bank,
Nehru Park Branch,
856-A EVR Periyar Road,
Kilpauk, Chennai - 600 010. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the 1st respondent herein, Registrar, Debts Recovery Tribunal-III, Chennai to number the Application provisionally numbered as S.A.Sr.No.2184 of 2016.

For Petitioner : Mr.T.R.Rajagopal, Sr. Counsel
for Mr.Kaushik N Sharma

For Respondents : Mr.F.B.Benjamin George (for R2)

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

M/s.Malar Energy and Infrastructure Private Limited, borrower has filed an appeal against the notice dated 07.01.2016, issued under Rule 8(1) of the SARFAESI Rules, 2002. Registry of the Debt Recovery Tribunal-III, Chennai, has made certain queries. Check list for SARFAESI Application S.A.Sr.2184/16 dated 11.03.2016 is extracted hereunder.
Sr.No.2184/16 Date: 11.03.2016

Application: M/s.Malar Energy & Infrastructure Pvt Ltd, Egmore, Chennai - 600008

Respondent: IOB, Nehru Park Vs 2 Others

Due Amount Rs.17,41,15,757/- Court Fee:1,00,000 (Fees paid in DRT Madurai)

1	Whether the applicant is competent to file the under Section 17(1) of SARFAESI Act	Yes/No (Fees paid in DRT, Madurai)
2	Whether the application fees deposited as per rule 13(2) of Security Interest (Enforcement) Rules, 2002	Yes/No (Paid in DRT, Madurai)
3	How the jurisdiction is covered	No
4	Whether the application is filed within the Limitation Period	No
5	Whether any Miscellaneous application is filed to condone the delay	Yes
6	Whether the application is filed as per prescribed format	Yes
7	Whether extra copy is furnished	Yes
8	Whether every page of the application is legible and paginated	Yes
9	Whether every page of the application is signed by the applicant	Yes
10	Whether proper index has been provided	Yes
11	Whether the documents in the index are furnished	Yes
12	Whether postal order/DD fr R.5/- is enclosed for vakalat	Yes
13	If documents filed are in languages other than English / hindi whether English Translation is provided	Yes
14	Whether interim relief is sought for	Yes/No
15	Whether CAVEAT petition filed	Yes/No

This SA was filed in DRT, Madurai and returned for want of Jurisdiction & represented in DRT III, Fees already deposited in DRT, Madurai & endorsement made _ and IA fees paid in the DRT III

1. After page No.74, page number to be given for one page.
2. Dates to be mentioned in the index
3. Vakalat filed is Xerox copy

4. All the applicants names to be mentioned in the vakalat
5. Corrections to be carried out in the index.
6. Para 8 details to be mentioned. It is mentioned as 'NIL'.
7. Correction to be carried out in Page 54.
8. This appeal is barred by limitation. This appeal was filed in DRT, Madurai in 23.02.2016. Possession notice is dt.07.01.2016. 45th day is on 21.02.2016 and this appeal was filed on 23.02.2016 in DRT, Madurai so this appeal is barred by limitation.
9. Urgent petition to be filed.
10. 'No Caveat' endorsement to be made by the counsel for applicant.
11. Counsel to clarify as to how R1&R3 have been added as parties in this SA.
12. Blank at Page No.6 of SA to be filled up.
13. Correction to be carried out at Page No.19 of SA
14. Fee details to be filled up. (Page 54)
15. Original possession notice to be filled
16. Blank in SA (Page 3) to be filled up
17. Correction to be carried out at Page No.19 of IA
18. In IA Petition, photocopy only filed
19. IA petition to be signed by the counsel for application.
20. This SA is filed challenging on possession notice dt.7.1.2016 whereas

interim relief prayed against section 14 of SARFAESI Act.
s/d dt 4/4/16

May be returned granting four weeks time for rectifying the defects.

s/d dt 4/4/16 (Kaushik)

Return time four weeks s/d dt. 4/4/16

Complied with issues raised s/d (Kaushik N Sharma)

See the complaints be completed and resubmitted s/d 18/8/16

Counsel for the applicant has represented this SA after compliance of defects.

Return at Sl.No.6,8,15 not complied by the counsel for the applicant.

1. Correction to be authenticated. Correction carried out at page no.63
 2. Appeal is barred by limitation
 3. Relief prayed against 2nd possession notice dt.18.07.2016. Since, this is a fresh cause of action, fresh SA to be filed.
 4. English translation of Tamil documents to be filed
 5. IA filed for condonation of delay in which number of days of delay wrongly mentioned.
 6. Page no.64, to be signed by the applicants
- a. IASR 6835 - IA filed for condonation of delay in

representation

b. IASR 6836 - IA filed for Urgent Petition
s/d 23/8/16

May be returned granted three weeks time. s/d registrar 23/8/16
return-3 weeks s/d
complied with all requirements as stated s/d Kaushik n Sharma
(25/8/16)"

2. When the appeal filed in S.A.Sr.No.2184/2016 and other applications have not been numbered by the Registry of DRT-III, M./s.Malar Energy & Infrastructure Private Limited/borrower, has sought for a writ of mandamus directing the Registry, DRT-III, Chennai, the 1st respondent herein to number the application, provisionally numbered as S.A.Sr.No.2184 of 2016.

3. Record of proceedings shows that while ordering notice in W.P.No.30412 of 2016 on 31.08.2016, a Hon'ble Division Bench of this Court has granted interim stay for a period of eight weeks subject to the condition that the petitioner, making substantial payment towards the outstanding dues, within eight weeks from that day. Impugned order states that the outstanding amount due as on the date of filing of S.A.Sr.No.2184/16 is Rs.17,41,15,757/-.

4. On this day, when the matter is listed for further hearing, it is the representation of the learned counsel for the 2nd respondent bank that no payment has been made. Though, on 31.08.2016, the learned senior counsel for the writ petitioner, had submitted that the petitioner was ready and undertake to make further payment, if eight weeks time is granted, even today, no payment has been made. On the contra, expressing difficulty, application No.32232 of 2016 has been filed seeking extension of time.

5. No order is impugned before us. For certain defects and clarifications, Registry of the DRT-III, Chennai has returned S.A.Sr.No.2184/16. Reading of the check list shows that writ petitioner has sought time for compliance of the defects. There was also a delay in representation and therefore, IASR No.6835 of 2016, has been filed. If according to the writ petitioner, compliance of the defects directed to be rectified by the Registry are not in consonance with law, it is always open to the writ petitioner to request the Registry of DRT-III, Chennai, to place the matter before the tribunal, for arguments and to convince the Tribunal that the defects pointed out by the Registry are unwarranted and there are no defects in filing of the appeal / petition, the defects have been complied with. Instead of approaching the DRT, for appropriate reliefs, the

writ petitioner has sought for a writ of mandamus directing the tribunal to number S.A.Sr. If the contentions of the writ petitioner are to be accepted, then in each and every case, where the Registry of DRT/ this Court/Subordinate Courts/Tribunal, returns the papers, then writ of mandamus can be sought for. Mandamus, is not the remedy for rectification of defects, pointed by the Registry of Courts/Tribunals, to be rectified.

6.While declining to issue the prayer sought for the writ petition, interim order granted on 31.08.2016, is also vacated. Writ petitioner is directed to approach the tribunal for appropriate remedy. Writ petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. Registrar,
Debts Recovery Tribunal-III, Chennai,
Spencer Tower, V Floor,
770-A, Anna Salai,
Chennai - 600 002.

2. Authorized Officer,
Indian Overseas Bank,
Nehru Park Branch,
856-A EVR Periyar Road,
Kilpauk, Chennai - 600 010.

+1cc to Mr.FB. Benjamin George, Advocate, S.R.No.63138

lks (CO)
md(21/11/2016)

W.P.No.30412 of 2016