

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/12/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Writ Petition No.41322 of 2016

1. Captain LV Joseph
 2. Captain A.Perianayagam
 3. Margaret Mary
 4. Ms.Bernadette Mary
 5. Colonel James Susainathan Petitioners
- Vs
1. Lt.Gen.S.A.Cruz & Bar
 2. The Chairman and Managing Director
Indian Overseas Bank
Anna Salai
Chennai 600 002.
 3. The Authorised Officer
Indian Overseas Bank
Ekkattuthangal
Chennai 600 032.
 4. M/s. Arul Constructions
rep. By Mrs.Deepika Vinohar
Chennai 600 004.
 5. Mr.A.Bright Vinohar. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, directing the Hon'ble Debts Recovery Tribunal III, Chennai to consider and decide the implead application filed by the petitioners in I.A.SR.No.7907 of 2016 in S.A.No.226 of 2015, on merits, on the file of the Hon'ble Debts Recovery Tribunal - III, Chennai.

For petitioner ... Mr.Ms.R.Aparna

For respondent ... Mr.F.B.Benjamin George
for R.R.2 and 3.

M/s.K.V.Babu
S.Vasudevan
for R.R.4 and 5.

O R D E R

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

Contending inter alia that the petitioners have 5/6th share in the property, subject matter of SARFAESI proceedings, writ petitioners have filed I.A.SR.No.7907 of 2016 in S.A.No.226 of 2015, praying for a direction to implead them, in S.A.No.226 of 2015 filed by the respondents herein and to decide S.A.No.226 of 2015, on merits.

2. Being aggrieved by the action of the Debts Recovery Tribunal - III, Chennai, in posting the interim application I.A.SR.No.7907 of 2016 along with S.A.No.226 of 2015, for orders, instant writ petition is filed for a writ of mandamus directing the Tribunal, to consider and decide the impleading application filed by the petitioners in I.A.SR.No.7907 of 2016 in S.A.No.226 of 2015, on merits.

3. Earlier, when the writ petition came up for hearing, we permitted the learned counsel for the petitioners to serve notice on the Bank as well as the contesting respondents, who had filed S.A.No.226 of 2015. We also directed the learned counsel for the Bank and the contesting respondents, to produce the record of proceeding of the Tribunal. Record of proceeding dated 28/10/2016, produced before this Court is extracted hereunder:-

"Ld. Counsels appearing for the respective parties are present. Written submissions filed by appellant and R.1 and R.2. Copies served on the other side. Ld. Counsel for R.3 and R.4 undertakes to file written submissions during course of the day into the Registry after serving copies to the other side. Permitted. For consideration of the written submissions and for third party application, orders reserved."

4. Though Mr.K.V.Babu, learned counsel for the respondents 4 and 5 submitted that even at the time, when I.A.SR.No.7907 of 2016, came up for hearing, the Tribunal gave an opportunity to the learned counsel for the proposed parties, to make her submission and thereafter, I.A.SR.No.7907 of 2016 was posted for orders along with S.A.No.226 of 2015, Ms.R.Aparna, learned counsel for the writ petitioners disputes the said submission. She further added that after 21/9/2016, the date on which I.A.SR.No.7907 of 2016 was filed, the case was called on 26/9/2016, 4/10/2016 and 28/10/2016, respectively, and there was no arguments on the impleading application, Mr.K.V.Babu, learned counsel for the respondents 4 and 5 refutes the same.

5. Be that as it may, from the record of proceedings, dated 28/10/2016, we are not able to deduce as to whether any arguments were made in I.A.SR.No.7907 of 2016. The last sentence of the true extract proceedings, dated 28/10/2016, reads that "For consideration of the written submission and for third party application, orders reserved."

6. It is the grievance of the writ petitioners that opportunity of hearing was not provided, despite three adjournments. It is also the contention of the petitioners that they are entitled to 5/6th share, subject matter of SARFAESI proceedings and therefore, they should be heard.

7. Mr.Benjamin George, learned counsel for the respondents 2 and 3 submitted that as per Section 17 of the SARFAESI Act, 2002, any person, including the borrower, can prefer an independent appeal and not entitled for impleadment in pending proceedings. In as much as I.A.SR.No.7907 of 2016, is still pending, on the file of the Debts Recovery Tribunal - III, Chennai, we do not propose, to advert to the rival contentions, as to whether the writ petitioners are entitled to 5/6th share in the subject property, whether they can be impleaded by filing an impleading petition or required to file a statutory appeal, being aggrieved over the action of the Bank under any of the measures taken under sub-section 3 of Section 4 of SARFAESI Act, 2002, when I.A.SR.No.7907 of 2016 is pending, it would not be proper to make any observation on the above aspects.

8. On the facts and circumstances of the case, we are also of the view that no serious prejudice would be caused to the respondents, if the writ petitioners are provided sufficient opportunity to make their submissions in I.A.SR.No.7907 of 2016.

9. In the light of the above discussion, there shall be a direction to the Debts Recovery Tribunal - III, Chennai, to pass final orders in S.A.No.226 of 2015, after deciding

I.A.SR.No.7907 of 2016, on merits and in accordance with law, as expeditiously as possible.

10. Ms.R.Aparna, learned counsel for the writ petitioners, is at liberty to file a memo before the Debts Recovery Tribunal - III, Chennai, setting out the decision of this Court in the instant writ petition. Memo if any filed, be taken on record and the Tribunal is directed to comply with the directions.

11. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1 The Debts Recovery Tribunal III
Chennai

+1cc to Mr.R. Aparna, Advocate, S.R.No.74590
+1cc to Mr.F.B. Benjamin George, Advocate, S.R.No.74596
+1cc to Mr. K.V. Babu, Advocate Sr.No.74748

GJII(CO)
md(24/01/2017)

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