



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2016

CORAM:

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**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN**  
**and**  
**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.P (MD) .No.1895 of 2015

R.Prakasam

... Petitioner

**Vs**

1.The Authorised Officer/The Chief Manager,  
Tamilnad Mercantile Bank Limited,  
280, Madurai Road,  
Virudhunagar.

2.G.Raju  
3.V.Karuppiah

4.The Presiding Officer,  
Debts Recovery Tribunal,  
Madurai.

... Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 4th respondent herein dated 25.8.2014 in S.A.SR.No.5438 of 2013 and quash the same and consequently direct the 4th respondent to take on the file in I.A.NO.1317/13 in SA.SR.No.5438/13.

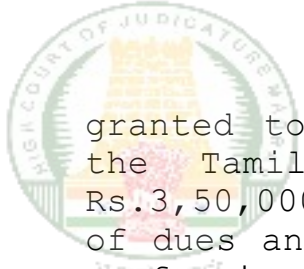
|                |                                                  |
|----------------|--------------------------------------------------|
| For Petitioner | : Mr.V.Sasikumar                                 |
| For R.1        | : Mr.A.R.M.Ramesh                                |
| For R.2&3      | : Mr.V.Meenakshisundaram for<br>Mr.D.Nallathambi |
| For R.4        | : Tribunal                                       |

**ORDER**

**[Order of the Court was made by M.SATHYANARAYANAN, J.]**

By consent, the Writ Petition itself is taken up for final disposal.

2. The petitioner would aver among other things that he stood as a guarantor in respect of the financial assistance



granted to M/s.Ve.En.Ar.Agency, Madurai Road in Virudhunagar by the Tamil Nadu Mercantile Bank Limited, to the tune of Rs.3,50,000/-. The principal debtor committed default in payment of dues and the assets of the petitioner were classified as Non-performing Assets (NPA) on 21.06.2004 and thereafter, the first respondent bank has initiated action under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI'). The petitioner being the guarantor challenged the legality of the proceedings of the Bank before the Debts Recovery Tribunal, Madurai and had the benefit of interim orders regarding tender-cum-auction and sale fixed on 03.01.2008. However, the petitioner did not comply with the conditional order granted by the said Tribunal. The first respondent again issued an auction sale notice dated 18.02.2009 by fixing the tender-cum-auction and challenging the same, the petitioner filed W.P.(MD).No.2048 of 2009 and obtained conditional interim order. The petitioner would claim that though he paid a sum of Rs.1,50,000/- by way of demand draft which was returned by the first respondent bank stating that the sale was concluded on 03.04.2009 in favour of the respondents 2 and 3. The petitioner challenging the violation of the above said interim order passed by this Court moved the Banking Ombudsman, Chennai and also filed W.P.(MD).No.2048 of 2009 before this Court to take on his representation dated 06.04.2009 and in the interregnum period, the first respondent has approached the District Magistrate under Section 14(2) of the Act to take possession of the financial assets and the District Magistrate also passed an order dated 07.06.2010 to take possession of the financial assets. As against the same, the petitioner filed W.P.(MD).No.7626 of 2010 and obtained an order of interim stay on 18.06.2010 and finally, it was dismissed on 22.09.2010 on the ground that the possession of the assets were already taken, whereas, according to the petitioner, he is still in possession and enjoyment of the property in question. Similarly, W.P.(MD).No.4078 of 2009 was also dismissed as not pressed on 31.01.2011 based on the endorsement made by the learned Counsel for the petitioner. Further, W.P.(MD).No.2048 of 2009 was withdrawn by the learned Counsel on 10.02.2011. The Securitization Appeal in S.A.No.1 of 2008 was also dismissed by the Tribunal on 22.02.2010. The petitioner also filed W.P.(MD).No.5773 of 2011 challenging the confirmation of the auction in favour of the respondents 2 and 3 and the same was disposed of, on 01.06.2011, by this Court, with liberty to the petitioner to avail alternative remedy available under the relevant Act and initially for a period of two weeks, the first respondent was restrained from taking further action with regard to the property in question.

2.1. The petitioner would further state that after the sale proceeds, balance amount of Rs.7,44,812/- was sent by the first respondent bank, however, he



refused to accept the same and sent back the demand draft to the first respondent on 19.04.2011 pointing out various irregularities and violations. Thereafter, challenging the sale notice, dated 03.01.2008, the petitioner, filed S.A.SR.No.5438 of 2013 with condone delay of more than 700 days and in paragraph No.7 of the said application, it is stated as follows:-

"7.I humbly submit that though an order has been passed to approach the Hon'ble Tribunal, I fell sick and I got treatment in Kerala and returned to my native place only on January 2012. At that time, the bank officials negotiated with me for not proceedings SARFAESI Appeal in view of the non-taking of the physical possession. But, the first respondent drag on the proceedings and they are trying to take possession. Hence, there is a delay of..... days in preferring the SARFAESI Appeal. The delay is neither wilful nor wanton but for the above said bonafide reasons. If the delay is not condoned, I will be put to irreparable loss and hardship. On the other hand, no prejudice would be caused to the respondents if the delay is condoned. Hence, it is just and necessary that the delay may be condoned."

2.3.The Tribunal, after taking note of the factual aspects of the matter dismissed the condone delay petition vide its order dated 25.08.2014 as not maintainable and challenging the legality of the same, the petitioner came forward to file this Writ Petition.

3. Learned Counsel for the petitioner has drawn the attention of this Court to the judgment of the Hon'ble Supreme Court in **Indian Bank Vs Manilal Govindji Khona, Civil Appeal No.1416 of 2015, dated 03.02.2015**, wherein, it has been held that Section 5 of the Limitation Act is also applicable to the proceedings initiated before the Debts Recovery Tribunal also and in the light of the same, the impugned order warrants interference and prays for appropriate orders.

3. *Per contra*, learned Standing Counsel appearing for the first respondent Bank would submit that though challenge has been made to the sale notice dated 03.01.2008 in the light of the observation made in the order dated 01.06.2011 made in W.A.(MD). No.5773 of 2011, much water has flown under the bridge for the reason that subsequently sale was confirmed in favour of the respondents 3 and 4, who were declared as successful bidders and for the purpose of taking possession, Section 14 of the Act has been invoked and therefore, at this distant point of time, it is not open to the petitioner to contend otherwise and also drawn the attention of this Court to the impugned order, which is challenged



in this Writ Petition to the effect that even at the time of hearing of the petition for condonation of delay, neither the petitioner nor his counsel was present and therefore, prays for the dismissal of this Writ Petition.

4. Mr.V.Meenakshisundaram, learned Counsel appearing on behalf of the auction purchasers, namely, the respondents 2 and 3 would submit that in the auction sale held on 03.04.2009, they became the successful bidders and the petitioner has repeatedly filed Writ Petitions and delayed the process of getting possession of properties and since the affidavit filed in support of the delay petition is bereft of any material particulars, there is no purpose for remanding the matter once again for the tribunal since it is going to be only an empty formality and prays for the dismissal of the Writ Petition with exemplary costs.

5. This court has considered the rival submissions and perused the materials available on record.

6. In the light of the above factual position and also the judgment reported in **2015 8 scale 509 equivalent to 2016-2-L.W.97, Baleshwar Dayal Jaiswal Vs. Bank of India and others**, that the provisions of Section 5 of the Limitation Act is applicable to the proceedings of the Debts Recovery Tribunal as well as Debts Recovery Appellate Tribunal, the moot question arises for consideration in this Writ Petition is whether the petitioner has properly explained the delay in the affidavit filed in support of the condone delay application filed in S.A.SR.No.5438 of 2013. This Court, while disposing of the Writ Petition in W.P.(MD). No.5773 of 2011 filed by the petitioner, has granted liberty to him to avail the alternative remedy and also protected his interests for a period of two weeks. Admittedly, the petitioner did not choose to avail the said remedy and approached the Debts Recovery Tribunal on 15.07.2013 praying for condonation of delay of over 700 days in filing the Securitization Appeal and in paragraph No.7 of the affidavit filed in support of the condone delay application, the petitioner has simply stated that he has fallen sick and got treatment in Kerala and thereafter, according to the petitioner, negotiations took place between the official of the first respondent and the petitioner, as such, there was a delay. The said stand cannot be countenanced in law, for the reason that admittedly, the petitioner did not state about the nature of the illness suffered by him and in which part of the place in Kerala, he took treatment and the reason assigned by him in the condone delay application, is totally bereft of any particulars. It is also pertinent to point out at this juncture that the delay is more than 700 days and the petitioner is under obligation to put forth proper, tenable and sufficient reasons for condonation of such huge delay and admittedly, in paragraph No.7 of the affidavit, no sufficient reason, whatsoever, has been assigned by



the petitioner. Therefore, this Court is of the considered view that the remanding the matter once again to the tribunal for considering the said application, will serve no purpose and it can be termed as only an empty formality and at any rate, this Writ Petition deserves dismissal.

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7. In view of the foregoing reasons and observations, this Writ Petition is dismissed. However, in the facts and circumstances, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

**To**

1. The Authorised Officer/The Chief Manager,  
Tamilnad Mercantile Bank Limited,  
280, Madurai Road,  
Virudhungan.
2. The Presiding Officer,  
Debts Recovery Tribunal,  
Madurai.

- + 1 CC TO Mr.A.R.M.RAMESH, ADVOCATE IN SR No. 63408
- + 1 CC TO Mr.V.SASIKUMAR, ADVOCATE IN SR No. 63440
- + 1 CC TO Mr.D.NALLATHAMBI, ADVOCATE IN SR No. 63905

SSM

TE/GSV-PM : 22/11/2016 : 5P/6C

W.P(MD) .No.1895 of 2015  
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