

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2017

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The Honourable **Mr.HULUVADI G.RAMESH,**
ACTING CHIEF JUSTICE
and

The Honourable **Mr.Justice M.SUNDAR**

W.P.NO.5838 OF 2017

Syed Anwar Jamal

... Petitioner

versus

1. Indian Overseas Bank,
Periyar Nagar Branch,
Chennai – 600 082.
2. The Registrar,
Debts Recovery Tribunal-III,
Chennai.
3. The Recovery Officer,
Debts Recovery Tribunal-III,
Chennai.
4. Presiding Officer,
Debts Recovery Tribunal-III,
Chennai.
5. Mr.Basheer Ebrahim

6. Mr.N.Mariappan

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to direct the 4th respondent to hear the appeal in Appeal Sr.No.1616 of 2017 on the file of the Debts Recovery Tribunal III, Chennai.

For Petitioner: Mr.Avinash Watwani

ORDER

(Order of the Court was made by The Acting Chief Justice)

This Writ Petition has been filed by the petitioner, praying for the issuance of a Writ of Mandamus, to direct the 4th respondent to hear the appeal in Appeal Sr.No.1616 of 2017 on the file of the Debts Recovery Tribunal III, Chennai.

2. It appears that in connection with the property in question, way back in the year 1988, the second respondent bank lent money to the predecessor in title and to secure the outstanding dues under the loan accounts of M/s.General Agencies, the mortgage deed was executed and the same was extended periodically. The father of the petitioner had purchased

the said property in the year 1999 without verifying the encumbrance on the property. Since the borrower committed default, the bank filed O.A.No.427 of 2007 before the Debts Recovery Tribunal and obtained final order on 10.01.2008. Thereafter, in terms of the final order, Recovery Certificate was also issued and the property was attached by the Recovery Officer by following the procedure contemplated under the Rules and later sale proclamation was also issued. Later the property was brought for auction sale and the sale was conferred in favour of the 8th respondent. The petitioner as well as his mother and brother filed an application to set aside the sale before the Recovery Officer and those applications were disposed of by a common order dated 25.04.2011. In the meanwhile, the petitioner filed a petition on the ground that the Recovery Officer has not entertained an application filed by him and has also raised some objections with regard to the said stand of the Recovery Officer. Since there was no proper response, the petitioner moved a Writ Petition before this Court in W.P.No.9476 of 2016.

3. By order dated 10.06.2016, this Court while dismissing

the above said Writ Petition, directed the Recovery Officer to consider the objections/queries raised by the petitioner, subject to the petitioner depositing a sum of Rs.15 lakhs within a period of one month.

4. Pursuant to the above direction, it appears that the petitioner had deposited the amount and the learned Recovery Officer, having heard the petitioner and on consideration of the objections/queries raised by the petitioner, passed orders dated 14.2.2017 dismissing the petition filed by the petitioner. Aggrieved by the same, the petitioner preferred an appeal before the Debts Recovery Tribunal III Chennai and it is at SR stage. In such circumstances, apprehending execution of the Warrant by the Advocate Commissioner, which, according to the petitioner, was sought to extend to take physical possession of the property even before expiry of the statutory period of appeal, the petitioner has come forward with the present Writ Petition, seeking the relief as stated above.

5. Considering the facts and circumstances and also the fact that the petitioner has already deposited Rs.15 lakhs and as the matter is at SR stage, the 4th respondent/Debt Recovery

Tribunal III is directed to consider the appeal, if it is otherwise in order and dispose of the appeal, after affording opportunity to all concerned including principal borrower and after impleading the Advocate Commissioner as party, by passing appropriate orders in accordance with law and on merits as expeditiously as possible. Till the final orders are passed, there shall be no coercive steps in respect of taking physical possession of the subject property.

With the above direction, this Writ Petition is disposed of.
No costs. Consequently, connected CMP is closed.

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(H.G.R., A.C.J.) (M.S., J.)
09.03.2017

To

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Debts Recovery Tribunal-III,

Chennai.

HULUVADI G.RAMESH, A.C.J.

and

M.SUNDAR, J.

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