

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.32967 of 2017
and WMP No.36358 of 2017

M/s.Thilak International,
Rep. by its Partner,
D.Joseph Raja. Petitioner

vs.

1. The Debts Recovery Appellate Tribunal,
55, Ethiraj Saalai,
Chennai.

2. UCO Bank,
Rep. by the Authorised Officer,
Regional Office,
Chennai - 600 024.

3. UCO Bank,
Tuticorin Branch,
Rep. by its Branch Manager,
208, C.D., V.E.Road,
Tuticorin - 628 003.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, forbearing the respondent 2 and 3 from proceeding further pursuant to the order of the Debts Recovery Tribunal, Madurai in T.S.A.No.60/2007 dated 17.11.2017, pending disposal of the appeal in A.I.R.No.745 of 2017, on the file of the Debts Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.J.Antony Jesus

ORDER

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

Being aggrieved by the order made in TSA No.60 of 2007 dated 17.11.2017 on the file of the Debts Recovery Tribunal, Madurai, petitioner has filed an appeal in AIR No.745 of 2017 before the

Debts Recovery Appellate Tribunal, Chennai. Petitioner has sought for stay of said order. But the tribunal, has ordered notice returnable on 02.01.2018. Contending inter alia that the bank, would take emergent steps for taking physical possession of the property, and left with no other alternative, instant writ petition, has been filed for a mandamus the respondents 2 and 3, not to proceed further, pursuant to the order of the Debts Recovery Tribunal, Madurai in TSA No.60 of 2007 dated 17.11.2017, pending disposal of the appeal in AIR No.745 of 2017, on the file of the Debts Recovery Appellate Tribunal, Chennai.

2. Supporting the prayer sought for Mr.J.Antony Jesus, learned counsel for the petitioner submitted that the bank has filed an application under Section 14 of the SARFAESI Act, 2002, seeking assistance, for taking possession and that if the said application is ordered, dispossession of the petitioner, pending appeal, would cause hardship and therefore, prayed to entertain the writ petition.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. As stated supra, final order made in TSA No.60 of 2007 dated 17.11.2017, has been challenged in AIR No.745 of 2017, on the file of the Debts Recovery Appellate Tribunal, Chennai.

5. Upon considering the averments and material on record, Debts Recovery Appellate Tribunal, Chennai, has ordered notice to the respondents therein, returnable by 02.01.2018. Though, the petitioner has contended that by resorting to Section 14 of the SARFAESI Act, 2002, bank would take physical possession of the property, neither the averments in support of the instant writ petition nor the type set papers filed along with the instant writ petition indicate, that the bank has moved to the District Collector-cum-District Magistrate, for assistance.

6. When the petitioner has already filed an application for stay of the order made in TSA No.60 of 2007 dated 17.11.2007 and when the same is pending on the file of the appellate Court, mandamus sought for cannot be issued against respondents 2 and 3. Further, it is always open to the petitioner to move the appellate forum and seek for advancement of hearing of the stay petition.

7. Though, Mr.J.Antony Jesus, learned counsel for the petitioner made submissions, on the merits of the challenge to TSA No.60 of 2007 dated 17.11.2017, the same cannot be countenanced, as the correctness of the same, is under challenge, before, the appellate forum in AIR No.745 of 2017.

There cannot be two parallel proceedings on the same issue. There is no merits in the instant writ petition, warranting interference.

8. For the abovesaid reasons, the instant Writ Petition is dismissed. No Costs. Consequently, connected Writ Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

dm/ars

To

1. The Debts Recovery Appellate Tribunal,
55, Ethiraj Saalai,
Chennai.
2. The Authorised Officer,
UCO Bank,
Regional Office,
Chennai - 600 024.
3. The Branch Manager,
UCO Bank,
Tuticorin Branch,
208, C.D., V.E.Road,
Tuticorin - 628 003.

+1 CC to Mr.J.Antony Jesus, Advocate sr 90340

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KAN(CO)
SP(18/01/2018)

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