

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.33562 of 2017
and WMP No.37085 of 2017

P.Kunjithapatham

... Petitioner

vs.

1. The Authorised Officer,
PNB Housing Finance Limited,
(A Wholly owned subsidiary of Punjab National Bank),
No.14, Sudharsan Building, Whites Road,
Royapettah, Chennai.

2. PNB Housing finance limited,
(A Wholly owned subsidiary of Punjab National Bank),
149th Floor, Antriksh Bhavan,
No.22, Kasturba Gandhi Marg,
New Delhi - 110 001.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records of the first respondent in pursuant to the issuance of the notice dated 10.11.2014 and quash the same as illegal and void abinito and consequently directing the respondents to handover the petitioner property namely Flat NO.C, Defense Enclave, 2nd Street, Muthapudupet IAF, Avadi, Chennai which has been locked illegally by the respondent on 10.11.2014 without following the due process of law to the petitioner.

For Petitioner : Mr.A.Kalaivanan

ORDER

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

Though, possession notice dated 10.11.2014 issued by PNB Housing Finance Limited, Chennai, is challenged on various grounds, this Court is not inclined to entertain the writ petition for two reasons. Firstly, as per Section 17 (1) of the SARFAESI Act, any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13

taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.

2. As per Section 13(4) of the SARFAESI Act, 2002, in case, the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

PROVIDED that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: PROVIDED FURTHER that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

3. Statute enables the petitioner to challenge the measures taken by the secured creditor under Section 13(4) of the SARFAESI Act, by filing an application under Section 17 of the Act, within 45 days from the date on which such measure had been taken.

4. Writ petitioner has not filed any application under Section 17 of the Act within the period provided therefor, under the statute. However, chosen to file the instant writ petition after nearly three years from the date of issuance of possession notice.

5. The petitioner who had failed to file an application under Section 17 of the SARFAESI Act, atleast is expected to file a writ petition, within a reasonable time provided there is a cause for entertaining such petition. Laches or reasonable time

are not defined under any Statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another.

6. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.

(i) The words "reasonable time", as explained in *Veerayeeammal v. Seeniammal* reported in 2002 (1) SCC 134, at Paragraph 13, is as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's *The Law Lexicon* it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

7. Laches on the part of the petitioner is per se apparent. Reference can also be made to few decisions of the Hon'ble Supreme Court, where inordinate delay and laches, on the part of the litigant, in approaching the Court, has been disapproved:

(i) In *State of M.P., v. Nandlal Jaismal* reported in 1986 (4) SCC 566, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under

Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.

(ii) In *State of Maharashtra v. Digambar* reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraphs 12, 18 and 21, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like.

Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 5 PC 221)

thus :

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy."

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

(iii) In *State of Rajasthan v. D.R. Laxmi* reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(iv) In *Chairman, U.P. Jal Nigam and another v. Jaswant Singh* reported in AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions on the aspect of delay, at Paragraph 13, held as follows:

"13.....Therefore, whenever it appears that the

claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

(v) While dealing with a belated claim and filing of a Writ Petition on the basis of the order obtained in some other Writ Petitions, the Hon'ble Supreme Court in M/s.Rup Diamonds and Ors. v. Union of India and Ors., reported in (1989) 2 SCC 356, observed that those people who were sitting on the fence till somebody else took up the matter to the court for refund of duty, cannot be given the benefit. In that context, Their Lordships held as follows:

"Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring the present writ petition which is brought after a year after the first rejection. As observed by the Court in Durga Prasad case, the exchange position of this country and the policy of the government regarding international trade varies from year to year. In these matters it is essential that persons who are aggrieved by orders of the government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition. Therefore, these delays are sufficient to persuade the Court to decline to interfere. If a right of appeal is available, this order rejecting the writ petition shall not prejudice petitioners' case in any such appeal."

8. In the light of the above discussion, we answer the first issue that the petitioner has been lethargic and instant writ petition is hit by laches.

9. Secondly, bank has issued auction notice, which is stated to have been challenged. Payments made subsequent to the issuance of possession notice dated 10.11.2014, cannot be taken into consideration, for challenge to the possession notice, issued much earlier.

10. For the reasons stated supra, there are no merits in the

writ petition, warranting interference. Hence, the writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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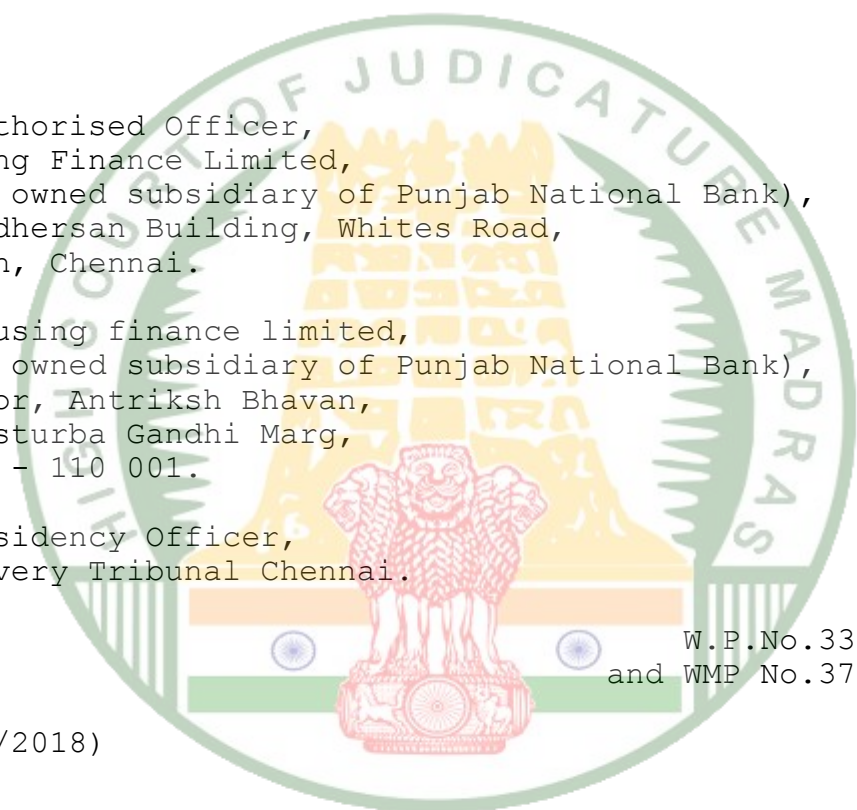
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3.The Presidency Officer,
DebtRecovery Tribunal Chennai.

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GMI (CO)
RRK(30/01/2018)

The seal of the Madras High Court is a circular emblem. It features a central golden temple gopuram (tower) with a red lion capital of Ashoka in front of it. The words "JUDICATURE MADRAS" are written in a semi-circle at the top. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is inscribed in Devanagari script.

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