IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.02.2017
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

Writ Petition No.1951 of 2017
and
W.M.P.No.1938 of 2017

K.Periasamy .... Petitioner

vs.

1.The Debts Recovery Appellate Tribunal at Chennai
Rep. by its Chairperson
4th Floor, Indian Bank Building
Commander In Chief Road
Egmore, Chennai - 600 008

2.The Debts Recovery Tribunal at Madurai
Rep. by its Presiding Officer, Madurai

3.The Authorised Officer
Indian Bank
No.5F, Bharathiar Salai
Jenne Plaza 3rd Floor
Cantonment, Tiruchirapalli - 620 001

4.Mrs.Nallammal
W/o.Karuppannasamy

5.K.Jamruth

6.S.Kuppusamy .... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, for a writ of certiorarified Mandamus, calling for the entire records ending with orders dated 20.10.2016 made in MA (SA) No.487/2010, on the file of Debts Recovery Appellate Tribunal at Chennai confirming the order dated 23.06.2010 in IA No.1235 of 2010 on the file of Debts Recovery Tribunal at Madurai and quash the same and allow the said IA and direct the second respondent to take the appeal filed by the petitioner on its file and decide the same on merits.

For Petitioner : Mr.S.D.S.Phillip
For Respondents : Mr.M.Praveenkumar
for Mr.P.V.Muralidharan for R3

ORDER
(Made by M.GOVINDARAJ, J)

The present writ petition has been filed against the order passed by the Debts Recovery Appellate Tribunal, Chennai in MA (SA) No.487/2010 dated 20.10.2016 confirming the order of the Debts Recovery Tribunal dated 23.06.2010 made in I.A.No.1235/2010, dismissing the application to condone the delay of 129 days in preferring the appeal in SA SR No.5168/2009 on the file of Debts Recovery Tribunal, Madurai.

2. The writ petitioner is the borrower and he availed loan from the third respondent for his business. Due to default in repayments, a demand notice dated 29.05.2008 under Section 13(2) of the SARFAESI Act, 2002, has been issued, for recovery of a sum of Rs.4,79,592/-, due as on 30.04.2008. Since the writ petitioner failed to repay the same, a possession notice under Section 13(4) of the SARFAESI Act, 2002, was issued on 20.10.2008. Thereafter, a sale notice was issued on 08.12.2008. Sale consists of two properties of which, one was purchased by the mother of the writ petitioner, namely the 4th respondent herein and the another property was purchased by the 5th respondent herein. The property which had larger extent was sold for a higher price and the property that had smaller extent, was sold for a lesser price.

3. It is the further contention of the writ petitioner that he has challenged the sale by way of a suit before the Civil Court. When he was informed that suit is not maintainable, he approached the Debts Recovery Tribunal. For this purpose, he preferred an appeal before the Debts Recovery Tribunal, Madurai. By the time he filed the appeal, there was a delay of 129 days and the Debts Recovery Tribunal, Madurai, by an order dated 23.06.2010 in I.A.No.1235/2010, rejected the prayer for condoning the delay. Against which, the writ petitioner filed an appeal before the Debts Recovery Appellate Tribunal, Chennai in MA (SA) No.487/2010 and the Debts Recovery Appellate Tribunal, Chennai also rejected the same, by its order dated 20.10.2016. Hence, the present writ petition has been filed by the petitioner.

4. The writ petitioner has averred that he was not well during the period and that he has approached the civil court for challenging the order. The respondent bank has contended that the writ petitioner has come out with two different reasons viz.

he was not well and on the other hand, he has approached the civil court. Either one of the statement should be true. The writ petitioner has approached the court with unclean hands and therefore, in the absence of sufficient reasons for the delay, the petition shall not be accepted.

5. Tribunals below accepted the contention of the respondent bank and held that, in support of his averment, the writ petitioner has failed to produce any document, like medical certificate and also failed to explain the specific incidences, which led the loss in business, which prevented him to approach the court in time. Tribunals below have held that the writ petitioner had knowledge about the dues and recovery proceedings right from the beginning and therefore, in the absence of specific averments, not supported by documents, appeal was considered to be time barred and no sufficient reasons are available for condoning the delay. Accordingly, the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal, have dismissed the applications.

6. We have heard the learned counsel for the petitioner as well as the respondent bank.

7. It is not in dispute that the writ petitioner's properties were sold in auction. It is also not disputed that the larger extent of property was sold for a higher price and the smaller extent of the property was sold for a lesser price. The factual disputes have not been addressed by the Tribunal. On the factual aspects of the matter, this court considers that writ petitioner has some substantial issue to be decided by the Tribunal.

8. The writ petitioner states that he has been advised to file a suit before the civil suit. It is the contention of the learned counsel for the writ petitioner that he was wrongly advised to approach the civil court and for the mistake of the lawyer in giving wrong advice, a litigant shall not be penalised. Writ petitioner has approached the civil court within the limitation that is prescribed for filing an appeal before the Debts Recovery Tribunal.

9. Be that as it may, it is also stated that he was suffering from some illness and had suffered loss in the business. It is obvious that the writ petitioner had suffered business loss and lost his property through auction. Therefore, in the interest of justice, an opportunity shall be given to the person who bonafide approaches the forum. However taking a decision on the material issue is left open for the consideration of the Tribunal.

10. Considering the matter on facts, this court is of the opinion that instead of deciding the matter on technicalities, it is better to afford an opportunity to the litigant to get the matter decided on substantial issues. Therefore, this court is inclined to set aside the order passed by the Debts Recovery Appellate Tribunal dated 20.10.2016 confirming the order of the Debts Recovery Tribunal dated I.A.No.1235/2010 in SA SR No.5168/2009 dated 23.06.2010 on the file of Debts Recovery Tribunal, Madurai. However, considering the process of litigation, which has been continuing for long and considering the time consumed for the bank in contesting the issue, we deem it appropriate that a sum of Rs.10,000/- is awarded as cost for condoning the delay in filing the appeal by the writ petitioner.

In the result, the writ petition is allowed. The order of the Debts Recovery Appellate Tribunal, Chennai in MA (SA) No.487/2010 dated 20.10.2016 confirming the order of the Debts Recovery Tribunal, Madurai dated 23.06.2010 made in I.A.No.1235/2010 in SA SR No.5168/2009, is set aside on payment of a cost of Rs.10,000/- to the respondent bank by the writ petitioner. The cost directed, is tendered by the learned counsel for the petitioner, which was received and acknowledged by the learned counsel for the respondent bank. Learned counsel for the petitioner is directed to file a Memo setting out the facts before the Debts Recovery Appellate Tribunal and on such filing of Memo, the Debts Recovery Appellate Tribunal, is directed to number the appeal and decide it on merit, within a period of three months from the date of receipt of a copy of this order. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Debts Recovery Appellate Tribunal at Chennai
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Rep. by its Presiding Officer, Madurai

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+1cc to Mr.P.V. Muralidhar, Advocate, S.R.No.10953
+2cc to Mr.S.D.S. Phillip, Advocate, S.R.No.10918

rv(CO)
md(24/03/2017)

W.P.No.1951 of 2017