

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE Tmt.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.3406 of 2012

and

M.P.No.1 of 2012

The Authorised Officer
State Bank of India
Ootacamund - 1

.. Petitioner

VS

1.Irane Isabella

2.P.V.Srinivasan

3.R.Karthikeyan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India,
against the impugned order dated 18.07.2012 made in S.A.No.72 of 2010
by the Debts Recovery Tribunal, Coimbatore.

For Petitioner : Mr.Ilaya Rajkumar
for M/s.Ramalingam and Associates

For Respondents : Mr.V.Bhiman

ORDER

(Made by **S.MANIKUMAR, J.**)

Inviting the attention of this court to the date, 14.02.2012, on which S.A. No.72 of 2010 was finally heard, __.02.2012, the date on which the bank filed the written submissions, filing of I.A. No.622/2012, to advance the hearing of the case S.A. No.72/2010, to 16.07.2012, and submissions made by the applicant, in person, and 18.07.2012, the date on which S.A. No.72 of 2010 was disposed of, Mr.Ilaya Rajkumar, learned counsel for the petitioner, submitted that the then Debts Recovery Tribunal, Coimbatore, has not followed the procedure contemplated in Section 17 of the SARFAESI Act.

2. Though, learned counsel for the petitioner further submitted the direction passed against the petitioner, by the then DRT is erroneous and prayed for reversal of the order impugned, we are not inclined to do so for the reason that DRT, Coimbatore, has found that reopening of the case, was unnecessary, and so saying, dismissed I.A.No.622/2012, in limini.

3. Perusal of the order impugned before us also shows that the then DRT, has not taken note of any of the submissions made, in person

and therefore, motive attributed against DRT, Coimbatore, is without any basis and hence rejected.

4. Another ground of challenge, in the instant Civil Revision Petition, by the bank, is that when restitution of property was found not feasible, DRT, Coimbatore, ought not to have directed the bank to compensate the respondent, to pay a sum of Rs.3,25,000/- as on the date of confirmation of sale i.e. 21.01.2009.

5. Bank has also assailed the correctness of the order of the DRT, Coimbatore, imposing a huge cost of one lakh, to be paid, to the guarantor/respondent.

6. Per contra, Mr.V.Bhiman, learned counsel for the guarantor/1st respondent submitted that being aggrieved by the directions of DRT, Coimbatore to the bank, to make compensation of Rs.3,25,000/- instead of restitution of the property, the guarantor/1st respondent has filed an appeal in R.A. (S.A.) No.53 of 2012 (AIR No.819/2012) before the Debts Recovery Appellate Tribunal, Chennai, and that in the above proceedings, bank has entered appearance. Learned counsel for the guarantor/1st respondent further submitted that R.A. (SA) No.53/2012 is

posted for final hearing on 21.09.2017.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. In the foregoing paragraphs, we have already held that the allegation of malafide attributed to DRT, Coimbatore, on the aspect of reopening of the case, is baseless and hence rejected. Contentions of the guarantor/respondent, is that R.A. (SA) No.5/2012 is pending on the file of the DRAT, Chennai, on the issues, that the Tribunal ought to have restored the property, back to the guarantor/1st respondent and that the Tribunal ought not to have issued any direction to the bank, to pay a sum of Rs.3,25,000/- being more than market value, are not disputed. Issues, are pending consideration, before the DRAT, Chennai, before the appellate forum in R.A. (S.A.) No.53/2012.

9. In the instant civil revision petition, bank is aggrieved over the directions to pay a sum of Rs.3,25,000/- and cost of Rs.1,00,000/-. In R.A.(SA) No.53/2012, and the guarantor/1st respondent is also aggrieved over the directions of DRT, Coimbatore, to pay Rs.3,25,000/- instead of restitution.

10. Considering the rival contentions, if DRAT, Chennai, has to come to the conclusion that restitution ought to have been ordered by the Tribunal, then the latter portion of the order of the Tribunal, in all probabilities, require to be set aside.

11. Having regard to the fact that the bank has approached this court, directly under Article 227 of the Constitution of India, giving a go by to the alternative and efficacious remedy, under Section 18 of the SARFAESI Act, 2002, and having regard to the fact that direction to repay has been questioned in the revision petition, in the interest of justice, and to have a final decision to all the rival contentions raised before the appellate forum, DRAT, Chennai, in exercise of powers under Article 227 of the Constitution of India, we deem it fit to permit the bank, to raise the issue, relating to payment of Rs.3,25,000/- in R.A. (SA) No.53/2012, pending on the file of the DRAT, for which Mr.V.Bhiman, learned counsel for the guarantor/respondent has no objection. Notwithstanding the consent, DRAT, Chennai, can address the issue as to whether bank can seek for deletion of the portion of the order, directing repayment.

12. As the subject matter, restitution/direction to the bank to pay, is pending before DRT, Coimbatore, there cannot be any parallel

proceedings, in this court, on the same issue. Bank is at liberty, to make submissions justifying the correctness of the procedure taken for auctioning the property, before the appropriate forum. On the facts and circumstances of the case, petitioner/bank is at liberty, to file an appeal under Section 18 of the SARFAESI Act, 2002, with an application to condone the delay in filing the appeal, within three weeks from the date of receipt of a copy of this order.

13. Order impugned before us is passed on 18.07.2012. Civil Revision Petition has been filed on 11.09.2012, within the statutory time of filing an appeal, under Section 18 of the SARFAESI Act, 2002. Civil revision petition is pending since 18.09.2012. While filing an application for condoning the delay, petitioner is at liberty to explain that revision petition filed, was pending in this court from 18.09.2012 till disposal and the petitioner is at liberty to invoke section 14 of the Limitation Act, which reads thus.

14. Exclusion of time of proceeding bona fide in court without jurisdiction –

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of the appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and

is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court of other cause of a like nature.

If any application is filed explaining sufficient cause for the delay in approaching DRAT, Chennai, the same shall be considered favourably in the light of the statutory provisions stated supra, considering the facts of this case, cost of Rs.1,00,000/-, imposed is set aside.

With the above observation, civil revision petition is partly allowed. There shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

[S.M.K., J.] [V.B.S., J.]
22.08.2017

Index: Yes/No.
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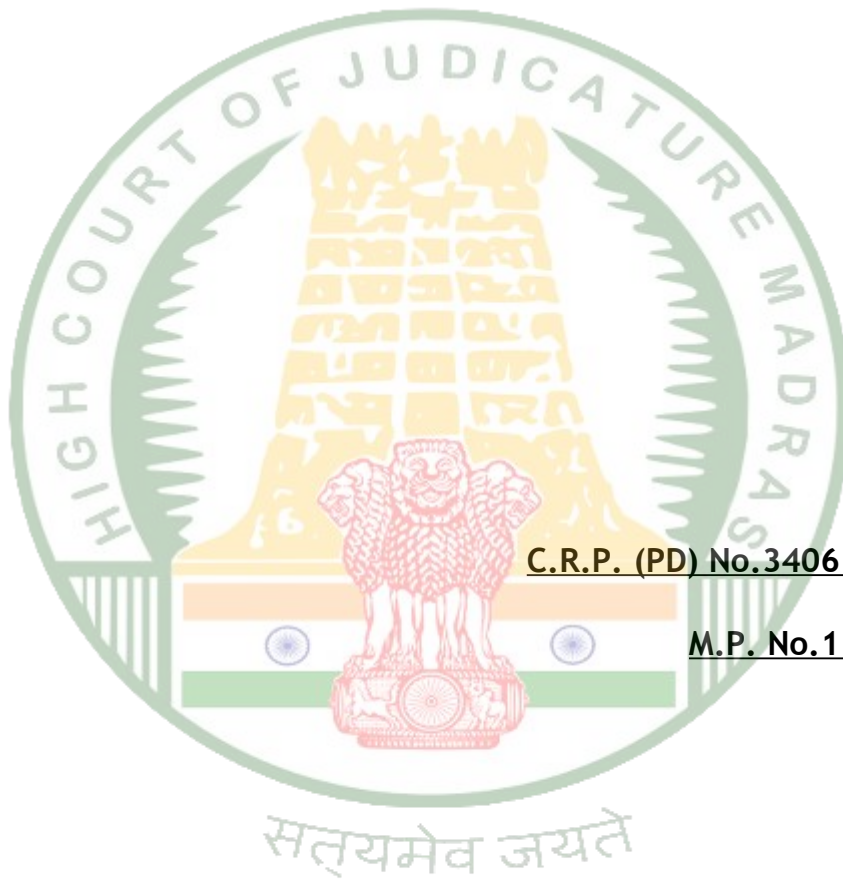
To
The Registrar
Debts Recovery Appellate Tribunal
Chennai.



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