



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2017

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CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

W.P.(MD)Nos.2788 and 2789 of 2014
and
M.P.(MD)Nos.1 and 1 of 2014

G.Gandhimathi : Petitioner in W.P.(MD)No.2728 of 2014
N.S.Murugan : Petitioner in W.P.(MD)No.2729 of 2014

Vs.

1. The State Bank of India,
Palayamkottai Branch,
41-C, Thiruvananthapuram Road,
Palayamkottai-627 002.
2. M/s Sahe Cements Ltd.,
Thottakudi Village,
Maruthankulam,
Nanguneri Taluk,
Tirunelveli District.
3. The Recovery Officer,
Debt Recovery Tribunal,
3rd and 4th floor, Kalyani Towers,
4/162, Madurai-Melur Road,
Uthangudi, Madurai.

: Respondents in both petitions

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent herein dated 17.01.2014 in I.A.Nos.30 and 33 of 2014 in RP.No.18 of 2007 in DRC No.429 of 2001 and quash the same and consequently direct the third respondent to consider the petition filed by the petitioner on merits after conducting fresh enquiry by restoring the petitions



For Petitioner
in both petitions

: Mr.C.Vakeeswaran

For Respondents
in both petitions

: Mr.S.Sethuraman
for R.1
: No Appearance
for R.2 and R.3

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COMMON ORDER

[Order of the Court was delivered by T.S.SIVAGNANAM, J.]

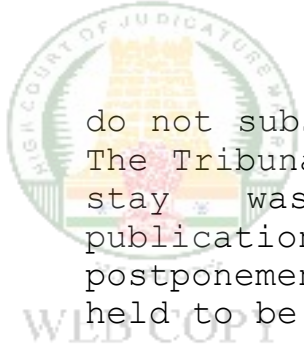
Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the Bank.

2. The petitioners in these writ petitions are the borrowers of loan from the first respondent Bank. Challenging the order passed by the Debt Recovery Tribunal, dated 17.01.2014, they have filed these petitions for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the third respondent herein dated 17.01.2014 in I.A.Nos.30 and 33 of 2014 in RP.No.18 of 2007 in DRC No.429 of 2001 and quash the same and consequently direct the third respondent to consider the petitions filed by the petitioners on merits after conducting fresh enquiry by restoring the petitions to file.

3. When the petitions were taken up before the Debt Recovery Tribunal, as the postponed date of sale of petitioners' properties was fixed on 22.01.2014 vide the RO's order dated 26.12.2013, the Tribunal before going into the merits of the case, perused the records and it came to light that the conditional stay granted by the Debt Recovery Tribunal, Madurai dated 27.12.2013 was in force upto 10.01.2014 and resultantly, the responent Bank had also kept the publication of RO's postponement order of sale dated 26.12.2013 in the Newspaper, in abeyance. Further the Tribunal observed that any postponement order of sale in this matter should have been issued only after the due dated ie., 10.01.2014 to bear legal sanctity and in the absence of any such order, there will not be any force in conducting the sale on the postponed dated ie., on 22.01.2014. Therefore, the Tribunal held that no action is warranted on the interlocutory petitions filed by the petitioners and thus the petitions have become infructuous. The respondent Bank was granted liberty to go for fresh sale by obtaining fresh sale proclamation from the Recovery Officer.

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4. Though the reasoning assigned by the Tribunal is proper, we



do not subscribe to the ultimate order passed in the applications. The Tribunal was correct in holding that when there is an order of stay was not in operation, no purpose would be served for publication of postponement order of sale. If that is so, the postponement order of sale, though prepared, it should have been held to be unenforceable.

5. In any event, by efflux time, there has been subsequent development and in view of the submission made by the learned Counsel for the petitioners that the settlement talks are going on, this Writ Petition is closed giving liberty to the petitioners to raise all the contentions if and when need arises. No costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

+ 1 CC TO Mr.S.SETHURAMAN, ADVOCATE IN SR No. 52536
+ 1 CC TO Mr.C.VAKEESWARAN, ADVOCATE IN SR No. 52547

SSL

TE/JC/SAR-IV : 27/04/2017 : 3P/3C

W.P. (MD) Nos. 2788 and 2789 of 2014
and
M.P. (MD) Nos. 1 and 1 of 2014
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