

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 21.06.2017

CORAM:

THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE**AND****THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**

WEB COPY

W.P(MD)No.20842 of 2015
and M.P. (MD) Nos.1 and 2 of 2015

M.V.Jai Kavithaa

... Petitioner

Vs.

- 1.The Authorised Officer,
Syndicate Bank, Regional Office,
Claret Plaza, Melakkal Main Road,
Kochadai, Madurai - 625 010.
- 2.M/s.Syndicate Bank,
Represented by its Senior Manager,
SRN Tower,
No.208/1, 1st Cross Street,
Sengunthapuram, Karur - 639 002.
- 3.M/s.Morvi Exports,
NH 7, New Madurai Bye Pass Road,
Represented by its Proprietor,
S.R.Manickavasagam
- 4.S.R.Manickavasagam
- 5.Presiding Officer,
Debts Recovery Tribunal, Madurai,
III & IV Floor, Kalyani Towers,
4/162, Madurai - Melur Road,
(Near Meenakshi Mission Hospital),
Uthangudi PO, Madurai - 625 107.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records comprised in the orders of the Respondent No.5 dated 24.06.2015 passed in S.A.No.182 of 2015 and the order dated 29.07.2015 passed in I.A.No.1292 of 2015 in S.A.No.182 of 2015 and quash the same and consequently direct the Respondent No.5 to consider and pass orders on the I.A.No.1292 of 2015 in S.A.No.182 of 2015 on merits and upon due consideration of materials on record.

For Petitioner : Mr.K.Govindarajan

For 1st Respondent : Mr.K.Gokul
for Mr.P.Jeyaraman

For Respondents 2 to 5 : No appearance

**ORDER**

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

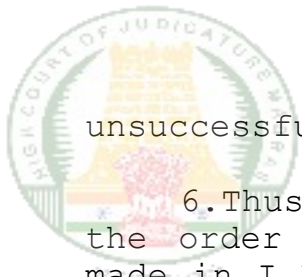
Heard Mr.K.Govindarajan, learned counsel for the petitioner and Mr.K.Gokul, learned counsel appearing for Mr.P.Jeyaraman, learned Standing counsel for the respondent bank.

2.The petitioner has filed this Writ Petition challenging the orders passed by the Debts Recovery Tribunal, Madurai dated 24.06.2015, passed in S.A.No.182 of 2015 and the order dated 29.07.2015 passed, in I.A.No.1292 of 2015 in S.A.No.182 of 2015 and to direct the Debts Recovery Tribunal to consider and pass orders on the above I.A.No.1292 of 2015 on merits.

3.Learned counsel appearing for the petitioner submitted that the petitioner is not pressing the writ petition insofar as it seeks to quash the order dated 24.06.2015, passed in S.A.No.182 of 2015 and the challenge in the writ petition is restricted only to the order dated 29.07.2015, passed in I.A.No.1292 of 2015 in S.A.No.182 of 2015. Recording the said submission, we take up the case for consideration as to whether the said order passed by the Tribunal is just and proper.

4.The said interlocutory application was filed by the petitioner/borrower in S.A.No.182 of 2015 with a prayer to appoint Advocate Commissioner to be assisted by an Engineer / Surveyor for conducting local inspection of the properties mortgaged with the third respondent bank. This is with a view to identify and demarcate the existing road to access item No.1 property through item No.2 property from the public road and to demarcate item Nos.1 and 2 properties into various salable units.

5.Though initially the respondent bank contended that there is access to item No.1 property through item No.2 property from the public road, in the counter affidavit filed in the stay petition they took a different stand stating that the item No.1 property is not a land locked one and it has got access on two sides. The Tribunal has taken note of the stand taken by the bank in paragraph 7(f) of the impugned order and would state that when the stay petition was taken up for hearing, the bank took a 'U' turn and submitted that 1st item property is not land locked one and has got access on two sides. However, on a perusal of the impugned order we find that there was no material available before the Tribunal to come to a conclusion that item No.1 property had an access on two sides from a public road. Therefore, for the purpose of identifying whether there is access to the property it is necessary that a survey should be conducted. In fact this would aid in the recovery process as it appears that the petitioner/borrower is due and payable substantial money to the respondent bank. Thus in all fairness, the respondent bank should not have opposed the prayer sought for as it is stated that on seven earlier occasions the property was brought for sale, but all such attempts were



unsuccessful.

6. Thus, for the above reasons we are inclined to interfere with the order passed by the Debts Recovery Tribunal dated 29.07.2015 made in I.A.No.1292 of 2015 in S.A.No.182 of 2015. Accordingly, the same is set aside and we direct the Tribunal to appoint the District Surveyor of the concerned area, where the property is situated, to conduct a survey of the property by issuing appropriate directions to the revenue officials and the petitioner shall pay the entire charges towards the survey to be conducted and the scope of the warrant to the surveyor will be only to identify and demarcate the existing road access to item No.1 property through item No.2 property from the public road or there is any separate access to the property as was referred to by the bank in their counter affidavit. On receipt of the survey report, the Debts Recovery Tribunal shall proceed further in the matter in accordance with law and pass appropriate orders within a period of two weeks therefrom. It is need less to state the survey be conducted, after notice to the petitioner and the respondent bank and in their presence.

7. This Writ Petition is disposed of accordingly. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. Presiding Officer,
Debts Recovery Tribunal, Madurai,
III & IV Floor, Kalyani Towers,
4/162, Madurai - Melur Road,
(Near Meenakshi Mission Hospital),
Uthangudi PO, Madurai - 625 107.

+1cc to Mr.K.GOVINDARAJAN Advocate in SR. N.61681

SJ

JS/MR/KKR/SAR.2/5.7.2017/3P-3C

ORDER MADE IN
W.P(MD) No.20842 of 2015
and M.P. (MD) Nos.1 and 2 of 2015
21.06.2017