



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**W.P (MD) No.12937 of 2017
and
W.M.P (MD) No.10017 of 2017**

Kandasamy

... Petitioner

Vs.

1. The Chairman,
SIDBI Bank, Lucknow,
Uttarpradesh,
India.
2. The District Magistrate/Executive Magistrate,
The District Coolector,
Perambalur District.
3. The Authorized Officer,
The Deputy General Manager,
SIDBI Bank, Trichy No.19, Royal Road,
Near KMC Speciality Hospital,
Canconment,
Trichy & District.
4. The Branch Manager,
SIDBI,
No.19, Royal Road,
Near KMC Speciality Hospital,
Cantonment,
Trichy & District.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order, dated 10.07.2017 passed by the Hon'ble Debts Recovery Tribunal, Madurai in S.A.SR.No.5467 of 2017, quash the same as illegal and consequently direct the Hon'ble Debts Recovery Tribunal, Madurai to assign the main number to S.A.SR.No.5467 of 2017 and decide the same on merits.



For Petitioner : Mr.K.Baalasundharam
For R2 : Mr.V.R.Shanmuganathan
Spl. Govt. Pleader
For R3 & R4 : Mr.Alaguram Jothi

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J U D G M E N T

[Judgment of the Court was delivered by M.M.SUNDRESH,J.]

By consent, the writ petition itself is taken up for final disposal.

2.Heard the learned counsel appearing for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the second respondent and Mr.Alaguram Jothi, learned counsel appearing for the respondents 3 & 4.

3.The petitioner is a borrower. Proceedings have been initiated against the petitioner under the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred as The Act) by the respondents 1,3 & 4. An order was passed under Section 13(2) and 13(4) of the Act. The petitioner has challenged the proceedings, dated 13.06.2017 by which, he was called upon to hand over the peaceful possession by exercising the power under the Act. Incidentally, the petitioner was informed that non-compliance of the provisions of the Act, is an offence punishable under Section 29 of the Act.

4.The appeal filed by the petitioner was dismissed, by the Debts Recovery Tribunal, Madurai, without even numbering, on the ground that it is not maintainable as the petitioner cannot be said to be a secured creditor. Further, the finding has been given that the impugned order being a letter asking the petitioner to hand over the possession, is not amenable to challenge.

5.The learned counsel for the petitioner would submit that as per the decision of the Apex Court in **Authorised Officer, Indian Overseas Bank and another vs. Ashok Saw Mill reported in (2009) 8 Supreme Court Cases 366**, the application is maintainable.

6.The learned counsel for the respondent/Bank would submit that what has been challenged is only a notice requiring the petitioner to hand over the possession and therefore, without challenging the earlier proceedings under the provisions of 13(2) and 13(4) of the Act, the application is not maintainable.



7. We do not go into the controversy, however, we may note that the Tribunal has committed an error in not numbering the application. It is one thing to show that the application is not maintainable and another to state that it is not open to the petitioner to challenge a consequential order/notice, without challenging the earlier proceedings. Suffice it is to state that the impugned notice has been issued under the Act, impounding thereby in exercising the power conferred therein. Be that as it may, as observed by us, the earlier application ought to have been numbered and thereafter, reasoning as given in the order, is under challenged.

8. In such view of the matter, without wasting any more time, we direct the Debts Recovery Tribunal, Madurai to number the application, by making an order to be made applicable to the said application. The said exercise will have to be done within two weeks from the date of receipt of a copy of this order. Thereafter, it is well open to the petitioner to file a statutory appeal.

9. We make it clear that we have not expressed any opinion in the merits of the matter, including the question as to whether the relief sought for can be granted while challenging the impugned notice, without challenging the earlier proceedings.

10. With the above observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Chairman,
SIDBI Bank, Lucknow,
Uttarpradesh, India.
2. The District Magistrate/Executive Magistrate,
The District Coolector,
Perambalur District.
3. The Authorized Officer,
The Deputy General Manager,
SIDBI Bank, Trichy No.19, Royal Road,
Neelam Speciality Hospital,
Canconment, Trichy & District.



4. The Branch Manager,
SIDBI, No.19, Royal Road,
Near KMC Speciality Hospital,
Cantonment,
Trichy & District.

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5. The Debts Recovery Tribunal,
Madurai

+1 cc to Mr.K.Baalasundaram , Advocate in SR.No. 65035
+1 cc to Mr.J.Alaguram Jothi , Advocate in SR.No. 65461
+1 cc to Special Government Pleader in SR.No.65653

am/sss

AE/SV/SAR3/21.07.2017/4P/9C

W.P (MD) No.12937 of 2017
13.07.2017