

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

CRP(PD) No.1787 of 2018

and

CMP No.10028 of 2018

M/s.Coromondel Indag Products India Limited,
No.5A, Ram Mansions, 5th Floor,
No.381, Pantheon Road,
Egmore, Chennai - 600 008.
Rep. by its Managing Director,
Mr.Arun R. Fredrick

... Petitioner

vs.

1. M/s.Canara Bank,
Asset Recovery Management Branch,
Spencer Tower II, First Floor,
770-A, Anna Salai,
Chennai - 600 002.

2. Mr.C.Vijayakumar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 27.04.2018, passed in Miscellaneous Appeal bearing No.AIR (SA) No.473 of 2017, on the file of the Debs Recovery Appellate Tribunal, Chennai.

For Petitioner

: Mr.C.R.Prasanan
for Mr.B.Manimaran

ORDER

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

When the bank took action for recovery under the proceedings of SARFAESI Act, 2002, against the borrower, M/s.Coromandel Indag Products India Limited, Chennai, Mr.Arun R. Fredrick, in the capacity of Managing Director of the said Company, has filed SA SR No.4241 of 2013 on the file of Debts Recovery Tribunal-I, Chennai to set aside the possession notice dated 13.02.2016, with regard to Item No.2 movables alone, and consequently, prayed for a direction to the respondents therein, to return the movables morefully described in the accompanying petition, in the Schedule thereunder, which were removed on 11.11.2007 and 12.12.2007, respectively, by the respondent or in the alternative to pass an order, directing the respondents therein, to adequately compensate the applicant company, by directing the respondents, to pay Rs.50,00,000/- (Rupees Fifty Lakhs only) being the value of the movables of the applicant company.

2. There was a delay of 2051 days in filing the application. SIA No.52 of 2013 in S.A.S.R No.4241 of 2013, filed to condone the SARFAESI application, was dismissed on 31.03.2017, by the Debts Recovery Tribunal-I, Chennai.

3. Being aggrieved, M/s.Coromandel Indag Products India Limited,

Chennai, represented by the said Managing Director, has filed AIR (SA) No.473 of 2017 before the Debts Recovery Appellate Tribunal, Chennai. Here again, there is a delay of 100 days in filing the Miscellaneous Petition. Hence, petitioner has filed IA No.1415 of 2017 in AIR (SA) No.473 of 2017, for condoning the delay of 100 days in filing the Miscellaneous Appeal. IA No.1416 of 2017, has been filed to waive the pre deposit, required under the SARFAESI Act, 2002.

4. Registry of the Debts Recovery Appellate Tribunal, seemed to have an objection for numbering on the ground that institution of the proceedings by Mr.Arun R.Fredrick, in the capacity of Managing Director of M/s.Coromandel Indag Products India Limited, Chennai, is not permissible and therefore, in view of the objections, Mr.Arun R.Fredrick, filed IA No.--- of 2017 in AIR (SA) 473 of 2017, to accept the cause title, as Director instead of Managing Director, as initially, shown in the memorandum of grounds of appeal. Averments contained in the supporting affidavit to IA No.--- 2017, in AIR (SA) No.473 of 2017, to accept the cause title, are as hereunder

"1. I am the Director of the Petitioner Company. I became an Advocate by enrolling myself with The Bar Council of Tamil Nadu and Puducherry on 04.04.2012 and my Roll No.is Ms.998/2012. I am fully acquainted with what is stated hereunder.

2. The petitioner has filed the above Miscellaneous Appeal under Section 18 of the Securitization and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002. The appeal was filed against the order dated 31.03.2017 in S.I.A.No.52 of 2013 in S.A.S.R.No.4241 of 2013 on the file of the Debts Recovery Tribunal-1, Chennai. The Debts Recovery Tribunal did not go into the merits of the contentions of the respective parties in S.I.A.No.52 of 2013. The Debts Recovery Tribunal dismissed the application filed by the appellants on the sole grounds that power to condone delay in filing an application under Section 17 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is not vested with the Debts Recovery Tribunal. In other words the Debts Recovery Tribunal took a view that it has no jurisdiction to condone the delay.

3. The above appeal was presented by me in the capacity of its Director. As already stated that I became an Advocate by enrolling myself with the Bar Council of Tamil Nadu and Puducherry on 04.04.2012 and my enrolment number is Ms.998/2012. In view of the same, I cannot represent the Petitioner Company as its Managing Director. However, there is no impediment or bar to represent the company as its Director. I am possessed of experience and knowledge in one or more fields of management, sales, marketing, administration, research, corporate Governance and technical operations or other disciplines related to the Petitioner Company business. The Petitioner Company has become defunct and I am taking steps to recover the money due to the petitioner company from its borrowers. As far as the present case is concerned, the articles and goods kept by Petitioner Company in its factory premises had been taken away by the 2nd respondent in collusion with the 1st respondent herein. Hence there were several proceedings initiated which had been set out in detail in the application filed for waiver of the conditions in the above Miscellaneous Appeal. Further as per the directions given in Review Application No.101 of 2011 in WA No.281 of 2011 by the Division

Bench of the High Court of Madras, the petitioner Company filed the main application in S.I.A.No.52 of 2013 in S.A.Sr.No.4241 of 2013 before the Debts Recovery Tribunal No.1, at Chennai."

5. Record of proceedings of Debts Recovery Appellate Tribunal, Chennai shows that when the papers were placed, the learned counsel for the appellant therein, has sought for time, for compliance of the office objection and on 27.04.2018, the appellate tribunal has recorded as hereunder.

"In principle, Appellant has agreed to comply with the office objections and mentioned in hand writing that deponent of Appellant in Appeal Memo has put his signature as Managing Director. However, for the sale of formalities, office seal of Managing Director needs to be put on the signature, hence a weeks time is granted."

6. As the objections subsisted on 14.05.2018, the Hon'ble Chairperson, Debts Recovery Appellate Tribunal, Chennai, has recorded as hereunder.

"None for Appellant though name of counsel Mr.B.Manimaran appears in the cause list.

Office Objections are still subsisting.

List for orders on absence of Appellant on 18.6.2010"

7. For brevity, record of proceedings of the Debts Recovery Appellate Tribunal in AIR (SA) No.473 of 2017 from 08.09.2017, is reproduced.

Proceedings Dated 08.09.2017

Ld.Counsel Mr.S.Ravi for Appellant present.

Appellant counsel prays for two days time for compliance of office objections.

List for compliance on 3.10.2017.

Proceedings Dated 03.10.2017

Ld.Counsel Mr.S.Ravi for Appellant present.

Appellant counsel prays for time for compliance of office objections.

On Appellant's prayer, list on 2.11.2017.

Proceedings Dated 02.11.2017

Ld.Counsel Mr.B.Manimaran for Appellant present.

Appellant counsel prays for two weeks time for compliance of office objections.

List for compliance of objections on 20.11.2017.

Proceedings Dated 20.11.2017

Ld.Counsel Mr.B.Manimaran for Appellant present.

Appellant counsel prays for some more time for compliance of office objections.

List for compliance of objections on 16.01.2018.

Proceedings Dated 16.01.2018

Ld.Counsel Mr.B.Manimaran for Appellant present.

Appellant counsel prays for some more time for compliance of office objections.

List for compliance of objections on 15.02.2018.

Proceedings Dated 15.02.2018

Ld.Counsel Mr.B.Manimaran for Appellant present.

Appellant counsel prays for some more time for compliance of office objections.

List for compliance of objections on 13.03.2018.

Proceedings Dated 13.03.2018

Ld.Counsel Mr.B.Manimaran for Appellant present.

Appellant counsel prays for some more time for compliance of office objections.

As prayed list for compliance on 13.04.2018.

Proceedings Dated 13.04.2018

Ld.Counsel Mr.B.Manimaran for Appellant present.

Appellant counsel prays for further time for compliance of office objections by way of last opportunity, failing which, will make him liable for dismissal of this Appeal.

List for compliance of Office objection on 27.04.2018.

Proceedings Dated 27.04.2018

Ld.Counsel Mr.B.Manimaran for Appellant present.

In principle, Appellant has agreed to comply with the office objections and mentioned in hand writing that deponent of Appellant in Appeal Memo has put his signature as Managing Director. However, for the sale of formalities, office seal of Managing Director needs to be put on the signature, hence a weeks time is granted

List for compliance and further hearing on 14.05.2018.

Proceedings Dated 14.05.2018

"None for Appellant though name of counsel Mr.B.Manimaran appears in the cause list.

Office Objections are still subsisting.

List for orders on absence of Appellant on 18.6.2010"

8. When the interim application filed to accept the cause title is

pending orders, on the file of the Debts Recovery Appellate Tribunal, Chennai, instant Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 27.04.2018, stated supra.

9. Though, Mr.C.R.Prasanan, learned counsel for the petitioner submitted that inasmuch as the petitioner is an Advocate, and as per the Bar Council Rules, he cannot represent M/s.Coromandel Indag Products India Limited, as Managing Director and that therefore, the Debts Recovery Appellate Tribunal, Chennai, should permit SARFAESI application to be numbered as per the cause title and that therefore, the record of proceedings dated 27.04.2018 of the Debts Recovery Appellate Tribunal- Chennai, requires interference, by this Court under Article 227 of the Constitution of India, at this juncture, we are not inclined to accept the said submissions, for the reason that objections of the Registry, still subsists and it is for the Debts Recovery Appellate Tribunal, Chennai, to pass a reasoned order either to over rule or sustain the objections of the Registry of the tribunal.

10. When IA ---/2017 in AIR (SA) No.473 of 2017, filed to accept the cause title, as per the memorandum of grounds, of the civil revision petitioner, is pending on the file of Debts Recovery Appellate Tribunal, Chennai and posted for orders on 18.06.2018, any observation of this Court,

at this juncture, would amount to interference with the exercise of jurisdiction of the Debts Recovery Appellate Tribunal, Chennai. Courts cannot pre-empt exercise of jurisdiction of the tribunal, in the manner as submitted. If for any reason, if the petitioner, is aggrieved over the decision of the Debts Recovery Appellate Tribunal, Chennai, it is always open to the petitioner to challenge the same, in the manner known to law.

11. With the above observation, instant Civil Revision Petition is dismissed. No Costs. Consequently, the connected Civil Miscellaneous petition is closed.

(S.M.K., J.) (S.P., J.)
14.06.2018

Index: Yes/No.
Internet: Yes
Speaking/Non speaking

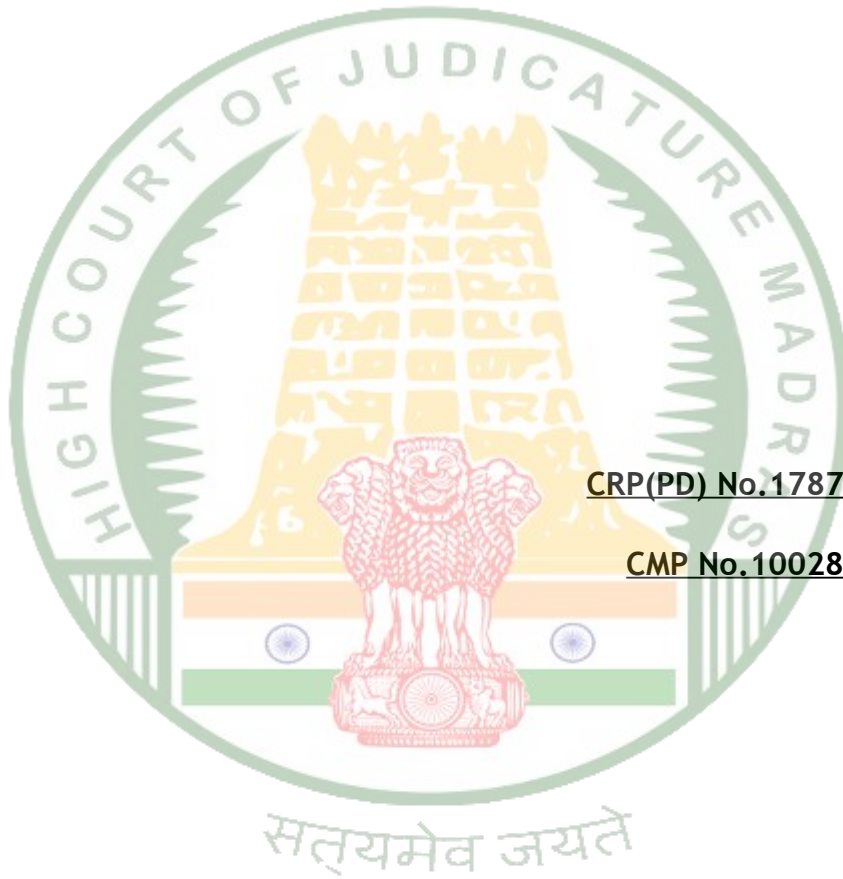
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To

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Spencer Tower II, First Floor,
770-A, Anna Salai, Chennai - 600 002.

S.MANIKUMAR,J.
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