

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.33568 of 2017
and
W.M.P.No.37096 of 2017

A.P.Subramanien ... Petitioner

vs.

- 1.State Bank of India
Stressed Assets Recovery Branch,
No.337/1, Dr.Nanjappa Road,
Coimbatore - 641 018.
- 2.The Recovery Officer,
Debt Recovery Tribunal,
No.1670, Trichy Road,
Ramanathapuram, Coimbatore.
- 3.The Presiding Officer,
Debt Recovery Tribunal,
No.1670, Trichy Road,
Ramanathapuram, Coimbatore.
- 4.The District Magistrate cum District Collector,
O/o. the Collectorate Tirupur,
Palladam Road, Tirupur - 641 602.

5.R.Karthikeyan ... Respondents

Prayer: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 3rd respondent, Presiding Officer, Debts Recovery Tribunal, Coimbatore to dispose the Petitioner's application viz., (i) Condone the Delay in filing set aside petition in M.A.No.55 of 2015 in O.A.No.79 of 2014 (ii) Contesting the Auction dated 27.03.2015 in S.A.No.88 of 2015 (iii) contesting the auction dated 27.09.2015 in S.A.No.90 of 2015 (iv) Contesting the 4th respondent order dated 28.03.2017

in S.A.No.323 of 2017 (v) Contesting the Recovery Proceedings by the 2nd respondent in Application No.3/2017 in R.A.No.3 of 2016, within the time frame.

For Petitioner	: Mr.S.V.D.Rajendra Prasad for Mr.J.Vivekanandan
For R1	: Mr.Senthilkumar for Mr.Sethuraman
For R4	: Mr.M.Elumalai Government Advocate
For RR2 & 3	: Tribunal

ORDER

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

A.P.Subramanien/borrower/writ petitioner, has committed default in repaying the loan amount, to State Bank of India, Coimbatore, first respondent herein. Bank has filed O.A.No.79 of 2014 before the Presiding Officer, Debts Recovery Tribunal, Coimbatore, third respondent herein, for the following reliefs:

(i) a direction to the defendants to pay a sum of Rs.2,03,89,415.60 to the applicant with subsequent interest at 15.50% per annum with compounded monthly rests from the date of this application till the date of repayment, with respect to case credit bearing Account No.30729067840/- (transaction being commercial);

(ii) to grant a Personal Decree against the Defendants jointly and severally to pay a sum of Rs.4,20,882.31/- towards the legal charges incurred;

(iii) directing the sale of hypothecated, stocks and receivables mentioned in schedule-A to the original application, belonging to Defendants No.1 the mortgaged property mentioned in schedule - B belonging to defendant No.1 and applying the net proceeds thereof in payment of the amounts due as set out above;

(iv) If the sale proceeds are found insufficient to recover the balance with consequent interest and costs from the defendants No.1 and 2 personally and put of their assets;

(v) To pay cost of the application including incidental expenses and other expenses which may be incurred by the applicant subsequent to filing of this application.

2. Petitioner was set ex-parte on 01.10.2014 and exparte final order passed on 06.01.2015. Recovery certificate in D.R.C.No.80 of 2015, has been issued by the Recovery Officer, Debt Recovery Tribunal, Coimbatore, the second respondent herein.

3. Being aggrieved by the ex-parte final order, petitioner has filed M.A.No.54 of 2015 an emergent petition and he has also filed M.A.No.55 of 2015 in O.A.No.79 of 2014, to condone the delay of 55 days in filing this application to set aside the ex-parte final order.

4. Petitioner has filed S.A.No.88 of 2015, on the file of the Debts Recovery Tribunal, Coimbatore, third respondent herein, challenging the e-auction sale notice dated 27.03.2015. Petitioner has also filed S.A.No.90 of 2015 before the Debts Recovery Tribunal, Coimbatore, against E-auction sale notice dated 29.03.2015. There was a subsequent E-auction notice dated 27.09.2016 fixing the auction sale on 03.11.2016, which has been postponed to 10.11.2016, fixing the up set price at Rs.1,40,00,000/-, which according to the petitioner is below the guide line value and that the property was sold to Mr.R.Karthikeyan, fifth respondent herein, for Rs.1,40,50,000/-.

5. E-auction notice dated 10.11.2016, was challenged in W.P.No.43025 of 2016. Vide order dated 09.12.2016, the same was dismissed. Now the bank has obtained the order dated 28.03.2017 from the District Magistrate-cum-District Collector, Tirupur, fourth respondent herein, to take physical possession of the property and hand over the same to State Bank of India, Coimbatore, the first respondent herein.

6. Challenging the order of the District Magistrate-cum-District Collector, Tirupur, S.A.No.323 of 2017 has been filed before the Debts Recovery Tribunal, Coimbatore. Application No.3 of 2017 is also stated to be pending. Therefore, the petitioner has sought for a mandamus directing the DRT, Coimbatore, to dispose of the above proceedings, within the time as may be fixed by this court. Actual physical possession has been taken and handed over to the bank.

7. Though there are many cases pending on the file of the DRT, Coimbatore, and in ordinary circumstances, this Court would not issue directions to the Tribunals to take up any particular matter and dispose the same, unless circumstances warrant, from the facts and circumstances of this case, we could see that the petition filed to set aside the exparte final order in M.A.No.55 of 2015, was filed in the year 2015 itself. From 23.04.2015, the said application is pending. Recovery certificate has been issued on 30.11.2015 and thereafter, many events have occurred, putting the borrower in a disadvantage position and ultimately

losing the property, to fifth respondent/auction purchaser. Had the Tribunal taken up M.A.No.55 of 2015, and passed orders on merits, parties would have taken proper course. But the Tribunal seemed to have kept the application in M.A.No.55 of 2015 pending for nearly three years and in the meanwhile, Recovery Certificate has been issued and acted upon.

8. In the light of the above discussion, we are of the view that the Tribunal shall take up the pending application viz. M.A.No.55 of 2015 and dispose of the same, as expeditiously as possible, within the period of eight weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Recovery Officer,
Debt Recovery Tribunal,
No.1670, Trichy Road,
Ramanathapuram, Coimbatore.
2. The Presiding Officer,
Debt Recovery Tribunal,
No.1670, Trichy Road,
Ramanathapuram, Coimbatore.
3. The District Magistrate cum District Collector,
O/o. the Collectorate Tirupur,
Palladam Road, Tirupur - 641 602.
4. The Manager, The State Bank of India,
Stressed Assets Recovery Branch
337/1, Dr.Nanjappa Road,
Coimbatore - 641 018

+1cc to Mr.K.Seetharam Advocate, S.R.No.18956
+1cc to Mr.S.Sethuraman, Advocate, S.R.No.18884
+1cc to the Government Pleader, S.R.No.19228

W.P.No.33568 of 2017
and

W.M.P.No.37096 of 2017

MR(CO)

CS/15/03/18