

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

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

W.P.No.2908 of 2018  
and WMP No.3577 of 2018

S.V.Pravin Rathinam ... Petitioner

vs.

1. The Registrar,  
Debts Recovery Tribunal,  
Coimbatore.

2. Punjab and Sind Bank,  
rep. by its Authorized Officer,  
434, 435, Oppanakara Street,  
Coimbatore - 641 001.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records on file of the 1st respondent leading to the docket order dated 20.01.2018 passed in Sr.No.168 and quash the same, and consequently direct the 1st respondent to place the SARFAESI Application in Sr.No.168 and its connected interim applications upon re-presentation by the petitioner before the presiding officer, DRT-Coimbatore for Adjudication.

For Petitioner : Mr.Vignesh Venkat

ORDER

(Order of the Court was made by S.MANIKUMAR, J)  
Sarfaesi Application in S.A.No.168 of 2018, filed on 08.01.2018, challenging the notice, issued under Section 13(4) of the SARFAESI Act, 2002, has been returned by the Registry of the Debts Recovery Tribunal, Coimbatore, as hereunder:

"SA Scrutinized:

As per section 17(1) of the sarfaesi act, any person including the borrower aggrieved by any person including the borrower aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorized officer may make an application along with necessary

fee as prescribed, to the DRT within 45 days from the date of measures taken. This appeal was filed by the appellants on 08.01.18 only and not within 45 days from 23.08.17 (i.e. the date of possession notice). As such, SA app. filed is barred by limitation.

Submitted.

Sd.

20/01/2018 Decline to number as barred by limitation under provision of Sec.17(1) of SARFAESI Act, 2002.

A.R/Reg i/c

Sd.

20/1/18

2. Contending inter alia that the Registry of the Tribunal has usurped the powers of the tribunal in declining to number S.A.Sr.No.168 of 2018 as barred by limitation under the provisions of Section 17(1) of the SARFAESI Act, 2002, instant writ petition is filed.

3. Though, Mr.Vignesh Venkat, learned counsel for the petitioner, relied on a Division Bench judgment of this Court in C.Sakthivel and Ors Vs. The Authorised Officer, State Bank of India and Ors dated 21.12.2016, to which one of us (Hon'ble Mr.Justice S.Manikumar), is a party, and submitted that at paragraph No.34 of the order, this Court held that Section 5 of the Limitation Act, would be applicable to Section 17 of SARFAESI Act, 2002, and that therefore, Registry of Debts Recovery Tribunal ought to have numbered SA SR.No.168 of 2018, we are not inclined to accept the said contention for the reason that in C.Sakthivel's case, there is no categorical declaration of law that Section 5 of the Limitation Act, would be applicable to Section 17 of the SARFAESI Act, 2002. However, in the said judgment, this Court has granted liberty to the writ petitioners therein to challenge the sale certificate, subject matter of dispute.

4. In Ponnusamy and Smt. P.Shanthi Vs. The Debts Recovery Tribunal, rep. by its Registrar and The Corporation Bank, reported in 2009(2) CTC 302: 2009 (1) LW 954: (2009) 3 MLJ 1271, a learned Judge of this Court held that Section 5 of the Limitation Act, would be applicable to Section 17 of SARFAESI Act, 2002.

5. Attention of this Court was invited to an order of the Hon'ble Division Bench of this Court in A.Ranganayagi and others Vs. The Chief Manager, Southern Railway and others, reported in 2017 (5) LW 878: (2017) 8 MLJ 382: 2017 (2) WritLR 704, wherein Hon'ble Division Bench of this Court, held that Registry by returning the writ petition, on the ground of maintainability virtually acted as the Court and exercised judicial function and

the Registry has no authority to reject the writ petition on the ground of availability of alternate remedy.

6. Though reliance was placed on the above reported judgment, by Mr.Vignesh Venkat, learned counsel for the petitioner and contended that Registry cannot return a writ petition on the ground of maintainability, or barred by limitation, as the case may be, which is the function of the Court and that therefore, the impugned proceedings, dated 20.01.2018 of the Registry of Debts Recovery Tribunal, Coimbatore, has to be set aside, we are not inclined to do so, at this juncture.

7. At paragraph No.9 of the judgment in A.Ranganayagi's case, the Hon'ble Division Bench held as follows:

"9. The Registry by returning the writ petition on the ground of maintainability virtually acted as the Court and exercised judicial function. The Registry has no authority to reject the writ petition on the ground of availability of alternative remedy. It is for the Court to decide whether the writ petition should be entertained in a matter, in spite of alternative remedy. It is always open to the Court to entertain the writ petition notwithstanding the alternative remedy available to the party. We therefore hold that it is not within the province of the Registry to return the writ petition on the ground of alternative remedy."

8. Rule 5 of the Debts Recovery Tribunal (Procedure) Rules, 1993, deals with presentation and scrutiny of applications and the same is extracted hereunder.

5. Presentation and scrutiny of applications.-

(1) The Registrar, or, as the case may be, the officer authorised by him, shall endorse on every application the date on which it is presented or deemed to have been presented under Rule 4 and shall sign endorsement.

(2) If on scrutiny, the application is found to be in order, it shall be duly registered and given a serial number.

(3) If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the applicant such time to rectify the defect as he may deem fit.

(4) If the concerned applicant fails to rectify the defect within the time allowed in sub-rule (3), the Registrar may by order and for reasons to be recorded in writing, decline to register the application.

(5) An appeal against the order of the Registrar under

sub-rule (4) shall be made within 15 days of the making of such order to the Presiding Officer concerned in chamber whose decision thereon shall be final. "

9. Rule 5(A) deals with review and the same is reproduced.

"5A. Review.- (1) Any party considering itself aggrieved by an order made by the Tribunal on account of some mistake or error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.

(2) No application for review shall be made after the expiry of a period of sixty days from the date of the order and no such application shall be entertained unless it is accompanied by an affidavit verifying the application.

(3) Where it appears to the Tribunal that there is no sufficient ground for a review, it shall reject the application but where the Tribunal is of opinion that the application for review should be granted, shall grant the same:

PROVIDED that no such application shall be granted without previous notice to the opposite party to enable him to appear and to be heard in support of the order, a review of which is applied for."

10. Even taking for granted that the tribunal has declined to number the SARFAESI application, filed under Section 17(1) of the Act, 2002, on the grounds that it is barred by limitation, still, the said decision, is appealable under Sub Rule 5. At the risk of repetition, sub rules 4 and 5 of the said Rule are reproduced.

"5. (4) If the concerned applicant fails to rectify the defect within the time allowed in sub-rule (3), the Registrar may by order and for reasons to be recorded in writing, decline to register the application.

(5) An appeal against the order of the Registrar under sub-rule (4) shall be made within 15 days of the making of such order to the Presiding Officer concerned in chamber whose decision thereon shall be final. "

11. Rule 5(5) of the Debts Recovery Tribunal (Procedure) Rules, 1993, enables the petitioner to file an appeal. Though time, provided under rule 5(5) of the said rules, has expired, we permit the petitioner to file an appeal to the tribunal, which shall consider the same without insisting the period of limitation. If any such appeal is filed under rule 5(5) of the Debts Recovery Tribunal (Procedure) Rules, 1993, Registry of the tribunal shall place it before the tribunal for appropriate orders.

12. With the above observations, writ petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,  
Debts Recovery Tribunal,  
Coimbatore.

2. The Authorized Officer,  
Punjab and Sind Bank,  
434, 435, Oppanakara Street,  
Coimbatore - 641 001.

3. The Presiding Officer,  
Debts Recovery Tribunal,  
Coimbatore.

+1cc to Mr.Vignesh Venkat, Advocate, S.R.No.10037

W.P.No.2908 of 2018  
and  
WMP No.3577 of 2018

RRK(09/02/2018)

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