

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.26679 of 2018

1.Captain LV Joseph
2.Captain A.Perianayagam
3.Margaret Mary
4.Bernadette Mary
5.Colonel James Susainathan .. Petitioners

Vs.

1. Lt.Gen.S.A.Cruz
2. The Chairman and Managing Director,
Indian Overseas Bank,
Anna Salai, Chennai - 600 002.
3. The Authorized Officer,
Indian Overseas Bank,
Ekkattuthangal, Chennai - 600 032.
4. M/s.Arul Constructions,
rep by Mrs.Deepika Vinohar
having Office cum residence at
No.42/65, P.S.Sivasamy Salai,
(Plalur Kanniappan Street),
Mylapore, Chennai - 600 004.
5. A.Bright Vinohar .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus to take appropriate action against the Presiding Officer, Debts Recovery Tribunal - III, Chennai in disobeying the orders passed by this Court in W.P.No.41322 of 2016 dated 21.12.2016.

For Petitioners : Ms.R.Aparna

O R D E R
(Order of the Court made by M.DURAISWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of mandamus to take appropriate action against the Presiding Officer, Debts Recovery Tribunal - III, Chennai in disobeying the orders passed by this Court in W.P.No.41322 of 2016 dated 21.12.2016.

2.It is the case of the petitioners that they filed an application in I.A.(SR).No.7907 of 2016 in S.A.No.226 of 2015 to get themselves impleaded as respondents in the SARFAESI Appeal. The 1st respondent has preferred S.A.No.226 of 2015 on the file of the Debts Recovery Tribunal - III, Chennai challenging the action of the respondent - Bank for the loan availed and default committed by the respondents 4 & 5. It is also the case of the petitioners that the petitioners are entitled to one-sixth share in the total extent of the property having inherited from their father. The 1st respondent, who has filed the S.A. before the Debts Recovery Tribunal is the brother of the petitioners.

3.The respondent - Bank initiated SARFAESI proceedings against the respondents 4 & 5 for the default committed by them in repaying the loan. In the SARFAESI Appeal, the 1st respondent has challenged the Sale Notice dated 06.05.2015. The Debts Recovery Tribunal, while dismissing the application in I.A.(SR).No.7907 of 2016, observed that the Sale Notice itself has become infructuous for want of bidders. When the relief sought for in the S.A. itself has become infructuous, the petitioners have filed the application to get themselves impleaded, claiming right over the property, which was mortgaged with the respondent - Bank. In the affidavit filed in support of the petition, the petitioners have not stated as to who should repay the loan to the respondent - Bank.

4.Earlier, the petitioners filed a Writ Petition in W.P.No.41322 of 2016 to issue a writ of mandamus directing the Debts Recovery Tribunal - III, Chennai to consider and decide the impleading application filed by them in I.A.(SR).No.7907 of 2016 in S.A.No.226 of 2015 on merits. This Court by order dated 21.12.2016 disposed of the Writ Petition by observing as follows:

"...

8.On the facts and circumstances of the case, we are also of the view that no serious prejudice would be caused to the respondent, if the writ petitioners are provided sufficient opportunity to make their submissions in I.A.SR.No.7907 of 2016."

5. Now, based on the observation made by the Division Bench of this Court, the petitioners have filed the present Writ Petition to take action against the Presiding Officer, Debts Recovery Tribunal - III, Chennai in disobeying the orders.

6. It is pertinent to note that this Court has only observed that no prejudice would be caused to the respondents if the Writ Petitioners are provided sufficient opportunity to make their submissions in I.A.(SR).No.7907 of 2016. That apart, in paragraph - 9 of the affidavit filed in support of the petition, the petitioners have stated that nothing had happened for more than 1 ½ years and that the 5th petitioner has not heard anything from the Court and that he came to know about the order passed in I.A.(SR).No.7907 of 2016 only on 20.06.2018 when the petitioners received individual orders from the Debts Recovery Tribunal - III, Chennai. Having filed the application for impleading before the Debts Recovery Tribunal, it is the duty of the petitioners to ascertain the date of hearing and also the proceedings pending before the Debts Recovery Tribunal. The petitioners having slept over for more than 1 ½ years, they cannot be heard to say that no opportunity was given to them. The conduct of the petitioners would only establish that they were not diligent in prosecuting the application in a proper manner. The Tribunal found no merits in the application filed by the petitioners and hence, rightly dismissed the application. Apart from the merits of the matter, the petitioners have got remedy by way of appeal before the Debt Recovery Appellate Tribunal.

7. The Hon'ble Supreme Court of India in the judgments reported in (2018) 3 Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.] and (2018) 1 Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] held that the aggrieved party cannot challenge the SARFAESI proceedings directly by filing a Writ Petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

8. The ratio laid down by the Apex Court in the above referred judgments is applicable to the present case.

9. The petitioners have not made out a case for taking action against the Presiding Officer, Debts Recovery Tribunal - III, Chennai for disobeying the orders passed in W.P.No.41322 of 2016 dated 21.12.2016. The Writ Petition is devoid of merits and the same is dismissed. If the petitioners are aggrieved over the

order passed in I.A.(SR).No.7907 of 2016 in S.A.No.226 of 2015, it is open to the petitioners to challenge the same before the Debt Recovery Appellate Tribunal under Section 18 of the SARFAESI Act in accordance with law. No costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

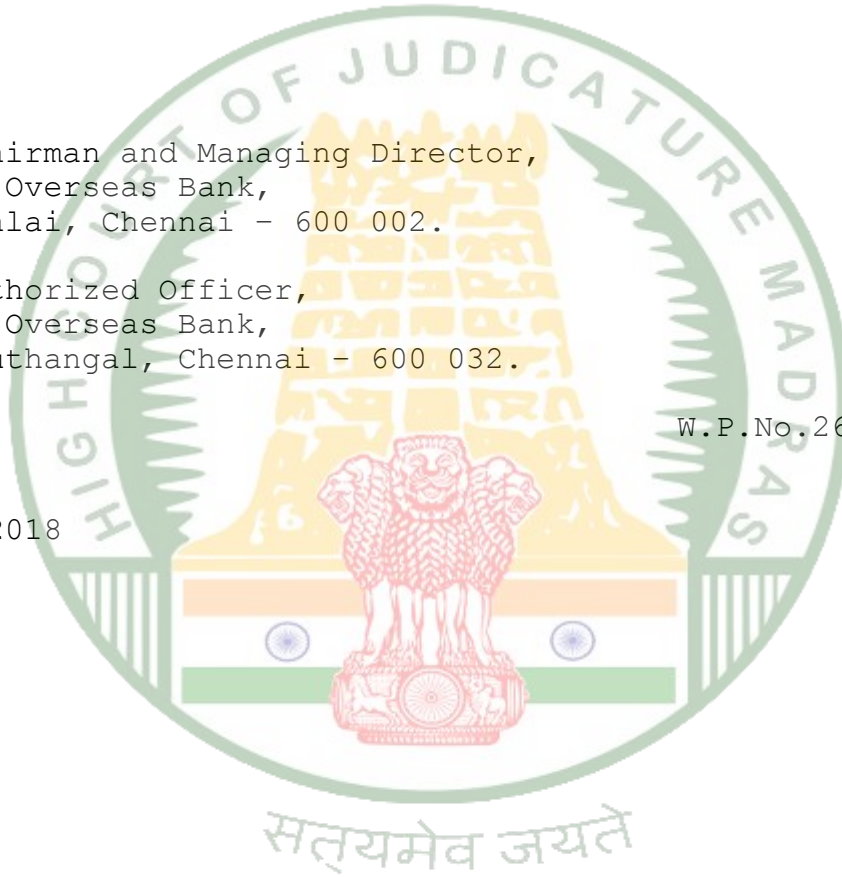
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To

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Anna Salai, Chennai - 600 002.
2. The Authorized Officer,
Indian Overseas Bank,
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PVS (CO)
CS/29/10/2018



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