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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 20.03.2018**

CORAM

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND**

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P. (MD) .No.631 of 2018 (PD)

and

C.M.P. (MD) .No.2754 of 2018

The Authorised Officer,
Pegasus Assets Reconstruction
Private Limited,
55-56, 5th Floor, Free Press House,
Nariman Point, Mumbai-400 021. .. Petitioner/1st Respondent

Vs.

1. Sri Krishna Refineries
Rep by its Partner and Guarantor,
D.Venkateswaran
At No.74, Park Road,
Erode District-638 003.

2. D.Venkateswaran Respondents 1 & 2/Applicants

3. The Chief Engineer,
Karur Vysya Bank Ltd.,
24, Muthurangam Street,
Erode District-638 001.

4.K.Balasubramanian
5.K.Karthikeyan
6.D.Shanmugasundaram
7.Mrs.D.Kaveriammal
8.Mrs.Suseela
9.Mr.C.Krishnan

10. M/s.Kaveri Oils and Fertilizers,
Rep by its Proprietor Mr.Krishnan
At No.74, Park Road,
Erode District-638 003.

...Respondents 3 to 10/Respondents 2 to 9

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the appeal in S.A.No.171 of 2016 on the file of the Debts Recovery Tribunal, Madurai.

For Petitioner

: Mr.OM Prakash

**ORDER**

[Order of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.OM Prakash, learned Senior Counsel appearing for the petitioner.

2.The petitioner is a Pegasus Assets Reconstruction Company and they have approached this Court by filing this revision under Article 227 of the Constitution of India to strike off the appeal filed by the respondent before the Debts Recovery Tribunal, Madurai in S.A.No.171 of 2016.

3.It is not in dispute that the respondent borrower had filed the SARFAESI Appeal and obtained an interim order from the Debt Recovery Tribunal, upon compliance of condition on payment of Rs.5 Crores. The petitioner has approached this Court to strike off the appeal on the ground that it is not maintainable and it is premature.

4.However, we find that the petitioner/Company has not filed any separate application before the Debt Recovery Tribunal to strike off the appeal filed by the respondent and it is only by way of a Memo. It is settled legal principle that the Court or the Tribunal cannot be called upon or compelled to pass an order on a Memo.

5.It is not in dispute that the petitioner has filed a reply statement in S.A.No.171 of 2016 on 07.01.2017. In the said reply statement, in Paragraph No.1, it is stated that the SARFAESI Appeal is premature and the same is not maintainable. Therefore, we are of the view that the Debt Recovery Tribunal, will definitely take a decision on all the issues and if, in its opinion, the jurisdiction has to be considered as the first issue among several issues, it will do so. Therefore, we are not inclined to issue any direction to the Debt Recovery Tribunal and leave it to the Debt Recovery Tribunal to take a decision on merits and in accordance with law.

6.With the above observation, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar



To

The Debt Recovery Tribunal,
Madurai.

Copy to

The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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VB/KK/SAR1/13.04.2018/3P/4C

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