



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

WP.(MD) No.3575 of 2018

and

W.M.P.(MD) Nos.3707 and 3708 of 2018

R.Rakku

... Petitioner

-vs-

- 1.The Authorized Officer,
Indian Overseas Bank,
Arignar Anna Nagar,
Madurai.
- 2.The Branch Manager,
Indian Overseas Bank,
Kamarajar Salai Branch,
No.198, Kamarajar Salai,
Madurai - 09.
- 3.Nobal Rich

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified Mandamus, to call for the records in pursuant to the impugned possession notice dated 16.11.2017 issued by the respondent No.1 bank and consequential order passed in I.A.No.69 of 2018 in S.A.No.10 of 2018 dated 25.01.2018 on the file of the Debt Recovery Tribunal at Madurai and quash the same and subsequently directing the respondents bank to issue fresh notice by including petitioner as legal heir of the deceased guarantor by name Mr.T.Rameshkumar.

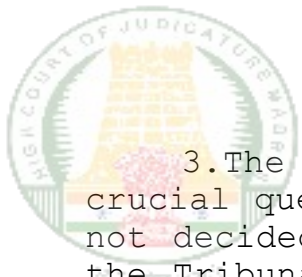
For Petitioner	:	Mr.V.Muthukamatchi
For Respondents	:	Mr.N.Dilipkumar for RR1 and 2

O R D E R

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

Heard Mr.V.Muthukamatchi, learned counsel for the petitioner and Mr.N.Dilipkumar, learned counsel appearing for the respondent bank.

2.The petitioner has impugned the interlocutory order passed by the Debt Recovery Tribunal, Madurai in I.A.No.69 of 2018 in S.A.No.10 of 2018.



3.The learned counsel for the petitioner would contend that the crucial question as to whether the possession notice was served was not decided by the Tribunal though in paragraph No.4 of the order, the Tribunal observes that the name of the petitioner is not found in the notice. Therefore, it is submitted that the contention put forth by the petitioner before the Tribunal should have been accepted and the Tribunal should not be imposed a condition to pay a further sum of Rs.2,06,000/- when the petitioner had paid a sum of Rs.3,71,000/- pursuant to the orders passed in W.P.(MD) No.12236 of 2016.

4.The learned standing counsel appearing for the respondent bank pointed out that in the earlier writ petition, the Court noted that there was no record to establish that the petitioner was the wife of the deceased T.Rameshkumar, account holder. Further, the Court also noted the statement of the respondent bank that the photostat copy of the sale deed produced relating to the immovable property itself, where the relationship of the petitioner as the wife of the deceased T.Rameshkumar has been interpolated.

5.The learned counsel for the respondent bank further submitted that the possession notice itself was not acted upon and in fact, the officers of the respondent bank were unable to affix it on the premises on account of certain issues raised by the petitioner.

6.In our considered view, all these factual issues cannot be adjudicated in a writ petition and the petitioner has an effective and efficacious alternative remedy of filing an appeal before the Debt Recovery Appellate Tribunal. The settled legal position is that when there is an alternative remedy provided under a Statute as in this case under the SARFAESI Act, which being a special Statute, the Writ Court should not interfere in the proceedings and the aggrieved party should necessary avail the hierarchy of remedies available under the Act. Thus, with the above reasons, we hold that the writ petition is not maintainable. However, the petitioner is at liberty to file an appeal before the Debt Recovery Appellate Tribunal, if so advised.

7.With the above observations, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

+One cc to M/s.N.Dilip Kumar, Advocate, SR.No.50838

+One cc to M/s.V.Muthukamatchi, Advocate, SR.No.50041

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