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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

And

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P(MD)Nos.1672 and 1673 of 2018

and

C.M.P(MD)Nos.7317 and 7318 of 2018

1.M/s.Haribala Krishna Automobiles

Represented by its Proprietor C.Jayaraj,
S/o.ChokkiaNaicker,
No.109, Door No.2/189C,
Tirunelveli Road,
Opposite APTA Market, Nagercoil - 629 001.

2.M/s.VDR Parcel Service,

Represented by its Proprietor P.Sampath,
S/o.Durairaj, aged about 34 years,
No.109, Door No.2/189 A6,
Tirunelveli Road,
Opposite APTA Market, Nagercoil - 629 001.

Also at

No.8A, Observator Street,
Nagercoil-629 001

... Petitioners/Petitioners
in C.R.P. (MD) No.1672 of 2018

1.M/s.Ganesh Traders

Represented by its Proprietor C.N.Ganesh,
S/o.Chidambaradass, aged about 27 years,
No.109, Door No.2/189 A4 and A5,
Tirunelveli Road,
Opposite APTA Market, Nagercoil - 629 001.

2.M/s.Thirumurugan Transport,

Represented by its Proprietor S.Gopu,
S/o.Shanmugam, aged about 30 years,
No.109, Door No.2/189 A,
Tirunelveli Road,
Opposite APTA Market, Nagercoil - 629 001.

Also at

19/28, Chetty Street, Kottar,
Nagercoil - 629 002.

... Petitioners/Petitioners
in C.R.P. (MD) No.1673 of 2018



1.The District Collector,
Kanyakumari District,
Ramavarmapuram,
Nagercoil - 629 001.

2.Tamilnad Mercantile Bank,
Represented by its Authorised Officer,
Therekalpudur Branch,
K-2 Block, 15-24, APPTA Market Complex,
Ozhiginasery,
Therekalpudur - 629 901.

3.Mr.S.Balamuruga

... Respondents/Respondents
in both the C.R.Ps.

Common Prayer: Petitions filed under Article 227 of the Constitution of India, praying to call for the records and set aside the order dated 19.06.2018 passed in SA SR No.3697 of 2018 and SA SR No.3700 of 2010 on the file of the Debts Recovery Tribunal, Madurai, respectively.

For Petitioners in
both C.R.Ps

: Mr.P.Jesus Moris Ravi

For R1 in both CRPs.

: Mr.C.Ramar

Additional Government Pleader

For R2 in both CRPs

: Mr.N.Dilip Kumar

COMMON ORDER

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

The Civil Revision Petition (MD)No.1672 of 2018 has been filed by M/s.Haribala Krishna Automobiles and M/s.VDR Parcel Service against the order passed in SA SR No.3697 of 2018 by the learned Debts Recovery Tribunal, Madurai, dated 19.06.2018. The Civil Revision Petition (MD)No.1673 of 2018 has been filed by M/s.Ganesh Traders and M/s.Thirumurugan Transport against the order passed in SA SR No.3700 of 2010 by the learned Debts Recovery Tribunal, Madurai, dated 19.06.2018. Both the Civil Revision Petitions have been filed by the tenants claiming that they are in possession and enjoyment of the property in question on the basis of a rental agreements dated 15.05.2011; 15.10.2012; 30.05.2012 and 30.09.2012 respectively. Hence, without notice or enquiry, the respondents 1 and 2 cannot proceed against them.

2.The learned Tribunal considering that the property mentioned in the rental agreement deeds filed in SA SR No.3697 of 2018 and the properties mentioned in rental agreement deeds filed in SA SR No.3700 of 2018 are one and the same, however, the applicants in SA SR No.3697 of 2018, have shown the same properties as if they are



tenants and raising certain doubts, has rejected both the SA SR Nos.3697 of 2018 and 3700 of 2018 holding that they are not maintainable and that they failed to establish the fact that they are aggrieved persons as defined under Section 17 of the SARFAESI Act.

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3.Although the learned counsel appearing for the petitioners raised various objections assailing the impugned order, dated 19.06.2018, Mr.N.Dilip Kumar, learned counsel appearing for the respondent bank submitted that it is an appealable order under Section 18 of the SARFAESI Act and therefore, the petitioners should be directed to approach the Debts Recovery Appellate Tribunal, Madurai. When there is an effective, efficacious and alternative appealable remedy available to the petitioners, recourse to invoke the extraordinary power under Article 227 of the Constitution of India, is barred.

4.We are also unable to disagree with the objections raised by the learned counsel appearing for the respondent bank. As the petitioners have already approached the learned Debts Recovery Tribunal, Madurai and obtained an order that their applications are not maintainable, they should approach the learned Debts Recovery Appellate Tribunal, Madurai. Therefore, we are unable to entertain these Civil Revision Petitions. Accordingly, these Civil Revision Petitions are dismissed giving liberty to the petitioners to file an appeal under Section 18 of the SARFAESI Act, within a period of one week from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. There is no order as to costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The District Collector,
Kanyakumari District,
Ramavarmapuram,
Nagercoil - 629 001.

+2CC to Mr.P.Jesus Moris Ravi, Advocate, SR.Nos.79164,79165
+1CC to Mr.N.Dilip Kumar, Advocate, SR.No.79855

Order made in
C.R.P(MD)Nos.1672 and 1673 of 2018
20.08.2018