IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P. (Npd) No.1530 of 2018

Mohan Kumar .. Petitioner

-vs-

1. State Bank of India,
   Rep. by its Manager,
   Palakkad Road,
   Pollachi.

2. The Authorized Officer,
   State Bank of India,
   Palakkad Road,
   Pollachi.

3. M/s.Krishna Sweets (P) Ltd.,
   No.23, Mettupalayam Road,
   Kavundampalayam
   Coimbatore - 641 030.

4. Mr.Muthukumar

5. Mr.Vincent .. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 14.03.2018 passed in I.A.No.317

of 2018 in AIR (SA) No.483 of 2010 on the file of Hon'ble Debts Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.R.Gowthama Narayanan for Mr.S.Muthukrishnan

For Respondents : Mr.R.R.Pradheep (R1 & R2) For Mr.S.Sethuraman Mr.Ananda Gomathy (R3 to R5)

O R D E R

(Judgment of the Court was made by *Dr.Vineet Kothari, J*)

The Petitioner Mohan Kumar, has filed this Civil Revision Petition aggrieved by the order dated 14.03.2019 passed by the learned Member of the Debts Recovery Appellate Tribunal upholding the order passed by the Debts Recovery Tribunal on 23.04.2014.

2. The Debts Recovery Tribunal vide order dated 23.04.2014 had directed the petitioner to deposit a sum of Rs.37,49,983/- with the Debts Recovery Tribunal on or before 21.05.2014 failing which, the Interlocutary Application in I.A.No.1103 of 2010 seeking waiver of the Pre-Deposit shall stand automatically dismissed. The same could not

be complied with by the petitioner in time, but however after mobilizing the funds by way of mortgaging the property of his wife, the petitioner is ready to deposit a sum of Rs.37,49,983/- and thereafter applied to Debts Recovery Appellate Tribunal to consider the Appeal on merits. But the learned member of the Tribunal,on 14.03.2019 refused to pass any order stating that the remedy is elsewhere and no orders were required to be passed.

3. The learned counsel for the petitioner submitted that there was a delay of 1390 days in complying with the order passed by the Debts Recovery Appellate Tribunal on 23.04.2014. The learned counsel for the petitioner submits that the delay was not willful on account of the fact that the petitioner was unable to sell the properties of his wife earlier and therefore as soon as the property of his wife was sold, he was able to mobilize the fund and thus got ready with the amount for complying with the Pre-Deposit order. He further submits that the petitioner attempted to thwart the Sales/auction by originally filing O.S.No.65 of 2006 and obtained an order of injunction, which was dismissed later on 13.03.2008. Aggrieved by it, the petitioner also filed A.S.No.55/2008. However, the bank proceeded to issue a Sale

notice on 08.02.2010 in which the respondents 3 to 5 participated, they were petitioners tenants. The petitioner also had made it clear that he intended to protect the property which had been auctioned by the first respondent and despite the same, the respondents 3 to 5 knowing fully participated in the auction held on 10.03.2010 pursuant to which sale certificate was issued on 12.03.2010. He submits that the petitioner be given a fair chance as the petitioner's property has been fairly auctioned by the first respondent bank on 10.03.2010 and the sale certificates were issued on 12.03.2010 by showing undue alacrity.

4. Defending the order of the learned DRAT, the learned counsel for the respondents 1 and 2 submitted that the order was well reasoned and requires no interference. It is submitted that the petitioner was not diligent in pursuing his remedy by complying with the directions of the DRAT and slept over the rights and therefore the present Civil Revision Petition is liable to be dismissed. He further referred to the decision of the Hon'ble Supreme Court in the case of ***Tridip Kumar Dingal & Ors Vs. State of West Bengal & Ors [SLP.No.14820-14825 of 2005 dated 04.11.2008]*** wherein the

Hon'ble Supreme Court reiterated the observations taken in the case of ***P.S.Sadasivaswamy Vs. State of Tamil Nadu*** reported in ***T.N.(1975) 1 SCC 152***; wherein it was held as follows:

> *"It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion of Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."*

5.He also referred to the decision of the Hon'ble Supreme Court in a case of Office of the ***Chief Post Master General & Ors Vs. Living Media India Limited & Another [Civil Appeal Nos. 2474-2475 of 2012].***

6. The learned counsel for the Auction Purchasers viz., 3 to 5 submitted that by resurrecting the stale case by coming forward to Pre-Deposit the amount when indeed the Auction Purchasers have purchased not only the Auction property but also the neighbouring property. They have demolished the existing structures and put up new constructions by combining and annexing the land appurtenant and therefore as on date, it is not possible to re-deliver the property even if it is assumed that the petitioner has a case. It is further submitted that the property in question were auctioned as early as on 10.03.2010 and sale certificate was issued on 12.03.2010 and the Tribunal had directed the Pre-Deposit of the amount on 23.04.2014 on or before 21.05.2014. The petitioner had unsuccessfully challenged the same belatedly after the lapse of 11 months in W.P.No.5646 of 2015, which was dismissed for non prosecution on 03.03.2015. The learned counsel further submitted that during the interregnum, the petitioner had also filed Criminal complaint which was registered in Crl.No.879 of 2011 and the said complaint was quashed in Crl.O.P.Nos.1083, 1084 of 2012 and 1077 of 2012.

7. Having slept over the rights, the petitioner cannot be

permitted to resurrect the stale of the case for making Pre-Deposit at this distant point of time. The issue having attained finality with the dismissal of the W.P.No.5646/2015 also would come in the way of any favourable orders to be passed.

8. Having heard the learned counsel for the petitioner, we are of the opinion that the valuable right of Appeal in the form of First Appeal before the First Appellate Authority before the Debts Recovery Appellate Tribunal under Section 18 of the SARFAESI Act is to be normally made available to the aggrieved persons in accordance with law. The condition of Pre-Deposit in the said provisions is to test the bonafides of the borrower and to ensure recovery of the amount due from the said deposit. The learned DRAT has not given reasons as to why application filed by the petitioner for condoning the delay in restoration of Appeal except making a cryptic observation, which is quoted below for ready reference:

> *"My predecessor has passed a clear order on 23.04.2014. Hence , remedy is somewhere else. I am not in a position to make any explanation on the order of my predecessor."*

9.Though the Tribunal is required to examine the application in accordance with law while considering the application for condonation of delay in restoring the Appeal, it cannot dismiss the application in a summary manner, particularly when the litigent shows bonafide in Complying with the order though belatedly as in the facts of the present case. The learned Tribunal has refused to consider those facts and simply dismissed the Interlocutary Application seeking restoration of the Appeal by observing that since the prohibitory order is passed the order nothing else could be done in the matter and remedy lies elsewhere. We are not satisfied with the observation made by the learned Member of the Debts Recovery Appellate Tribunal in the Impugned Order. The learned Debts Recovery Appellate Tribunal in our opinion ought to have considered the relevant aspects of the matter for condonation of delay and after satisfying itself with the evidence adduced by the petitioner could have assigned reasons and ought to have condoned the delay in the facts and circumstances of the present case. Therefore, in our opinion the Civil Revision Petition deserves to be allowed by setting aside the order dated 14.03.2018 of the learned Debts Recovery Appellate Tribunal, Chennai subject to the petitioner depositing the Pre-Deposit of a sum of Rs. 37,49,983/-.

10. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 14.03.2018 is set aside. The Pre-Deposit amount of Rs.37,49,983/- shall be deposited by the petitioner within a period of three weeks from the date of receipt of a copy of this order. On such deposit being made, the learned Debts Recovery Appellate Tribunal may consider the Appeal in accordance with law and pass appropriate orders after affording an opportunity of hearing to the petitioner, including the Borrower, Bank and Auction Purchasers. No costs.

(V.K.,J.) (C.S.N.,J.)
20.11.2019

Index : Yes/No
arr

DR.Vineet Kothari, J
and
C.Saravanan, J.

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To:

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