IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P.(NPD).No.2606 of 2019

M.J.Dhandapani .. Petitioner

Vs.

1.The Assistant General Manager cum
The Authorized Officer,
State Bank of India,
SME Chennai Branch,
No.39, Prasanth Real Gold Tower,
6th Floor, North Usman Road,
T.Nagar, Chennai – 600 017.

2.M/s.Ganga Foundations Pvt. Ltd.,
New No.69, Old No.33,
Hemavathy Complex,
Paper Mills Road,
Perambur, Chennai – 600 011. .. Respondents

Petition filed under Article 227 of the Constitution of India against the order dated 29.11.2018 passed in I.A.No.1126 of 2018 in Appeal No.AIR (SA).No.518 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.P.J.George

ORDER

(ORDER OF THE COURT WAS MADE BY M.DURAISWAMY, J.)

Challenging the order passed in I.A.No.1126 of 2018 in AIR (SA).No.518 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai, the petitioner has filed the above Civil Revision Petition.

2.The petitioner filed the appeal before the Debt Recovery Appellate Tribunal challenging the order passed in S.A.No.244 of 2017 on the file of the Debts Recovery Tribunal – II, Chennai wherein he has challenged the possession notice dated 13.10.2017 and the publication dated 17.10.2017. The Debts Recovery Tribunal, by order dated 14.08.2018, dismissed the SARFAESI Application. Challenging this order, the petitioner preferred an appeal in AIR (SA).No.518 of 2018 before the Debt Recovery Appellate Tribunal. The Appellate Tribunal, by order dated 15.11.2018, held that the petitioner is interested in the property as owner on the strength of the agreement between the borrower and himself and he should be treated as a borrower. In these circumstances, the Appellate Tribunal directed the petitioner to pay the deficit court fees and to file a waiver application. Thereafter, the petitioner filed a Review Application in I.A.No.1126 of 2018 under Rule 5(A) of the Debts

Recovery Tribunal (Procedure) Rule, 1993 to review the order dated 15.11.2018 passed in AIR (SA).No.518 of 2018. The Appellate Tribunal dismissed the Review Application finding no error apparent on the face of the record.

3.It is pertinent to note that the Debt Recovery Appellate Tribunal has no jurisdiction to try the Review Application. In other words, an aggrieved party cannot file a Review Application before the Debt Recovery Appellate Tribunal. Except the power to be exercised as Appellate Authority, the Debt Recovery Appellate Tribunal has no further power for review or revision, the Debt Recovery Appellate Tribunal cannot assume the power which is not available and provided under the Act. After passing the order under Section 18 of the SARFAESI Act, the Tribunal becomes *functus officio* and cannot go beyond its powers. In the judgment reported in ***2010 (9) SCC 437 [Kalabharati Advertising Vs. Hemant Vimalnath Narichania]***, the Hon'ble Supreme Court held that unless the statute/rules so permit, the Review Application is not maintainable in the case of judicial/quasi judicial orders. It has further been observed that in the absence of any provision in the concerned Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is *ultra vires*, illegal and without jurisdiction. It has further been held that in the absence of any statutory provision for review, entertaining an application for review or an application for review under the garb of clarification/modification/correction is not permissible.

4.In the judgment reported in ***2011 (4) SCC 750 [Assistant Commercial Tax Officer Vs. Makkad Plastic Agencies]***, the Hon'ble Supreme Court relying upon the judgment reported in ***2010 (9) SCC 437 [Kalabharati Advertising Vs. Hemant Vimalnath Narichania] (cited supra)*** held that review is a creature of statute and in the absence of any statutory provision for review, exercise of jurisdiction under the garb of clarification/modification/correction is not permissible. The aforesaid pronouncements of Supreme Court leave no manner of doubt that power of review or review in the garb of clarification/ modification/ correction is not exercisable in the absence of a specific provision either in the concerned Act or in concerned Rules. Thus, it is luminously clear that the Debt Recovery Appellate Tribunal had no jurisdiction to review the orders. Therefore, the Appellate Tribunal ought to have dismissed the Review Application on this ground alone.

5.With regard to the filing of the Civil Revision Petition as against the dismissal of the Review Application, the same is barred under Order 47 Rule 7 of the Code of Civil Procedure. As per the said provision, an order rejecting the Review Application is not appealable. An order of the Court rejecting the application for review shall not be appealable, but, an order granting the application may be objected to at once by an appeal from the order granting.

6.On a reading of Section 22(2) of the Recovery of Debts and Bankruptcy Act, 1993, it is clear that the Tribunal and the Appellate Tribunal shall, for the purposes of discharging their functions under the SARFAESI Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, while trying a Review Application. In other words, while trying a Review Application, the provisions of Order 47 of the Code of Civil Procedure should be applied. Therefore, as per the provisions of Order 47 Rule 7 of the Code of Civil Procedure, the Civil Revision Petition preferred by the petitioner challenging the dismissal of the Review Application is not maintainable.

7.In the unreported judgment of this Bench dated ***21.12.2018*** made in ***W.P.No.14553 of 2017 [M/s.Parsn Medicinal Plants Pvt. Ltd and another Vs. Indian Bank and 3 others]***, this Bench had dismissed the Writ Petition filed against the dismissal of a Review Application as not maintainable in view of Order 47 Rule 7 of the Code of Civil Procedure. The ratio laid down by this Bench in the said judgment squarely applies to the facts and circumstances of the present case. It is also pertinent to note that a Special Leave Petition in Special Leave to Appeal (C) No.5971/2019 filed against the order made in W.P.No.14553 of 2017 was also dismissed by the Apex Court on 08.03.2019 and the Review Petition in R.P.(C).No.1467/2019 in SLP(C) No.5971/2019 was also dismissed by the Apex Court on 09.07.2019.

8.For the reasons stated above, we are of the considered view that the Civil Revision Petition filed by the petitioner is liable to be dismissed not only on the ground of maintainability, but also on the ground that the Debt Recovery Appellate Tribunal has no jurisdiction to entertain the Review Application. In these circumstances, the Civil Revision Petition is dismissed. No costs.

(V.K.T., CJ.) **(M.D., J.)**
08.08.2019

Index : Yes/No
Internet : Yes
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To

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