

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.33459 of 2019

K.Muthulakshmi

Petitioner

-vs-

1. The Presiding Officer
Debts Recovery Tribunal
Coimbatore
2. The Recovery Officer
Debts Recovery Tribunal
Coimbatore
3. The Manager
Indian Overseas Bank
Pollachi Branch
New Scheme Road, Pollachi
Coimbatore

4. N.Prakash

Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, to direct the first respondent to dispose the appeal filed by the fourth respondent in Appeal No.2/2017 against order dated 13.03.2017 passed by second respondent in R.P.No.45/2008 in DRC No.45/2008 in O.A.No.43 of 2005 within a short stipulated period as fixed by this Hon'ble Court.

For Petitioner :: Mr.S.Venkatesh

For Respondents:: R1 & R2 - Tribunal
Mr.Rajendran Raghavan
Standing Counsel for R3
Mr.K.J.Parthasarathy for R4

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The petitioner is the auction purchaser and in the affidavit filed in support of the writ petition, it is averred that the third respondent-Indian Overseas Bank, Pollachi Branch, Coimbatore had filed the Original Application in O.A.No.43 of 2005 under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act (now known as 'Recovery of Debts and Bankruptcy Act') for recovery of a sum of Rs.17,15,633/- with further interest and costs and a recovery certificate for a sum of Rs.20,35,823.72p came to be issued on 3.3.2008 and when the secured property was brought for sale in the year 2009, the petitioner became the successful bidder in respect of the land admeasuring an extent of about 4.90 acres and a sale certificate was also issued in her favour on 5.9.2013 and the possession of first item of the schedule mentioned property was also handed over to her on 18.12.2014 and in respect of the second item of property, which was also purchased by the petitioner, the possession is yet to be handed over. The learned counsel for the petitioner has invited the attention of this Court to the series of proceedings initiated at the instance of the fourth respondent and though the appeal petition before the Debts Recovery Tribunal, Coimbatore was filed by the fourth respondent as early as in the year 2017, no disposal is being given on account of the dilatory tactics adopted by him and also on account of want of regular Presiding Officer in the Debts Recovery Tribunal at Coimbatore and hence, prays for appropriate direction for expeditious disposal of the appeal.

2. Mr.Rajendran Raghavan, learned counsel, who accepts notice on behalf of the third respondent-Bank, has invited the attention of this Court to the detailed reply statement dated 30.11.2017 filed in A.P.No.2 of 2017 and would submit that all the defences taken by the fourth respondent have been rejected by the Hon'ble Supreme Court of India vide order dated 1.7.2016 in S.L.P.Nos.15115 & 15116 of 2016 and he has absolutely no tenable defence and his endeavour is only to drag on the proceedings by repeatedly filing untenable applications and on account of the same, the jurisdictional Debts Recovery Tribunal is unable to give any disposal.

3. The learned counsel for the fourth respondent would submit that he is also claiming as a cultivating tenant and as such, he is having a tenable defence and has no serious objection for directing the jurisdictional Debts Recovery Tribunal to dispose of the appeal at an early date.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it. It is relevant to extract the details of the proceedings given in

the reply statement of the third respondent-Bank, in their counter filed in the appeal petition, which read thus:-

Sl.No	Date	Particulars
1	23.01.1986	Mortgage created by Kuttiammal (now deceased in favour of the 1 st Respondent Bank)
1	28.11.1988	Proceedings of Tahsildar
2	18.07.1994	Preliminary Decree passed in O.S.No.123 of 1989 along with clean copy
3	20.10.2003	Final Decree passed in I.A.No.358 of 2002 in O.S.No.123 of 1989
4	24.01.2005	Application in O.A.No.43 of 2005
5	21.08.2008	Affidavit and petition in I.A.No.2113/2008
6	13.03.2009	Order passed in I.A.No.2113/2008
7	18.03.2009	Sale Notice
8	15.04.2009	Memo of grounds in Appeal No.1 of 2009
9	24.04.2009	Order passed in I.A.No.552 of 2009
10	May 2009	Appeal grounds in M.A.No.278/2010
11	22.05.2009	Order in I.A.No.887/2009 in No.369 of 2009
12	24.06.2009	Deposit Receipt
13	02.07.2009	Sale Certificate
14	21.07.2009	Order of Recovery Officer in R.P.No.45 of 2008
15	26.04.2012	Order passed in W.P.No.11113/2012
16		Proceedings of DRT, Coimbatore
17		Appeal grounds in M.A.No.62/2014
18	19.02.2013	Affidavit and petition in I.A.No.82/2013 in Appeal No.16/2012
19	Mar 2013	Affidavit and petition M.P.No.1/2013 in W.P.No.6679/2013
20	30.04.2013	Order passed in W.P.No.6679/2013
21	27.08.2013	Common order passed in Appeal No.16/2012 and I.A.No.82/2013
22	04.09.2013	Sale certificate
23	06.05.2014	Order passed in M.A.No.130/2013
25	01.07.2016	Order of the Hon'ble Supreme Court of India in S.L.P.No.15115 of 2016 and S.L.P.No.15116 of 2016

5. The diary extract of the Debts Recovery Tribunal,

Coimbatore is also made available in the typedset of documents from pages 52 to 58 and they would disclose that the fourth respondent is in the habit of frequently changing his counsel and it is also one of the reasons for the unnecessary protraction of the proceedings. It prima facie appears that whatever defence the appeal has projected, has ended in failure and in the light of the cited orders passed by the Hon'ble Supreme Court of India, the fourth respondent is making a last-ditch effort to protract the proceedings and going on filing applications to delay the disposal of the appeal petition.

6. In the light of the above facts and circumstances, the Debts Recovery Tribunal, Coimbatore, the first respondent herein is directed to dispose of the appeal filed by the fourth respondent, namely, Mr.N.Prakash in Appeal Petition No.2 of 2017 along with the pending applications, by according priority, and pass final orders on or before 20.02.2020. The parties to the said appeal are also directed to extend their maximum cooperation to the Debts Recovery Tribunal for early disposal of the appeal, as directed by this Court. The writ petition stands disposed of, accordingly. Consequently, W.M.P.No.33928 of 2019 is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
Debts Recovery Tribunal
Coimbatore
2. The Recovery Officer
Debts Recovery Tribunal
Coimbatore
3. The Manager
Indian Overseas Bank
Pollachi Branch
New Scheme Road, Pollachi
Coimbatore

+1cc to Mr.K.J.Parthasarathy, Advocate SR.106176

W.P.No.33459 of 2019

PA (CO)
CB (28/01/2020)