

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.31641 of 2018 and
W.M.P.No.36889 of 2018

1.M/s.Sri Varatharaj Silks,
rep by its Proprietor P.K.Varatharaj
2.P.K.Varatharaj
3.P.K.Ellappan ... Petitioners

Vs.

1.The Federal Bank Ltd.,
rep by its Authorized Officer/Chief Manager,
Specialized Asset Recovery Branch,
First Floor, 21, Variety Hall Road,
Coimbatore - 641 001.

2.The Federal Bank Ltd.,
rep by its Branch Manager,
Tirupur Industrial Finance Branch,
132 A, Deepa Complex, Mangalam Road,
Tirupur - 641 604.

3.The Chairperson,
Debt Recovery Appellate Tribunal,
Chennai - 600 008.

4.The Presiding Officer,
Debts Recovery Tribunal,
Coimbatore.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the production of the records relating to the order dated 29.10.2018 made in AIR(SA).No.470 of 2018 passed by the Debt Recovery Appellate Tribunal, Egmore, Chennai - 600 008 confirmed the order of the Debts Recovery Tribunal, Coimbatore dated 16.07.2018 made in I.A.No.1156 of 2018 in I.A.No.533 of 2018 in S.A.No.379 of 2017, quash the same and direct the petitioner to deposit the balance of Rs.4,75,000/- in S.A.No.379

of 2017 on the file of the Debts Recovery Tribunal, Coimbatore within a stipulated day.

For Petitioners : Mr.S.Senthil Nathan

For Respondents : Mr.S.Sathyanarayanan (R1 & R2)
R3 & R4 - Tribunal

O R D E R

(Order of the Court made by the Hon'ble Chief Justice
and M.Duraiswamy, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records relating to the order dated 29.10.2018 made in AIR(SA).No.470 of 2018 passed by the Debt Recovery Appellate Tribunal, Chennai, confirming the order of the Debts Recovery Tribunal, Coimbatore dated 16.07.2018 made in I.A.No.1156 of 2018 in I.A.No.533 of 2018 in S.A.No.379 of 2017 and to quash the same and to direct the petitioner to deposit the balance of Rs.4,75,000/- in S.A.No.379 of 2017 on the file of the Debts Recovery Tribunal, Coimbatore within a stipulated time.

2.It is the case of the petitioners that they availed loan from the 2nd respondent - Bank on 19.07.2011 by mortgaging the property. Since they defaulted in re-paying the loan, the Bank initiated proceedings under the SARFAESI Act. Thereafter, the petitioners filed SARFAESI Appeal in S.A.No.379 of 2017 before the Debts Recovery Tribunal, Coimbatore challenging the possession notice dated 20.11.2017. In the said appeal, the petitioners filed an application in I.A.No.533 of 2018 to stay all further proceedings. By order dated 05.03.2018, the Debts Recovery Tribunal granted an order of interim injunction against the respondent - Bank not to confirm the sale, subject to payment of Rs.12 lakhs in 2 installments of Rs.6 lakhs each. As per the order dated 05.03.2018, the petitioners were directed to pay the 1st installment of Rs.6 lakhs on or before 28.03.2018 and the 2nd installment on or before 05.05.2018.

3.According to the petitioners, they paid the 1st installment of Rs.6 lakhs before 28.03.2018 and paid only Rs.1,75,000/- towards the 2nd installment on 02.05.2018. Therefore, for making payment of the balance amount of Rs.4,25,000/-, the petitioners filed an application in I.A.No.1156 of 2018 in I.A.No.533 of 2018 seeking for extension of time by two months. In the affidavit filed in support of the petition, the petitioners have stated that the 3rd petitioner, on 05.04.2018, suddenly fell ill and was admitted in PSG Hospital, Coimbatore and underwent treatment upto 10.04.2018 and thereafter, is taking continuous treatment till this date. In

these circumstances, the petitioners have stated that they were not in a position to make the balance payment of Rs.4,25,000/- within the stipulated time by the Debts Recovery Tribunal. The said application was contested by the respondent - Bank and the Debts Recovery Tribunal, by order dated 16.07.2018, dismissed the petition. Aggrieved over the same, the petitioners preferred an appeal in AIR (SA).No.470 of 2018 before the Debt Recovery Appellate Tribunal, Chennai and the Appellate Tribunal also, by order dated 29.10.2018, dismissed the appeal. Aggrieved over the same, the petitioners have filed the above Writ Petition.

4.The learned counsel appearing for the petitioners submitted that the petitioners are having the balance sum of Rs.4,25,000/- ready with them and therefore, they may be permitted to make the payment before the Debts Recovery Tribunal by extending the time granted by the Debts Recovery Tribunal.

5.Since the petitioners have satisfactorily explained the reasons for their non-compliance of the condition imposed by the Debts Recovery Tribunal, in the interest of justice, the time can be extended enabling the petitioners to make their payment before the Debts Recovery Tribunal.

6.Since the Debts Recovery Tribunal had granted time till 05.05.2018 for making payment of the 2nd installment and since the petitioners have not complied with the order in full, we direct the petitioners to make a deposit of a further sum of Rs.6 lakhs before the Debts Recovery Tribunal, Coimbatore on or before 11.02.2019.

7.The learned counsel for the petitioners submitted that the petitioners would make the deposit of Rs.6 lakhs on or before 11.02.2019. Further, the learned counsel submitted that the respondent - Bank had issued a fresh sale notice fixing the auction on 12.02.2019.

8.In view of the submission made by the learned counsel for the petitioners, we give liberty to the petitioners to move the Debts Recovery Tribunal after depositing the sum of Rs.6 lakhs, seeking for appropriate relief with regard to the sale scheduled to be held on 12.02.2019.

9.With these observations, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Authorized Officer/Chief Manager,
Federal Bank Ltd.,
Specialized Asset Recovery Branch,
First Floor, 21, Variety Hall Road,
Coimbatore - 641 001.

2.The Branch Manager,
Federal Bank Ltd.,
Tirupur Industrial Finance Branch,
132 A, Deepa Complex, Mangalam Road,
Tirupur - 641 604.

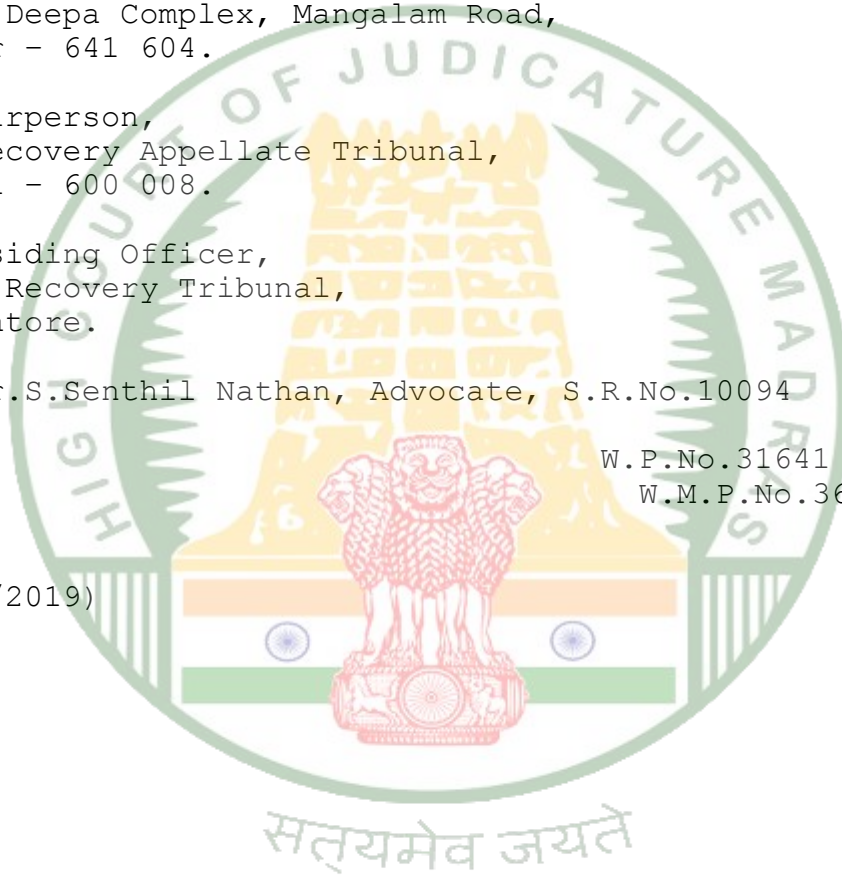
3.The Chairperson,
Debt Recovery Appellate Tribunal,
Chennai - 600 008.

4.The Presiding Officer,
Debts Recovery Tribunal,
Coimbatore.

+1cc to Mr.S.Senthil Nathan, Advocate, S.R.No.10094

W.P.No.31641 of 2018 and
W.M.P.No.36889 of 2018

SSV(CO)
GSP(06/02/2019)



WEB COPY