



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. (MD) No.16983 of 2019
and
WMP (MD) No.13555 of 2019

D.Ramanathan : Petitioner

Vs.

1.The Registrar,
Debts Recovery Tribunal,
IV Floor, Kalyani Towers,
Melur Main Road, Madurai.

2.The Authorised Officer,
City Union Bank Ltd.,
Paramakudi Branch,
Paramakudi,
Ramanathapuram District.

3.The Manager,
City Union Bank Ltd.,
Paramakudi Branch,
Paramakudi,
Ramanathapuram District.

4.K.Amuthan : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the first respondent to take up the appeal in S.A.No.264 of 2017 along with S.A.No.395 of 2019 and dispose of the same in accordance with law within the time fixed by this Court.

For Petitioner : Mr.K.Mahendran

For R-2 & R-3 : Mr.R.Pandivel

For R-4 : Mr.K.Rajeswaran



O R D E R

[Order of the Court was made by K.RAVICHANDRABAABU, J.]

This writ petition is filed for Mandamus directing the first respondent/Debts Recovery Tribunal, Madurai to take up the appeal in S.A.No.264 of 2017 along with S.A.No.395 of 2019 and dispose of the same in accordance with law.

2.Heard Mr.M.Mahendran, learned counsel appearing for the petitioner; Mr.R.Pandivel, learned counsel appearing for the respondents 2 and 3 and Mr.K.Rajeswaran, learned counsel appearing for the fourth respondent.

3.The writ petitioner is the borrower. The respondent bank initiated SARFAESI proceedings against the writ petitioner, which has culminated into issuance of a sale notice, dated 02.06.2017 and consequential sale dated 28.06.2017 of the property belonging to the petitioner, which is said to be a dwelling house. Challenging the said sale notice and the consequential sale, the writ petitioner filed appeal in S.A.No.264 of 2017 before the Debts Recovery Tribunal, Madurai. The said appeal is still pending. During the pendency of the appeal, it is seen that a notice under Section 14 of the SARFAESI Act, was issued and the same was challenged before this Court by filing W.P.(MD)No.24044 of 2018. The said writ petition was dismissed on 13.12.2018 by observing that the same is not maintainable as the writ petitioner has to approach the Debts Recovery Tribunal for redressal of his grievance, however, by granting liberty to the writ petitioner to work out his remedy before the Debts Recovery Tribunal. Accordingly, the writ petitioner filed appeal before the Debts Recovery Tribunal which was not entertained and returned to the writ petitioner by citing the reason of limitation and also the order of dismissal passed in W.P.(MD) No.24044 of 2018. Challenging the said action of the Debts Recovery Tribunal in returning the appeal, the petitioner filed a writ petition in W.P.(MD)No.3131 of 2019 before this Court. The said writ petition was disposed of on 08.07.2019 with the following directions:-

"8.Therefore, without expressing any view on the merits of the matter, the Writ Petition is disposed of, as follows:-

(a).the petitioner shall re-present the appeal papers before the Debts Recovery Tribunal, Madurai, within a period of two weeks from the date of receipt of a copy of this order;

(b).on such representation, the Debts Recovery Tribunal shall take up the appeal and decide the same on merits and in accordance with law;

(c).as it is seen that the petitioner has also presented I.As' pending disposal of such appeal, the Debts Recovery Tribunal, Madurai shall take up these applications first and decide the same on merits and in accordance with law, within a period of two weeks from the date of re-representation of the appeal papers;



(d).Till an order is passed in the I.As' by the Debts Recovery Tribunal, Madurai, the status-quo as on today shall be maintained;

(e).if the petitioner fails to re-present the appeal papers within the time stipulated by this Court, the order of status-quo granted supra, shall cease to operate."

4.Accordingly, in pursuant to the above order, when the Debts Recovery Tribunal, Madurai, has taken up the appeal and the interim application filed therein for hearing, the present writ petition is filed by the writ petitioner seeking for the relief as stated supra.

5.Mr.K.Mahendran, learned counsel for the petitioner submitted that since both the appeals are filed by the very same petitioner, the Debts Recovery Tribunal can be directed to hear both the matters together.

6.On the other hand, the learned counsel for the respondent bank contended that the present writ petition is filed only with an intention to drag on the proceedings further one way or other without allowing the Debts Recovery Tribunal to pass orders in the appeal filed by the petitioner in S.A.No.395 of 2019 and the interim application filed therein in compliance of the order passed by this Court dated 08.07.2019 in W.P.(MD)No.3131 of 2019.

7.The learned counsel Mr.K.Mahendran, appearing for the petitioner informed this Court that the petitioner's daughter's wedding is fixed on 09.09.2019 and therefore, if any adverse order is passed by the Debts Recovery Tribunal in the interim application or in the appeal in S.A.No.395 of 2019, it would cause great hardship and undue sufferings, to the petitioner and his family since the subject matter property is a dwelling house, where the petitioner and his family is residing. Therefore, he submitted that since the respondent bank will take possession of property immediately in the event of his failure before Debts Recovery Tribunal and therefore, atleast a breathing time should be given to the petitioner to work out his remedy before the appellate forum, if any adverse order is passed by the Debts Recovery Tribunal in the above S.A.No.395 of 2019 or in the interim application filed therein.

8.There is no dispute to the fact that the earlier writ petition was filed by the very same writ petitioner challenging the return of the appeal presented by him. When this Court passed an order on 08.07.2019, by issuing certain directions as extracted supra, the pendency of other appeal in S.A.No.264 of 2017 was not brought to the notice of this Court nor it was prayed for common disposal as well. Therefore, we find that the present writ petition filed by the petitioner seeking for common disposal of both the



appeals will only protract the proceedings further inasmuch as this Court has already passed a time bound order in W.P.(MD)No.3131 of 2019. Therefore, we are not inclined to grant the relief as prayed for in this writ petition. However, if any order is passed adversely against the petitioner by the Debts Recovery Tribunal, either in S.A.No.395 of 2019 or in the interim application filed therein, the same shall not be given effect to till 15th September, 2019 only on the humanitarian ground that the petitioner's daughter's marriage is fixed on 9th September, 2019. Needless to say that within such time, the petitioner has to work out his remedy before the appellate forum by filing appropriate appeal, in case, if he fails to succeed either in S.A.No.395 of 2019 or in the interim order passed therein.

9.This writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Writs)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Registrar,
Debts Recovery Tribunal,
IV Floor, Kalyani Towers,
Melur Main Road, Madurai.

2.The Authorised Officer,
City Union Bank Ltd.,
Paramakudi Branch,
Paramakudi,
Ramanathapuram District.

3.The Manager,
City Union Bank Ltd.,
Paramakudi Branch,
Paramakudi,
Ramanathapuram District.

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-79823[F] dated 05/08/2019)
+1 CC to M/s.R.PANDIVEL, Advocate (SR-79832[F] dated 05/08/2019)
+1 CC to M/s.K.RAJESHWARAN, Advocate (SR-80112[F] dated 06/08/2019)

W.P. (MD)No.16983 of 2019

rj2
JM/06.08.2019/4P-7C