BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.11.2019**

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

C.R.P.(MD).No.1897 of 2019

and

C.M.P.(MD).No.9702 of 2019

Jai Kavitha ... Petitioner/Petitioner/Appellant

Vs.

1.The Authorized Officer,
Syndicate Bank,
Claret Plaza, Melakkal Main Road,
Kochadai, Madurai-625 010.

2.Syndicate Bank,
Rep by its Senior Manager,
SRN Tower,
No.208/1, 1st Cross Street,
Sengunthapuram
Karur-639 002.

3.M/s.Morvi Exports,
NH7, New Madurai Bye Pass Road,
Rep by its Proprietor,
S.R.Manickavasagam.

4.S.R.Manickavasagam ... Respondents/Respondents/Respondents

PRAYER: This petition is filed under Article 227 of the Constitution of India, against the order in I.A.No.430 of 2018 in S.A.No.182 of 2015 dated 04.10.2010 on the file of the Debt Recovery Tribunal, Madurai.

For Petitioner :Mr.S.Radha Krishnan
for Mr.M.Guruprasad

For Respondents :Mr.P.Jeyaraman

ORDER

(Order of this Court was made by **T.S.SIVAGNANAM, J)**

Heard Mr.S.Radha Krishnan, learned counsel appearing for the petitioner and Mr.P.Jeyaraman, learned counsel appearing for the respondents.

2.This Civil Revision Petition has been filed under Article 227 of the Constitution of India, challenging the order passed by the Debt Recovery Tribunal, Madurai in I.A.No.430 of 2018 in S.A.No.182 of 2015 dated 04.10.2019.

3.The said application in I.A.No.430 of 2018 was filed by the petitioner under Section 19(25) of the RDDBFI Act, to amend the prayer in the main appeal as well as addition further details. The particulars of the amendment sought for have been set out in the amendment petition filed by the petitioner before the Tribunal. Essentially, the petitioner seeks to bring certain facts, which according to her, are very relevant and there are subsequent events which are required to be taken note of and the prayer sought for in the appeal filed by the petitioner in S.A.No.182 of 2015 needs to be amended.

4.The respondent/Bank resisted the petitioner for filing an elaborate counter affidavit much of which touch upon the merits of the matter. With regard to the prayer for amendment, it is submitted by the respondent/Bank that the prayer is absolutely not maintainable either on law or on facts and the respondent bank has strictly followed the terms and conditions of the loan agreement and it is the applicant/petitioner, who has committed breach of the conditions of the agreement and therefore, the Bank was left with no option except to invoke the provision of the SARFAESI Act for recovery of the outstanding dues.

5.In the counter affidavit, the allegation made against the respondent/Bank have been denied. The fourth respondent herein, who is the former husband of the petitioner had filed a separate counter affidavit seeking for dismissal of the application for amendment of the main S.A.No.182 of 2015. The marriage between the petitioner and the fourth respondent has been dissolved by a decree of divorce passed in H.M.O.P.No.138 of 2017. The fourth respondent refers to the orders passed in W.P.No.35198 of 2012, which was decided on 08.04.2013 and it is submitted that the Court had elaborately considered all the contentions and rejected the case and the present attempt of the petitioner seeking amendment of the main S.A., is liable to be rejected.

6.The ground on which, the petitioner is before us by contending that the law relating to amendment of pleading has been overlooked by the Tribunal, the Tribunal did not take note of the facts placed before the Tribunal as to why the amendment is required to be made to the main SARFAESI appeal, but rather the Tribunal was largely guided by the merits of the matter and rejected the petition.

7.The preliminary objection raised by the learned counsel for the respondent/Bank is on the ground that the C.R.P is not maintainable, as the petitioner has an effective remedy of appeal before the Debt Recovery Tribunal. Though the arguments were advanced by Mr.S.Radhakrishnan, learned counsel for the petitioner has elaborately argued as to why this Court should entertain this Civil Revision Petition under Article 227 of the Constitution of India, we find that any attempt to consider the correctness of the order passed by the Debt Recovery Tribunal would be entering into examination of the disputed questions of fact, some of which have been dealt with in the earlier round of litigation. Therefore, we are convinced that the petitioner if aggrieved by the order passed by the Debt Recovery Tribunal should file an appeal before the Debt Recovery Appellate Tribunal. This is one course open to the petitioner. The other course open to the petitioner is to pray for a combined hearing of the original application filed by the respondent/Bank, which is now pending before the Debt Recovery Tribunal, Coimbatore in O.A.No.1277 of 2016 along with the appeal filed by the petitioner in S.A.No.182 of 2015, which is now pending before the Debt Recovery Tribunal, Madurai.

8.In our considered view, the substantive case is the application filed by the respondent Bank in O.A.No.1277 of 2016. Therefore, out of the two options available to the petitioner, the appropriate option that should be considered by the petitioner is to seek for both cases to be heard together. However, we do not wish to make any observation which may be construed as foreclosing the rights of the petitioner to challenge the impugned order before the Debt Recovery Appellate Tribunal. However, to facilitate a comprehensive hearing and to ensure that all issues are fully thrashed out, we deem it appropriate to transfer the case in S.A.No.182 of 2015 from the Debt Recovery Tribunal, Madurai to the Debt Recovery Trinunal, Coimbatore to be heard and dispose of along with O.A.No.1277 of 2016 pending before the Debt Recovery Tribunal, Coimbatore. As we have already observed that the application filed by the respondent/Bank is the substantive case, we direct the Debt Recovery Tribunal, Coimbatore to take up O.A.No.1277 of 2016 at the first instance and allow the parties to agitate all issues before it and then, consider the S.A.No.182 of 2015. In the mean time, it is well open to the petitioner to file an appeal before the Debt Recovery Appellate Tribunal, if they are aggrieved by the order in I.A.No.430 of 2018 impugned before us.

9.With the above observations, this Civil Revision Petition stands disposed of. No costs.

10.In the light of the above order, the respondent/Bank shall not initiate any coercive action against the petitioner, till the matter is heard by the Debt Recovery Tribunal, Coimbatore. We are informed that the case is posted before the Debt Recovery Tribunal, Coimbatore, during the third week of November 2019, the interim protection which we have granted shall enure to the petitioner only till the case is listed before the Debt Recovery Tribunal, Coimbatore on the next hearing date and not beyond that. If the petitioner wants any interim order to be passed, it is open to the petitioner to move the Debt Recovery Tribunal, Coimbatore, for appropriate relief.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Debt Recovery Tribunal, Madurai.

2.The Debt Recovery Tribunal, Coimbatore.

+1 CC to MR.M.GURU PRASAD, Advocate (SR-95557[F] dated 01/11/2019)
+1 CC to MR.P.JEYARAMAN, Advocate (SR-95779[F] dated 04/11/2019)

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and
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VB(02.12.2019) 4P 5C