BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P.[MD]No.1971 of 2019

and

C.M.P.[MD]No.10129 of 2019

1.M/s. RS Toughened Glass (P) Ltd.,
Rep. by its Managing Director,
K.Rajendran,
Old No.H31, New No.41,
RM Colony,
Dindigul - 624 001.

2.M/s. Sri Sakthi Glass Tech Industries,
Rep. by its Proprietor,
K.Rajendran,
708/4, Nagampalli Village,
NH7, Byepass Road,
Malaikovilur,
Karur. : Petitioner

Vs.

1.The Authorised Officer,
Central Bank of India,
Raja Muthiah Mandram,
1st Floor, Dr. Ambedkar Road,
Madurai - 625 020.

2.The Branch Manager,
Central Bank of India,
Dindigul Branch,
Dindigul.

3.The District Collector and District Magistrate,
Dindigul District,
Dindigul. : Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 09.10.2019 passed in I.A.No.723 of 2019 in A.I.R. No.213 of 2019 on the file of the Debt Recovery Appellate Tribunal at Chennai and direct the Honourable DRAT to number the main appeal and to allow this Civil Revision Petition.

For Petitioner : Mr.P.Thirumahilmaran
For Respondents 1 & 2 : Mr.N.Dilip Kumar
For Respondent No.3 : Mr.A.K.Baskara Pandian
Special Government Pleader

O R D E R
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[Order of the Court was made by **T.S.SIVAGNANAM, J.]**

This civil revision petition filed under Article 227 of the Constitution of India, is directed against the order in I.A.No.723 of 2019 in A.I.R. No.213/2019, on the file of the Debt Recovery Appellate Tribunal, Chennai.

2.By the impugned order the Debt Recovery Tribunal imposed a condition directing a pre-deposit of Rs.3 crores in two instalments of Rs.1.5 crores each. The question is whether the Debt Recovery Tribunal should have imposed such a condition or not. The answer to the said question is in favour of the appellant and against the bank, in the light of the settled legal position, more particularly, in the case of ***Sree Jeya Soundharam Textile Mills Pvt. Ltd., represented by its Managing Director, Perungudi Village, Sivagangai*** *Vs.* ***Canara Bank*** *reported in* ***2019 2 LW 961.***

3.The said decision would apply with full force to the case of the petitioner because the appeal before the Debt Recovery Appellate Tribunal was against an order passed by the Debt Recovery Tribunal, Madurai in I.A.No.776 of 2019 in S.A.SR.No.3696 of 2019. The said application was filed for condonation of delay of 107 days in filing the SARFAESI appeal. The Labour Tribunal by order dated 07.05.2019, dismissed the petition on the ground that there was no convincing and valid reasons made out by the petitioner.

4.The said order was put to challenge before the Debt Recovery Appellate Tribunal. Before the Appellate Tribunal, the petitioner filed I.A.No.723 of 2019, seeking for waiver of the condition of pre-deposit. This was not allowed in its entirety, but a condition for deposit of Rs.3 crores has been imposed. As pointed out earlier, since the appeal filed before the Debt Recovery Tribunal arises out of an order refusing to condone the delay in filing the SARFAESI appeal, no pre-deposit can be insisted upon. This is sufficient to hold that the impugned order before us requires to be set aside.

5.Next we move on to consider as to whether the petitioner has made out sufficient cause for condonation of delay of 107 days in filing the SARFAESI appeal challenging an order passed by the District Collector, Dindigul under Section 14 of the SARFAESI Act. The specific case of the petitioner is that they were not made parties to the proceedings before the District Collector in the application filed by the respondent bank under Section 14 of the Act and secondly not communicated with the order passed by the District Collector directing physical possession to be taken over. In paragraph 10 of the affidavit filed in support of I.A.No.776 of 2019, before the Debt Recovery Tribunal, the petitioners have stated that they have approached the office of the District Collector and after great difficulty, they have obtained the photocopy of the order dated 10.12.2018 passed under Section 14 of the Act and thereafter, filed SARFAESI Appeal.

6.In our considered view, the delay of 107 days cannot be stated to be inordinate nor there is any specific allegation of malafide against the petitioner. In any event, law of limitation has been founded at principles of public policy not intended to destroy the rights of parties. If it is established that the delay is occasioned on account of deliberate malafide with a view to achieve something, then Courts have refused to condone the delay even though the delay was meagre. In the instant case, we are of the view that the delay of 107 days can be condoned, more particularly, when the remedy available to the petitioner under the provisions of the SARFAESI Act is in the nature of an appeal because the order passed by the District Collector under Section 14 is to be tested for the first time.

7.For all the above reasons, the Civil Revision Petition is allowed and the order passed by the Debt Recovery Appellate Tribunal dated 09.10.2019 is set aside. Consequently, the order passed by the Debt Recovery Tribunal dated 07.05.2019 in I.A.No.776 of 2019, is set aside and the Debt Recovery Tribunal is directed to number the SARFAESI appeal and list the same along with S.A.480 of 2015.

8.We are informed by the learned Counsel for the petitioners that the respondent bank is yet to file their counter in S.A.No.480 of 2015, pending before the Debt Recovery Tribunal, Madurai. If this is so, we direct the respondent bank to complete the pleadings within three [3] weeks from the date of receipt of a copy of the order. Simultaneously, the respondent bank shall also file their counter affidavit in the SARFAESI appeal which we have directed to be numbered. The Debt Recovery Tribunal, Madurai is directed to hear both matters and consider the fact that the demand notices were issued to the petitioner in the year 2013 and the petitioners have been declared as NPA in the year 2011/2013. The Debt Recovery Tribunal is requested to hear the matter at the earliest, preferably within a period of four [4] weeks thereafter. The petitioners are directed to extend full cooperation to the Tribunal for early disposal.

9.With the above directions, the Civil Revision Petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

MR

To

1. The Debt Recovery Appellate Tribunal at Chennai.

2.The District Collector and District Magistrate,
Dindigul District,
Dindigul.

+1CC TO MR.P.THIRUMAHILMARAN, Advocate Sr. No. 95733
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 95733

Order made in
C.R.P.[MD]No.1971 of 2019
Dated: **04.11.2019**

KM(CO)
TR(06.12.2019)4P 5C