



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

WEB COPY

C.R.P. (PD) (MD)Nos.1643 of 2010 and 1653 of 2011

and

W.P. (MD)Nos.1287 and 10515 of 2011

and

M.P. (MD)Nos.1 of 2010, 2 and 3 of 2011 and C.M.P. (MD)Nos.1695, 1696 and 9850 of 2019

C.R.P. (PD) (MD)No.1643 of 2010

1.Muthu Thevar (died)

2.Nagarajan

(P.2 is brought on record as LR of the deceased sole petitioner vide order of this Court, dated 07.03.2018 made in C.M.P. (MD)Nos.2124 to 2126 of 2018 in C.R.P.No.1643 of 2010)

... Petitioners

Vs.

1.The Recovery Officer,
Debt Recovery Tribunal,
4/162, Kalyani Towers,
Melur Road, Uthangudi,
Madurai-625 107.

2.The Branch Manager,
Union Bank of India,
Kochadai Branch, Madurai.

3.P.Kannan,
Proprietor of M/s Sri Chakkara Trading Co.,
1-E, Extension, B.B.Road,
Chairman Muthuramaiya Road,
Madurai-9.

4.Manonmani

5.Karthik

6.Minor R.Subash

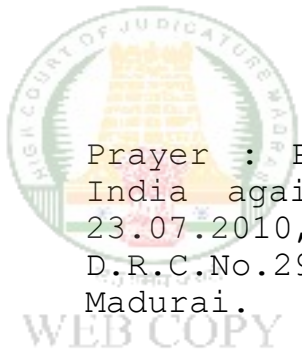
7.Minor Poornima Sree

(Minor respondents 6 and 7 are represented by mother and natural guardian Manonmani)

(Respondents 4 to 7 are impleaded vide Court order dated 21.02.2018 made in C.M.P. (MD)No.7850 of 2017 in C.R.P. (MD)

No.1643 of 2010)

... Respondents/Respondents



Prayer : Petition filed under Article 227 of the Constitution of India against the order passed by the first respondent, dated 23.07.2010, made in I.A.No.264/2010 in R.P.No.34/2008 in D.R.C.No.29/2008, on the file of the Debt Recovery Tribunal, Madurai.

For Petitioner : Mr.R.G.Sankar Ganesh
For Respondents : Mr.T.Govindasamy
for R.2
: Mr.S.Vijayashanthi
for R.4 to R.7
:No Appearance
for R.1 and R.3

C.R.P. (PD) (MD)No.1653 of 2011

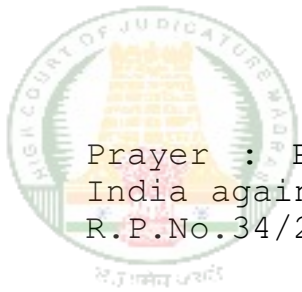
1.Muthu Thevar (died)
2.Nagarajan
(P.2 is brought on record as LR of the deceased sole petitioner vide order of this Court, dated 28.02.2018 made in C.M.P.(MD)No.1931 of 2018 in C.R.P.No.1653 of 2011)

... Petitioners

Vs.

- 1.The Recovery Officer,
Debt Recovery Tribunal,
4/162, Kalyani Towers,
Melur Road, Uthangudi,
Madurai-625 107.
- 2.The Branch Manager,
Union Bank of India,
Kochadai Branch, Madurai.
- 3.The Tahsildar,
Madurai South Taluk,
Thiruparankundram, Madurai.

- 4.Ravichandran(died)
 - 5.Manonmani
 - 6.R.Karthik
 - 7.Minor R.Subash
 - 8.Minor Boornima Sree
(Minor respondents 7 and 8 are represented by their mother and natural guardian Manonmani)
(Respondents 5 to 8 brought on record as Lrs of the deceased R4 vide Court order dated 21/2/2018 made in CMP(MD)Nos.7302 to 7304 of 2017 in CRP(MD)Nos.1653 of 2011)
- ... Respondents



Prayer : Petition filed under Article 227 of the Constitution of India against the order dated 27.07.2011 made in D.R.C.No.29/2008 in R.P.No.34/2008, on the file of the Debt Recovery Tribunal, Madurai.

For Petitioner : Mr.R.G.Sankar Ganesh
For Respondents : Mr.T.Govindasamy

for R.2

: Mr.J.Gunaseelan Muthiah
Additional Government Pleader

for R.3

: Mr.S.Vijayashanthi
for R.5 to R.8

:No Appearance
for R.1

: R-4-died

W.P. (MD)No.1287 of 2011

1.Muthu Thevar (died)

2.Nagarajan

(P.2 is substituted for the deceased
sole petitioner vide order of this
Court, dated 28.02.2018 in W.M.P.

(MD)No.4187 of 2018)

... Petitioners

Vs.

1.The Tamil Nadu Electricity Board,
represented through its
Executive Officer,
Having office at Arasaradi,
Madurai.

2.The Tamil Nadu Electricity Board,
represented through its Assistant Engineer,
Having office at Pasumalai,
Madurai.

3.Ravichandran

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent dated 19.10.2010 in proceeding No.U.PO./Bagi/Pasumalai/Ko.Viva/a716/10, quash the same as the same is arbitrary, ultravires and direct the second respondent to restore the electricity service connection which was available in the property composred in S.No.31/2 to an extent of 76 cents, Thiruparankundram Village, Madurai District, in consonance with Clause No.6.03 of the terms and conditions of Supply of Electricity based on the petitioner's representations dated 20.09.2010, 16.10.2010 and 20.10.2010.

For Petitioner : Mr.R.G.Sankar Ganesh
For Respondents : Mrs.S.Srimathy

for R.1 and R.2



: Mr.M.Ramu
for R.3

W.P. (MD)No.10515 of 2011

1.Muthu Thevar (died)

2.Nagarajan

(P.2 is substituted for the deceased
sole petitioner vide order of this
Court, dated 28.02.2018 in W.M.P.

(MD)No.4186 of 2018)

... Petitioners

Vs.

1.The Revenue Divisional Officer,
Madurai.

2.The Tahsildar,
Madurai South Taluk,
Madurai District.

3.Ravichandran (died)

4.Manonmani

5.R.Karthik

6.Minor R.Subash

7.Minor Poornima Sree

(Minor respondents 6 and 7 are represented
by their mother and natural guardian
Manonmani)

(R4 to R7 are substituted of the deceased 3rd Respondent vide Court
order dated 28.02.2018 in WMP(MD)No.11003 of 2017)

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of
India praying for issuance of Writ of Certiorari calling for the
records of the second respondent in T.R.No.10/10/P1 and quash the
same as the same is without jurisdiction, arbitrary, ultravires.

For Petitioner : Mr.R.G.Sankar Ganesh
For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader
for R.1 and R.2
: Mrs.S.Vijayashanthi
for R.3 to R.7

* * * * *

COMMON ORDER

[Order of the Court was delivered by **M.DURAISWAMY, J.**]

Challenging the order passed in I.A.No.264 of 2010 in
R.P.No.34 of 2008 in D.R.C.No.29 of 2008, passed by the Recovery
Officer, the third party petitioner has filed the Civil Revision



Petition in C.R.P.(MD)No.1643 of 2010. So far as the Civil Revision Petition in C.R.P.(MD)No.1653 of 2011 is concerned, the petitioner has challenged the order passed by the Recovery Officer in D.R.C.No.29 of 2008 in R.P.No.34 of 2008.

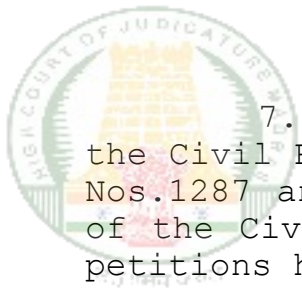
2. It is a settled position that when the aggrieved party got alternate remedy to challenge the order passed by the Recovery Officer by way of an appeal before the Debt Recovery Tribunal under Section 30 of the Recovery of Debts Due to Banks and Financial Institution Act, the Civil Revision Petitions cannot be entertained.

3. The Honourable Supreme Court in the cases of ***The Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.***, reported in (2018) 3 SCC 85 and ***Agarwal Tracom Private Limited Vs. Punjab National Bank and others***, reported in (2018) 1 SCC 626 has held that the aggrieved parties cannot challenge the SARFAESI proceedings directly by filing a writ petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

4. In a recent decision of the Honourable Supreme Court in ***ICICI Bank Limited v. Umakanta Mohapatra***, reported in 2018 SCC Online SC 2349, the Apex Court has referred to the decision in the case of ***Mathew K.C.***, referred supra, and observed that despite several judgments, including the decision in the case of ***Mathew K.C.***, referred supra, the High Courts continue to entertain matters which arise under the SARFAESI Act and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Honourable Supreme Court has held that writ petition filed by the aggrieved party, without exhausting the statutory remedy available under the SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, is not maintainable.

5. Admittedly, the petitioner is challenging the order passed by the Recovery Officer against which, only an appeal is maintainable before the Debts Recovery Tribunal under Section 30 of the Recovery of Debts Due to Banks and Financial Institution Act. It is also brought to the notice of this Court that the petitioner obtained an order of interim injunction in both the Civil Revision Petitions on 08.09.2010, which is in force till today.

6. In these circumstances, following the ratio laid down by the Honourable Supreme Court, we are not inclined to entertain the Civil Revision Petitions. Accordingly, the Civil Revision Petitions are dismissed. However, it is open to the petitioner to challenge the order passed by the Recovery Officer before the Debt Recovery Tribunal in accordance with law. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed.



7. The learned Counsel appearing for the petitioner in both the Civil Revision Petitions, who is also the petitioner in W.P.(MD) Nos.1287 and 10515 of 2011 submitted that in view of the dismissal of the Civil Revision Petitions, the relief sought for in the writ petitions have become infructuous.

WEB COPY

8. For the reasons stated above, the Writ Petitions are also dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ssl

To

1.The Recovery Officer,
Debt Recovery Tribunal,
4/162, Kalyani Towers,
Melur Road, Uthangudi,
Madurai-625 107.

2.The Tahsildar,
Madurai South Taluk,
Thiruparankundram,Madurai.

3.The Revenue Divisional Officer,
Madurai.

4.The Tahsildar,
Madurai South Taluk,
Madurai District.

+2 CC to M/s.S.VIJAYASANTHI, Advocate (SR-6342[F],SR-6343[F])

+1 CC to M/s.SPL.GP (SR-6338[F] dated 14/02/2020)

+1 CC to M/s.R.G.SHANKAR GANESH, Advocate (SR-6251[F] dated
13/02/2020)

C.R.P. (PD) (MD) Nos.1643 of 2010 and 1653 of 2011

and

W.P. (MD) Nos.1287 and 10515 of 2011

and

M.P. (MD) Nos.1 of 2010, 2 and 3 of 2011 and C.M.P. (MD) Nos.1695, 1696

and 9850 of 2019

13.02.2020