



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.7879 of 2020

Antony Samy

... Petitioner

Vs.

1.The Registrar,
Debts Recovery Tribunal,
Kalyani Towers,
4/162, Madurai - Melur Road,
Uthangudi,
Madurai.

2.The Authorised officer,
State Bank of India,
RBO-I, Administrative Office,
Trichy - 1.

3.Tamilselvan

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the first respondent to number the Application under Section 17 of the SARFAESI Act, in e-DRT Diary No.384 of 2020 in Unnumbered S.A.No.--- of 2020, dated 04.03.2020 and take the Application on file.

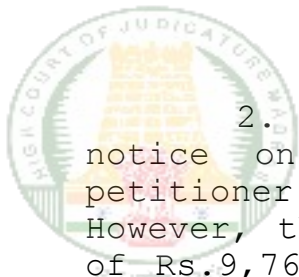
For Petitioner : Ms.S.Mahalakshmi

For Respondents : Mr.N.Dilip Kumar
Standing Counsel for R.2
R.1 - Tribunal
* * * * *

ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

The petitioner had availed a housing loan of Rs.8,00,000/- (Rupees Eight Lakhs only) in the year 2012 and also other financial assistance/facilities and in view of the default committed by the petitioner, a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act") came to be issued, demanding a sum of Rs.10,32,902/- (Rupees Ten Lakhs Thirty Two Thousand Nine Hundred and Two only) as on 26.05.2016 and it was followed by a possession notice.



2. The second respondent bank also issued an e-auction sale notice on 07.03.2017 fixing the date as 27.03.2017 and the petitioner also made arrangements to pay the portion of the dues. However, the second respondent bank insisted to pay the entire sum of Rs.9,76,500/- (Rupees Nine Lakhs Seventy Six Thousand and Five Hundred only) in his Savings Account and the second respondent bank assured that it will be adjusted towards the loan and believing the same, the petitioner has also deposited a sum of Rs.9,76,500/- (Rupees Nine Lakhs Seventy Six Thousand and Five Hundred only) on 10.04.2017. However, the second respondent bank proceeded with the recovery and conducted sale on 27.03.2017 and in the light of the same, the successful auction bidder has also deposited the amount and out of the sale proceeds, the loan amount has been adjusted and thereafter, the Sale Certificate came to be executed on 03.08.2017. Challenging the legality of the Sale Certificate issued in favour of the auction purchaser, he filed an Application in e-DRT Diary No.384 of 2020 under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal, Madurai.

3. Learned Counsel for the petitioner would submit that in the light of the fact that the petitioner was also diligently prosecuting the writ proceedings in W.P(MD)Nos.18239 of 2017 and 17099 of 2017, he is entitled to invoke Section 14 of the Limitation Act.

4. The grievance expressed by the petitioner is that despite papers are in order, the Application filed under Section 17 of the SARFAESI Act, has not been numbered and hence, he came forward to file this writ petition.

5. The learned Counsel for the petitioner would submit that in the light of the common order dated 13.01.2020 passed in W.P.Nos.34860 of 2019 and 251 of 2020 [**P.K.Radhakrishnan v. The Central Bank of India and others**], the petitioner is entitled to invoke Section 5 of the Limitation Act, for condonation of delay before the jurisdictional Debts Recovery Tribunal and has also drawn the attention of this Court to yet another judgment dated 06.02.2020 passed in W.P.No.2754 of 2020 [**Bensan Exim Corporation, rep. By its Partner, Jayashree Rao and others v. The Presiding Officer, The Debts Recovery Tribunal - II, 4th Floor, Dewa Tower, 770-A, Anna Salai, Chennai - 600 002 and another**].

6. Mr.N.Dilip Kumar, learned Standing Counsel for the second respondent bank would submit that in the light of the above cited decisions, it is open to the petitioner to file an application for condonation of delay and unless the delay is condoned, the Application under Section 17 of the SARFAESI Act, may not be numbered by the jurisdictional Debts Recovery Tribunal.

7. This Court has carefully considered the rival submissions and perused the materials placed on record.



8. In the light of the above cited decisions, it is open to the petitioner to file an application for condonation of delay in filing the Application under Section 17 of the SARFAESI Act and, as and when such application is filed, the Debts Recovery Tribunal, Madurai, is directed to entertain the same if the papers are otherwise in order and give disposal for the application for condonation of delay on merits and in accordance with law and pass orders as expeditiously as possible and not later than three weeks from the date of entertainment of the same.

9. This writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RSB

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Registrar,
Debts Recovery Tribunal,
Kalyani Towers,
4/162, Madurai - Melur Road,
Uthangudi,
Madurai.

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-13627[F]
dated 05/08/2020)

W.P. (MD)No.7879 of 2020
04.08.2020

KK(14.08.2020) 3P 3C