



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.16301 of 2021 & WMP.No.17262 of 2021

Sunil Kumar Jain

.. Petitioner

Vs

1. The Presiding Officer
Debts Recovery Tribunal
Coimbatore, 2nd & 3rd Floors,
Jawan's Bhavan, 27,
T.B. Road, Coimbatore 641 018.

2. The Authorised Officer
Bank of Baroda
Salem Main Branch
44, Sannadhi Street
Fort, Salem 636 001.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus directing the first respondent to collect Rs.200/- and restore the SA.21 of 2021 by treating the fresh application as M.A.No. of 2021 in the said SA which stands disposed of.

For Petitioner : Mr.T.Senthil Kumaran

For Respondents : Dr.G.Babu
for respondent-1

Mr.P.Elayaraj Kumar
For M/s. Ramalingam
Associates
for respondent-2



ORDER
(Order of the Court was made by
the Hon'ble Acting Chief Justice)

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By this writ petition, the petitioner prays for a direction to the first respondent - Debts Recovery Tribunal to collect Rs.200/- as court fee and restore S.A.No.21 of 2021 by treating the fresh application as a miscellaneous application in the said SARFAESI Appeal, which stood disposed of.

2. It is mainly in reference to the charging of court fee separately for maintaining a Miscellaneous Application in a SARFAESI Appeal earlier decided.

3. The facts on record show that the petitioner herein preferred an appeal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 before the first respondent, on receipt of the sale notice dated 04.12.2020. However, the said SARFAESI Appeal was dismissed as infructuous on 20.1.2021. After disposal of the appeal, the second respondent proceeded to issue a fresh sale notice on 30.5.2021 claiming a sum of Rs.2,38,83,173.37 Ps. The second respondent also issued another sale notice dated 16.7.2021 for the auction to be held on 05.8.2021. At that stage, the petitioner sought to prefer a Miscellaneous Application before Debts Recovery Tribunal challenging the said sale notice. Since it is yet to be numbered, the writ petition has been filed seeking a direction to the first respondent - Debts Recovery Tribunal to collect Rs.200/- in the said SARFAESI Appeal and restore the same by treating the fresh application as as miscellaneous application in the said SARFAESI Appeal, which stood disposed of.

4. The Miscellaneous Application can be maintainable in pending SARFAESI Appeal. But, the SARFAESI Appeal was disposed of by an order dated 20.1.2021. After disposal of the SARFAESI Appeal by Debts Recovery Tribunal, it becomes functus officio for the aforesaid case and otherwise the Miscellaneous Application was in reference to the subsequent action taken by the bank.

5. Today, learned counsel has contested the matter and accordingly, the matter was considered by this Court.

6. We find that after disposal of the appeal pursuant to notice under Section 13(4) of the SARFAESI Act, the Bank has proceeded to sell the property and caused the sale notice. As per the facts available on record, the sale notice was issued on 04.12.2020. The said sale notice was challenged in the SARFAESI



Appeal, which was disposed of by order dated 20.1.2021. Thereafter, the Miscellaneous Application has been sought to be preferred to challenge the sale notice on the ground of limitation, which was not a ground taken in the appeal and otherwise, the Miscellaneous Application was not maintainable in regard to the sale notice, as it was an action subsequent to the dismissal of the appeal with a separate cause of action.

7. In view of the above, we find no case has been made out for issuing the direction sought for.

8. Accordingly, the writ petition fails and the same is dismissed. Consequently, connected WMP is also dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

RS

To:

1. The Presiding Officer
Debts Recovery Tribunal
Coimbatore
2nd & 3rd Floors, Jawan's Bhavan
27, T.B. Road
Coimbatore 641 018.
2. The Authorized Officer
Bank of Baroda
Salem Main Branch
44, Sannadhi Street
Fort, Salem 636 001.

+2ccs to Mr.G.Babu, Advocate (CGSSC) SR.No.63148

+2ccs to M/s. Ramalingam Associates, Advocate SR.No.63093

W.P.No.16301 of 2021 &
WMP.No.17262 of 2021

KSM(CO)
GMY(07/12/2021)