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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.AUDIKESAVALU

C.R.P.NO.2152 OF 2021

&

C.M.P.NO.16300 OF 2021

1. M/s.AMR Pharma India Pvt Ltd.,
Y 34, Bhagya Lekha Apartments,
Door No.1A, First Floor,
5th Avenue Road, Anna Nagar West,
Chennai - 600 040.

Shifted to
1585, A Block, 13th Main Road,
Anna Nagar, Chennai - 600 040.
(Near Revathy Super Market).

2. G.Ashok
3. S.Sathish Kumar

4. M/s.Iris Art Galleria P Ltd.,
W18, Old No.W168, North Main Road,
Anna Nagar West Extension,
Chennai - 600 102.

... Petitioners

.Vs.

The Authorised Officer,
Indian Overseas Bank,
Maraimalai Nagar Branch,
34, Nandhanar Street,
Maraimalai Nagar - 603 209.

... Respondent

PRAYER:- Petition filed under Article 227 of the Constitution of India to issue a direction to the Registry of Hon'ble DRT-III, Chennai to number the M.A. (SR Nos.3835) of 2021 by directing the registry of Hon'ble DRT-III, Chennai to collect Rs.200/- for each M.A. as court fee and restore the SA 72 of 2019 by treating the fresh applications as M.A (SR Nos.3835) of 2021 in the said SA which stands disposed of.



a) To hear this M.A. of 2021 in S.A.No.72 of 2019 on Urgent basis Vide Video Conferencing

b) To grant an Interim order of Stay of confirmation of Sale pertaining to the Sale Notice dated 15/06/2021, for auction to be held on 09/07/2021 by the Respondent and making it subject to the outcome of this M.A. filed and

c) To declare that the action of the Respondent Bank in issuing the Sale Notice dated 19/06/2021, under the Sarfaesi Act is hopelessly barred by limitation

d) To consequently direct the Respondent to restore possession of the properties and return the original documents held by them alongwith any charges created in their favour of the schedule mentioned properties of the applicants.

e) To pass such other suitable Order or Orders as this Tribunal may deem fit proper under the circumstances of the above case

Petitioners : Mr.B.Gurumurthy

Respondent : Mr.F.B.Benjamin George

ORDER

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

By this civil revision petition, the challenge is made to the order passed by the Registry of Debts Recovery Tribunal-III, Chennai (for short, DRT-III).

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, on receipt of the notice under Section 13(4) of the said Act. After disposal of the appeal, the respondent proceeded to issue a sale notice on 15.06.2021. At that stage, the petitioner preferred a Miscellaneous Application before DRT-III, challenging the said sale notice.



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4. On the aforesaid, the Registry of DRT - III raised the following objections:

"(1) Separate SA to be filed since sale notice dated 15-6-2021 is a separate cause of action.

(2) It is seen from the records that SA 72/19 was disposed off on 08-8-2019 by granting 45 days time to settle the account. While so, Counsel for petitioners may state whether these petitions seeking direction/relief against a subsequent sale notice issued by the Respondent Bank in a disposed off matter, are maintainable.

(3) 3rd petitioner was not party to SA 72/19. Counsel to clarify.

(4) While Mr.Ganesh has filed vakalat as Director of M/s.IRIS ART GALLERIA PVT LTD in SA 72/19 and signed the pleadings, Mr.Ashok has signed in change of vakalat now filed. Counsel to clarify."

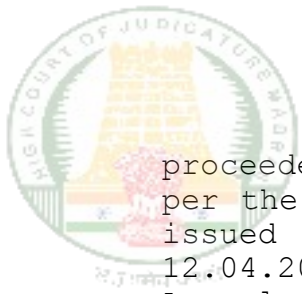
5. The present petition has been filed against the charging of separate court fee for each Miscellaneous Application. The fee paid by the petitioner was otherwise Rs.200/- for maintaining the Miscellaneous Application.

6. The matter was heard by the Court on 19.7.2021 and it was observed that the Miscellaneous Application is not maintainable, as the sale notice has given a separate cause of action. The Miscellaneous Application can be maintainable in pending SARFAESI Appeal. But, the SARFAESI Appeal was disposed of by an order dated 08.08.2019. After disposal of the SARFAESI Appeal by DRT III, it becomes functus for the aforesaid case and otherwise the Miscellaneous Application was in reference to the subsequent action taken by the bank.

7. Learned counsel for the petitioner prayed for time to seek instructions in the matter, so as to withdraw the petition with liberty to maintain a SARFAESI Appeal for challenging the sale notice forming a separate cause of action.

8. Today, learned counsel has contested the matter in view of the instructions passed on by his clients and accordingly, the matter was considered by this Court.

9. 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 initially issued on 25.02.2019, fixing the sale of the property on 12.04.2019. The said sale notice was challenged in the SARFAESI Appeal, which was disposed of by order dated 08.08.2019. Thereafter, the Miscellaneous Application has been 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.

10. Accordingly, we find no illegality in the objection raised by the Registry of DRT III against the maintainability of the Miscellaneous Application questioning the sale notice and therefore, when the Miscellaneous Application itself is not maintainable, we sustain the objection raised by the Registry of DRT III against the maintainability of the Miscellaneous Application, as it is not in the pending matter, but in the appeal already disposed of and that too, almost two years back prior to the sale notice.

11. Accordingly, the revision petition fails and the same is dismissed. There will be no order as to costs. Consequently, connected CMP is also dismissed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

RS

To

1. The Debt Recovery Tribunal-III,
Chennai.
2. The Authorised Officer,
Indian Overseas Bank,
Maraimalai Nagar Branch,
34, Nandhanar Street,
Maraimalai Nagar - 603 209.

C.R.P.NO.2152 OF 2021 &
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EV(CO)
PBS/07/12/2021