IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.R.P.NO.2050 OF 2021
AND
C.M.P.NO.15590 OF 2021

L.Prabakar ... Petitioner

.Vs.

1. The Authorised Officer,
J.M.Financial Asset Reconstruction Company Limited, (Formerly known as JM Financial Asset Reconstruction Company Private Ltd), 7th Floor,
Cnergy, Appasahed Marathe Marg,
Prabhadevi, Mumbai - 400 025.

2. M/s.Hema Enterprises
Rep. by its Partner,
Mr.W.S.Suresh Kumar.

3. W.S.Suresh Kumar
4. W.S.Vinod Babu ... Respondents

PRAYER:- Petition filed under Article 227 of the Constitution of India against the order dated 30.08.2019 made in RA (SA) No.119 of 2018 passed by Debt Recovery Appellate Tribunal at Chennai reversed the Order dated 21.07.2017 made in S.A.No.21 of 2015 on the file of the Debt Recovery Tribunal-I, Chennai.

For the Petitioner : Mr.R.Kalyan Kishen Singh

ORDER

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

The petitioner seeks to challenge an order dated August 30, 2019 passed by the Debt Recovery Appellate Tribunal at Chennai.

2. There is no indication in the petition as to why such a belated challenge has to be entertained in this extraordinary jurisdiction. The order impugned was passed on an appeal of the secured creditor.

3. Though it has not been adequately explained in the affidavit in support of the present petition that the petitioner may not have been contemporaneously aware of the order impugned dated August 30, 2019, however, it is evident from the first paragraph of the impugned order that appropriate service may not have been effected.

4. It is quite possible that the petitioner and the other borrowers, within the meaning of such word in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, may not have been available at the place of business or residence as per the address furnished by the borrowers to the secured creditor. However, it cannot be appreciated that substituted service by publication in newspapers would be accepted by the appellate tribunal without calling upon the secured creditor to ascertain the addresses of the borrowers.

5. There is no doubt that substituted service is permissible. However, it must also be kept in mind that the publication in the newspaper is by a small insertion in a remote part of the newspaper. It is not expected that every person would go through every part of every newspaper to ascertain whether any notice has been carried in any newspaper against such person.

6. Again, while it is true that the petitioner and the other borrowers may have changed their residence or place of business without intimation to the concerned secured creditor, despite owing money to such creditor, tribunals and courts should adhere to the principles of natural justice by ensuring meaningful service and not mere lip service by substituted service being effected in newspapers that may have little or no circulation. Indeed, banks have agents taking care of the assets which are furnished as securities to such banks and courts and tribunals should not straightaway resort to substituted service upon regular service failing.

7. There is sufficient basis to the petitioner's grievance in such regard as the order impugned reflects that an attempt at regular service was made by the secured creditor in this case but upon the postal articles being returned with the endorsement that the borrowers were not available at their place of business or residence, substituted service was immediately directed without requiring the secured creditor to make an attempt to

ascertain the whereabouts of the borrowers.

8. Despite the aforesaid, the present petition cannot progress any further. The petitioner ought first to have approached the DRAT, Chennai with an application for recalling the order impugned herein and reconsidering the matter after affording an opportunity of hearing to the petitioner. The petitioner ought to have attempted to convince the DRAT first as to why the petitioner altered the petitioner's place of business or residence without intimation to the secured creditor. In the absence of such exercise having been first undertaken, this court is not minded to receive the petition despite the possible prejudice that the order impugned may have caused to the petitioner.

Accordingly, CRP No.2050 of 2021 is disposed of without going into the merits of the petitioner's grievance and by leaving the petitioner free to approach the DRAT, Chennai with an application for recalling the order impugned within reasonable time hereof. CMP No.15590 of 2021 is closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sra

To

1. The Registrar,
Debt Recovery Appellate Tribunal,
Chennai.

2. The Presiding Officer,
Debt Recovery Tribunal-I,
Chennai.

+1cc to Mr.R.Kalyan Kishen Singh, Advocate, S.R.No.49378

C.R.P.NO.2050 OF 2021

RLD(CO)
PBS/30/09/2021