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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.27023 of 2019

The Official Liquidator
High Court of Madras
As the Provisional Liquidator of
Maxworth Orchards (India) Limited
No.1A, Akbarabad First Street
Kodambakkam, Chennai-600 024. .. Petitioner

Vs

1 ICICI Bank Limited
CBG-CMA, ICICI Bank Tower
93, Santhome High Road
Chennai - 600 028.

2 N.Vijayakumar
3 N.Jothishmathi
4 Sarasamma .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records connected with the impugned order dated 05.07.2017 passed by the Debt Recovery Appellate Tribunal, Chennai in I.A.No.929 of 2014 in M.A.No.191 of 2011 and quash the same.

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For the Petitioner : Mr.H.Karthik Seshadri

For the Respondents : M/s.Shivakumar and Suresh for 1st respondent

: M/s.T.Sundar Rajan for respondents 2 to 4

ORDER

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

The writ petition has been filed to assail the order of the Debts Recovery Appellate Tribunal, Chennai, dated 5.7.2017, whereby the application filed by the petitioner seeking condonation of delay of 212 days in filing the appeal was dismissed.

2. The Tribunal set out the facts for consideration of the application and found that the Bank of Madura Limited sanctioned a loan amount of Rs.1.50 Crore on 1.12.1995 in favour of the appellant company (now in liquidation). On account of default, the loan account was classified as a non-performing asset. The bank preferred O.A.No.1589 of 1998 before the Debts Recovery Tribunal, Chennai, for recovery of a sum of Rs.2,08,91,627/- and vide order

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dated 24.6.1999, a decree was passed in favour of the bank. On 16.8.1999, a recovery certificate was issued and the property was attached on 1.12.1999.

3. It is stated that the appellant company went in liquidation on 24.2.1998 and vide order dated 12.2.2001 passed in C.A.No.63 of 2001, the High Court appointed an Administrator. By order dated 6.2.2006 in C.A.No.353 of 1998, the High Court directed the Administrator to act as the Provisional Liquidator. By order dated 17.9.2010 in C.A.Nos.884 to 886 of 2008 in C.P.No.57 of 199, a learned Single Judge of this court directed the appellant to approach the Debts Recovery Appellate Tribunal to work out the remedy under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In paragraph (62) the said order, the learned Single Judge discussed in detail the various procedural irregularities in the sale.

4. The facts aforesaid were taken into consideration by the Tribunal for deciding the application for condonation of delay,

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though certain facts, which are relevant, were not considered.

5. It is stated that the order dated 13.6.2000 passed by the Recovery Officer was assailed before the Company Judge in the year 2008, on appointment of the Provisional Liquidator on 6.2.2006. Thereafter, the Company Judge passed an order on 17.9.2010 directing the writ petitioner to file an appeal before the Debts Recovery Appellate Tribunal and thereupon an appeal was filed with a delay of 212 days, but the Tribunal considered it to be a delay of 12 years.

6. Learned counsel for the appellant submits that though the order dated 13.6.2000 passed by the Recovery Officer, DRT-I, Chennai, was challenged before the Company Judge of the High Court, during the intervening period the order dated 4.8.2006 to confirm the sale was also passed, and the matter remained pending before the Company Judge. The final order in reference to it was passed on 17.9.2010 relegating the Official Liquidator to maintain the appeal before the DRAT. The Tribunal failed to consider that the

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delay occurred while the petitioner was pursuing its remedy bonafide before the Company Judge, thus the benefit of Section 14 of the Limitation Act, 1963 should have been given. It is also that the matter could not be taken up till the appointment of the Official Liquidator and thereupon after making enquiry about the property from the bank, the Company Judge of the High Court was approached in the year 2008.

7. It is further submitted that after the appointment of the Provisional Liquidator by the order dated 6.2.2006, the matter was examined by the Liquidator and for that he had to spend substantial time with the bank to find out whether the property in question was ever mortgaged or not. After putting in earnest efforts for two years, it was revealed that the property under auction was not mortgaged. Therefore, the Company Judge of the High Court made serious remarks against the sale of the property which was never mortgaged, and immediately thereupon the application was filed before the Company Judge in the year 2008 itself. It was decided by the order dated 17.9.2010 to relegate the appellant to the Debts

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Recovery Appellate Tribunal and immediately thereupon the appeal was preferred in the month of April, 2011. Thus, the delay was only of 212 days in filing the appeal but taking it to be a delay of 17 years from the date of sale, the application was dismissed. The prayer is to set aside the order of the Tribunal.

8. The writ petition has been contested by learned counsel appearing for the respondents. It is submitted that for challenge to the order of the Recovery Officer dated 13.6.2000, an appeal was preferred in the month of April, 2011 with a delay of almost 11 years and, therefore, the application was rightly dismissed by the Tribunal. It is more so when the benefit of Section 14 of the Limitation Act, 1963 would not be available to the petitioner/Official Liquidator, as no application before the High Court was filed till the year 2008, thus, the intervening period of eight years remains unexplained. Therefore, the application was rightly dismissed by the Tribunal.

9. We have considered the rival submissions and perused the

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records.

10. It is not in dispute that the Recovery Officer passed an order on 13.6.2000 issuing a sale certificate and thereupon the sale was confirmed by order dated 4.8.2006. The challenge to it was made before the High Court in the year 2008. The delay of intervening period has been explained in reference to the fact that the company went in liquidation on a company petition filed in the year 1998 by the order dated 24.2.1998. The order for appointment of the Administrator was issued by the High Court on 12.2.2001 and, by an order dated 6.2.2006, the Administrator was directed to act as Provisional Liquidator. During the intervening period, the company was in liquidation and, therefore, no action could have been taken to challenge the order dated 13.6.2000 or any order prior to it in the year 1999, as no one was in a position to take a decision for it. After the appointment of the Provisional Liquidator, earnest efforts were made to find out whether the property in question was mortgaged by the borrower to secure the loan and it is after making efforts for almost two years, it was revealed that the

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property sold in auction was not the mortgaged property. Thus, the petition was immediately filed before the Company Judge in the year 2008 and was decided by the order dated 17.9.2010 holding that the Official Liquidator should take the remedy of appeal before the DRAT, Chennai. The intervening period from 2008 on filing of the petition before the Company Judge till 17.9.2010 would be justified as per Section 14 of the Limitation Act, 1963 for the reason that the Official Liquidator was bonafide pursuing the remedy.

11. The appeal was then filed in the month of April, 2011 with a delay of 212 days with justification of the delay, but was ignored by the Tribunal. It is a fact that the Company Judge of the High Court has made serious remarks against the sale of the property which was not mortgaged to secure the loan and the procedural irregularities.

12. In view of the above, we find reason to cause interference in the order dated 5.7.2017 passed by the Debts Recovery Appellate Tribunal and, accordingly, allow this writ petition by quashing the

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said order with the acceptance of the application of the condonation of delay and restoration of the appeal on the file of the Debts Recovery Appellate Tribunal, Chennai. However, liberty is granted to the respondents to raise all the issues available to them to contest the said appeal. This order would not come in their way for the aforesaid.

There will be no order as to costs.

(M.N.B., CJ.) (N.M., J.)
12.07.2022

Index : Yes/No
sasi

To:

ICICI Bank Limited
CBG-CMA, ICICI Bank Tower
93, Santhome High Road
Chennai - 600 028.

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THE HON'BLE CHIEF JUSTICE
AND
N.MALA,J.

(sasi)

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