

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.26524 of 2022

MrP.Natarajan

.. Petitioner

V.

The Authorised Officer
Kotak Mahindra Bank
Samson Towers, 4th Floor
402 and 403, Pantheon Road
Egmore
Chennai 600 008

.. Respondent

Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for records relating to the order dated 27.09.2022 in S.A.No.417 of 2022 passed by the Hon'ble Debt Recovery Tribunal-I, Chennai and quash the same.

For Petitioner :: Mr.S.Silambanan
Senior Counsel for
Mr.Anil Relwani

For Respondent :: Mrs.Ananda Gomathy Murugesan
ORDER
(Order of the Court was made by the Hon'ble Acting Chief Justice)

This writ petition has been filed challenging the impugned order dated 27.09.2022 passed by the Debt Recovery Tribunal-I, Chennai in S.A.No.417 of 2022 and to quash the same.

2. Mr.S.Silambanan, learned Senior Counsel appearing for the petitioner submitted that the petitioner is aggrieved by the sale notice dated 09.09.2022 issued by the Kotak Mahindra Bank under Rule 8(6) and Rule 9(1) of the Security Interest (Enforcement) Rules, 2002, on the ground that when the Rule 8(6) mandatorily contemplates that the authorised officer shall serve to the borrower a notice of 30 days for sale of the immovable secured assets, without following the same, the immovable valuable properties of the petitioner have been brought for sale. The purpose of giving 30 days time, he pleaded, is only to give breathing time to the borrower to mobilize funds for settling the dues. When the petitioner has been facing financial crunch, the law-makers taking into consideration of the hardship faced by the borrowers

like the petitioner, thought it fit to grant 30 days time. This has been overlooked. Therefore, the very purpose of granting 30 days time giving a last chance to the borrower to save the properties, is defeated. Arguing further, it is stated that the petitioner is also having a purchaser with whom negotiations are going on already. When the petitioner has already explored the possibility of settling the entire dues through the prospective buyer of the properties, issuing the impugned notice giving 15 days time would cause irreparable loss and hardship to the petitioner.

3. It is at this stage, opposing the maintainability of the writ petition, Mrs.Ananda Gomathy Murugesan, learned counsel appearing for the respondent-Bank, relying upon the counter affidavit, submitted that the sale notice dated 09.09.2022 cannot be taken as the first notice, as it is the sixth notice issued by the bank to the petitioner/borrower over a span of one and half years to settle the dues. Taking support from the 3-Judge Bench judgment of the Apex Court in the case of *S.Karthik and others v. N.Subhash Chand Jain and others*, AIR 2021 SC 4559, more particularly,

paragraph-60 of the judgment, she submitted that the Apex Court has clearly held that there was no necessity of again following the same procedure of providing a 30 days clear notice, if the sale notice had already been issued to the borrower, for the reason that the auction subsequently stood cancelled for want of any buyer.

4. In our considered opinion, these arguments can very well be advanced by both parties before the Debts Recovery Appellate Tribunal. Therefore, we direct the petitioner to approach the Debts Recovery Appellate Tribunal by way of filing appeal along with the application for stay within a period of two days. The learned counsel appearing for the respondent-Bank also submitted that the Bank will proceed with the auction sale as notified in the notice dated 09.09.2022, but they will not confirm the same for a period of three weeks. Hence, recording the statement made by the learned counsel appearing for the respondent-Bank, we direct the petitioner to approach the Debts Recovery Appellate Tribunal, Chennai by filing appeal along with the interlocutory application for stay within a period of two days and upon

registration/numbering of the appeal along with the stay application, if the same are in order, the Debts Recovery Appellate Tribunal, Chennai is further directed to dispose of the same after hearing the parties on merits and as per law.

5. However, both the learned counsels brought to our notice that if the appeal papers are filed before the Registry of the Debts Recovery Appellate Tribunal, Chennai, the process of getting the same registered/numbered takes a longer time for compliance/fulfillment of various procedural requirements and such delay causes unnecessary hardship not only to the litigants but also to their counsels. On many occasions, urgent applications could not be listed for hearing, resultantly quick relief could not be obtained, consequently, petitions are becoming infructuous, hence, some suitable directions may be issued to take up matters immediately after filing. In view of the above procedural delay impacting on the main relief denying the fruits of approaching the Tribunal, we direct the Registrar of the Debts Recovery Appellate Tribunal, Chennai to earnestly take note of this situation and shall

register/number the appeal papers along with the application for stay, if the same are in order, to be placed before the Chairperson of the Debts Recovery Appellate Tribunal for admission and interim relief and for disposal on merit and in accordance with law, so as to avoid the hardship being caused to the parties and their counsels.

6. With the above observation and direction, the writ petition stands disposed of. Consequently, W.M.P.Nos.25583 & 25584 of 2022 are closed. However, there is no order as to costs.

Speaking/Non speaking order
Index : yes/no

(T.R.,A.C.J.) (D.K.K.,J.)
28.09.2022

ss

To

1. The Registrar
Debts Recovery Appellate Tribunal
Chennai

2. The Registrar

Debts Recovery Tribunal-I
Chennai

3. The Authorised Officer
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