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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.12.2022

CORAM

THE HON'BLE MR. JUSTICE **C.V.KARTHIKEYAN**
AND
THE HON'BLE MR. JUSTICE **S.SOUNTHAR**

W.P.No.30334 of 2022
and
W.M.P.No.29776 of 2022

M/s.Glenco Distilleries Pvt. Ltd.,
Rep.by its Director Smt.P.Sugeetha,
No.10, Rajabathar Street,
T.Nagar, Chennai – 600 017.

.. Petitioner

Vs.

1.Union of India,
Department of Financial Services,
Ministry of Finance,
3rd Floor, Jeevan Deep Building,
Sansad Marg, New Delhi – 110 001.

2.The Debts Recovery Tribunal – II,
Rep.by its Registrar,
6th Floor, Additional Office Building,
Shastri Bhavan, Haddows Road,
Nunambakkam, Chennai – 600 006.



3.The Debts Recovery Tribunal – III,
Rep.by its Registrar,
6th Floor, Annex Building,
Shastri Bhavan, Haddows Road,
Nungambakkam,
Chennai – 600 006.

4.The Authorized Officer,
CANARA BANK CNRB0002361,
Asset Recovery Management Branch,
2nd Floor, Circle Office Building,
563/1, Anna Salai, Teynampet,
Chennai - 600 018.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Authorized Officer, Canara Bank, the 4th respondent herein from taking physical possession of the property being 4 items of land comprised in (i)Survey No.236/6, New Survey No.236/38, measuring an extent of 2318 square feet (ii)Survey No.236/37 measuring an extent of 967 square feet (iii) Survey No.236/6, New Survey No.236/39, measuring an extent of 2318 square feet and (iv) Survey No.236/37 measuring an extent of 967 square feet in Thiruveethi Amman Kovil First Street, Kottivakkam Village, Saidapet Taluk, Chennai pursuant to the petition dated 27.06.2022 made in C.M.P.No.263 of 2021 under Section 14 of the SARFAESI Act.



For Petitioner

.. Mr.A.V.Arun

For Mr.R.Sugumaran

For R1

.. Mr.K.Ramanamoorthy,
Central Government Counsel.

For R4

.. Mr.M.L.Ganesh

ORDER

This writ petition has been filed in the nature of Mandamus, seeking a direction forbearing the Authorized Officer, Canara Bank, the 4th respondent herein from taking physical possession of the property which had been described as land in S.No.236/6, New S.No.236/38 measuring 2318 sq.ft., land in S.No.236/37 measuring 967 sq.ft., land in S.No.236/6, New S.No.236/39 measuring 2318 sq.ft., and land in S.No.236/37 measuring 967 sq.ft., at Thiruveethi Ammal Kovil First Street, Kottivakkam Village, Saidapet Taluk, Chennai, pursuant to a petition dated 27.06.2022 in C.M.P.No.263 of 2021 filed under Section 14 of the SARFAESI Act, 2002.



2.The petitioner had been at logger heads with the 4th respondent / Canara Bank with the issues swinging like a pendulum from one end to another end, but ultimately, though the debts payable had been crystallized, the 4th respondent had not been able to recover any amount as on date. There was an interim order directing the petitioner to deposit a sum of Rs.5,00,00,000/-. The petitioner had not complied with such deposit. The petitioner had also not preferred any appeal against the order of the Debts Recovery Tribunal, only because if any appeal was filed it would entail the petitioner to deposit 50% to 75% of the decree amount. The petitioner had therefore taken a conscious decision not to deposit such amount and not to file any appeal. The petitioner has taken an affinity to file writ petitions before this Court with an ostensible reason, that their possession should not be disturbed, and that though the 4th respondent have a lawful decree in their favour, they should be restrained from taking physical possession.

3.The proceedings had been initiated in the year 2013. There is an order in S.A.No.81 of 2014 dated 06.01.2015, which was originally S.A.No.58 of 2013 before the DRT – I, which was transferred to DRT – II. That was pursuant to an Application filed under Section 17 of the



SARFAESI Act, filed by the petitioner herein to declare the possession notice dated 03.04.2013 as null and void and to pass necessary orders restraining the 4th respondent / Canara Bank from proceeding further against the secured assets. By order dated 06.01.2015, the petitioner suffered an order of dismissal and as against that particular order no appeal has been filed.

4.It had been very specifically stated by the 4th respondent that they had taken possession of the secured assets as per law and that there was no violation of any procedure as alleged.

5.Thereafter, once again the petitioner went back before the Debts Recovery Tribunal by filing S.A.No.135 of 2021. That application is still pending.

6.It is complained by the learned counsel for the petitioner, that it is pending without any orders being passed.



7.The facts are however otherwise.

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8.After the order in 2015, a fresh demand notice was issued in the year 2020 and a fresh possession notice was ordered. Thereafter, the property had been sold, after a long winding process, by E-auction. The purchaser had been identified. The property had been sold. The purchaser had deposited the purchase amount. A Sale Certificate had been issued. The Sale Certificate had also been registered before the Sub-Registrar Office, Adyar.

9.The said purchaser has not been impleaded as a party in the present writ petition. The writ petition suffers on that one ground itself. He is a necessary and proper party and no order can be passed in his absence.

10.In S.A.No.135 of 2021, which is now re-posted on 16.02.2023, a direction had been given to the petitioner to implead the said purchaser as a party, but to the knowledge of this Court, no steps have been taken to implead the purchaser.



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11.Questioning the sale, the petitioner had also filed another S.A again under Section 17 of the SARFAESI Act, 2002, but unfortunately, with delay and therefore, it had not been taken on record. The delay application can be examined only by the Tribunal.

12.It is stated by the learned counsel for the petitioner, that in the meanwhile, a notification had been issued transferring jurisdiction from DRT – II to DRT – III. It is therefore complained that the matters are not being heard, since the papers had not been transferred physically from DRT – II to DRT – III and that the petitioner is put to much mental agony, owing to the papers locked up in one almirah. This Court cannot come to the rescue of the petitioner regarding those circumstances.

13.It is informed by the learned counsel for the 4th respondent, who had entered appearance, that the petitioner's application has not been taken into consideration, since there is a delay in filing the S.A and that the delay has not been condoned.



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14.The other application cannot be disposed of effectively in the absence of impleading the purchaser.

15.Though during the course of arguments, the learned counsel for the petitioner Mr.A.V.Arun, stated that the Court may give a direction to the concerned Debts Recovery Tribunal to hear the application and pass necessary orders within a time frame, the relief sought in the writ petition is different. The relief sought is forbearing the 4th respondent from taking physical possession of the property, which had already been sold and for which Sale Certificate had been issued and registered in the competent jurisdictional Sub-Registrar office.

16.The matters pending before the Debts Recovery Tribunal are the exclusive jurisdiction of the Tribunal. We hold that it would be extremely inappropriate and imprudent on our part to pass any order, particularly when the fault lies on the petitioner herein.



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17. In one matter the petitioner has to implead the purchaser and in the other matter, the petitioner has to cross the issue of delay in filing the S.A. These two defects are attributable only to the petitioner and this Court can never direct the Tribunal without any information as to the pendency before the Tribunal to dispose them within a particular time limit. Orders can be passed by the Tribunal only when the petitioner impleads the purchaser and only when the petitioner satisfies that particular Tribunal, about the reasons for the delay in filing the S.A.

18. It is contended by the learned counsel for the 4th respondent / Canara Bank that the dues have now multiplied, which is only natural, since the petitioner had not been paid any amount to the knowledge of this Court and if at all paid, have still outstanding balance to pay.

19. The petitioner will have to workout their remedies only before the Debts Recovery Tribunal and we are confident, the Tribunal would examine them in manner known to law, provided the petitioner impleads the purchaser and also forwards acceptable reasons for delay in filing S.A. If



application is filed to implead the purchaser and if explanations are given for the delay, we are confident, that the Tribunal would examine them in manner known to law and in appropriate form. If the matter is pending before DRT – II, that Tribunal would hear the matter. If the matter had been transferred to DRT – III, then that Tribunal would hear the matter. Deciding the calender and the hearing dates are the exclusive privileges of the respective Tribunals.

20. With the above observations, this Writ Petition stands disposed of.

No costs. Consequently, connected Miscellaneous Petition is closed.

[CVKJ] [SSJ]
28.12.2022

Index: Yes/No
Internet: Yes/No
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