



W.P. No.31332 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

CORAM

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

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.31332 of 2022

N.Madhavan

... Petitioner

Vs

1.The Registrar,
Debts Recovery Appellate Tribunal,
Shastri Bhavan, Chennai

2.The District Collector,
Namakkal District

3.The Revenue Divisional Officer,
Namakkal

4.R.Karthikraj

5.The Chief Manager and Authorised Officer,
Indian Bank,
Ranga Sannathi Street, Namakkal

6.M/s. Bhagvati Transports
Rep. by its Proprietor
P.K.Selvaraj

... Respondents



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Prayer: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records on the file of the 1st Respondent relating to the impugned order dated 27.10.2022 passed in M.A.(SA) No.17 of 2020 passed by the 1st respondent and quash the same and consequently to pass orders condoning the delay of 61 days in filing the application u/s. 17(1) of the SARFAESI Act in S.A.S.R.No.8187 of 2018 on the file of the DRT Coimbatore and also to direct the 1st respondent to return the amount of Rs.1,51,000/- (Rupees One Lakh and Fifty One Thousand only) deposited by the petitioner before the DRAT for entertaining the subject matter of Appeal.

For the Petitioner :: Mr.N.Subramaniyan

For the Respondents :: Mr.P.Muthukumar,
State Government Pleader,
for respondents 2 and 3

ORDER

(Made by the Hon'ble Acting Chief Justice)

The petitioner has filed this writ petition seeking a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 27.10.2022 passed in M.A.(SA) No.17 of 2020 by the first respondent and quash the same and consequently, pass order condoning the delay of 61 days in filing the application under



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Section 17(1) of the SARFAESI Act in S.A.S.R.No.8187 of 2018 on the file of the Debts Recovery Tribunal, Coimbatore and also to direct the first respondent to return the amount of Rs.1,51,000/- (Rupees One Lakh and Fifty One Thousand only) deposited by the petitioner before the Debt Recovery Appellate Tribunal for entertaining the subject matter of Appeal.

2. A perusal of the documents placed before this Court shows that a sale notice was issued informing that auction would be held, by bringing the properties of the borrower, on 27.05.2009, at 3 p.m. At the Indian Bank, Namakkal. When a successful bidder emerged and he has also paid the entire sale consideration, sales certificate was issued on 12.02.2010. Only thereafter, an application under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was moved before the District Collector, Namakkal for taking over the physical possession of the property. Considering the fact that the sales certificate has been issued and the accounts of the borrower has been declared as 'non-performing assets', the application was ordered by the District Collector. However, till date, no action whatsoever has



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been taken by the petitioner.

3. In the meanwhile, the petitioner has also moved a Sarfaesi Application before the Debts Recovery Tribunal, Madurai, which was transferred to the file of the Debts Recovery Tribunal, Coimbatore, and renumbered as SA SR No.8187 of 2018. The application was moved seeking condonation of delay in challenging the order passed by the District Collector, Namakkal, under Section 14 of the Act of 2002. The Debts Recovery Tribunal, Coimbatore, dismissed the application by observing that the petitioner wantonly and willfully avoided approaching the Tribunal for filing the Sarfaesi Application within the prescribed statutory period of limitation and that there are no valid reasons and merits to condone the delay. Aggrieved thereby, the petitioner filed an appeal before the Debt Recovery Appellate Tribunal. The Appellate Tribunal dismissed the appeal holding that the Tribunal was not invested with power to condone the delay. As against the said order, the present writ petition has been filed

Mr.N.Subramaniyan, learned counsel for the petitioner contended that the approach adopted by the Debts Recovery Appellate Tribunal that the Tribunal has no power to condone the



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delay, is wrong.

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5. We find merits in the said submission. Section 2(o) of the Recovery of Debts and Bankruptcy Act, 1993, defines 'Tribunal'. For better appreciation, Section 2(o) of the Act is extracted hereunder:

“(o) “Tribunal” means the Tribunal established under sub-section (1) of section 3.”

6. A perusal of the same shows that 'Tribunal' means Tribunal established under sub-Section (1) of Section 3. Sub-Section (1) of Section 3 of the Act of 1993 says that 'Tribunal' means Tribunal constituted by the Central Government. The said proposition is not in dispute. We are in agreement with the submissions made by the learned counsel for the petitioner. However, when we look at the ground reality of this case, it could be seen that the petitioner has slept over the matter for more than a decade, thereby allowing third party interest to creep in.

7. As mentioned above, when public auction was held pursuant



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to the sale notice and auction purchaser was also issued with sales certificate, for more than 12 years, the petitioner has not even taken up any action whatsoever. Therefore, we do not find any merits in the writ petition. Since the petitioner himself has made a claim which is a stale one, we do not want to entertain the writ petition.

8. Mr.Subramaniyan, learned counsel for the petitioner argued that the petitioner was not served with the order dated 27.04.2011, passed by the District Collector-cum-District Magistrate.

9. We have seen the earlier order dated 03.04.2018 passed by this Court in WP No.25758 of 2012. The very same argument was advanced and that was negated by this Court. This Court directed the petitioner to challenge the same before the Tribunal. Therefore, we do not find any merit in this writ petition. The writ petition is dismissed. No costs. Consequently, WMP No.30774 of 2022 is also dismissed.

(T.R., ACJ.) (D.K.K., J.)
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T.RAJA, ACJ,
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