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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.04.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2755 of 2012
and
M.P(MD)No.2 of 2012

Bank of Baroda,
Represented by its Branch Manager,
Tirunelveli Branch,
Nellaiappar Kovil Main Road,
Tirunelveli Junction,
Tirunelveli District. ... Petitioner/ Petitioner
Appellant/2nd Defendant

(Cause title of the petitioner is amended vide Court order, dated, 21.01.2022 made in C.M.P(MD) No.256 of 2022)

Vs.

1.Rajesh Karthick

2.Minor Rajeswari,
(Represented through her mother and next friend Mahalakshmi)

3.Minor Navin Prasath
(Represented through his mother and next friend Mahalakshmi)
... Respondents/Respondents
Respondents/Plaintiffs

4.R.Chokkalingam
5.Chellamuthu
... Respondent/Respondent
Respondent/Defendants 1 & 3

PRAYER : Civil Revision Petition is filed under Order 115 of the Civil Procedure Code against the order passed in I.A.No.327 of 2011 in unnumbered A.S.No. of 2012, dated, 30.04.2012 on the file of Principal District Judge, Tirunelveli.

For Petitioner : Mr.K.Muraleedharan
For Respondents R1 : No appearance
R2 to R3 : Minor

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ORDER

The second defendant in the suit is the revision petitioner.

2. The respondents 1 to 3 as plaintiffs filed O.S.No.2 of 2009 before Sub-Court, Ambasamudram for the relief of partition and separate possession of their 3/4th share in the suit schedule properties. The plaintiffs had further prayed that the second defendant Bank should not bring the suit schedule properties for auction. The second defendant Bank filed a written statement contending that already proceedings have been initiated under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act(hereinafter referred as the Act). A demand notice has been issued under Section 13(2) of the Act and constructive possession under 13(4) of the Act has also been taken on 11.11.2008. Suppressing the proceedings under the Act, the present suit for partition was filed collusively as if the children of the first defendant are entitled to 3/4th share in the suit schedule properties.

3. Though the second defendant Bank filed the written statement, they did not pursue the matter and they were set ex-parte and an ex-parte preliminary decree was passed on 06.09.2010. Challenging the said ex-parte preliminary decree, the second defendant filed first appeal before Principal District Court, Tirunelveli with a delay of 366 days. The appellant had filed I.A.No.327 of 2011 to condone the delay of 366 days.

4. A counter was filed by the plaintiff/respondent in the appeal, objecting to the condonation of the delay. The learned Principal District Judge dismissed the said application on 30.04.2012. As against the same, the present revision has been filed by the second defendant Bank.

5. Heard the learned counsel for the revision petitioner. Though the contesting respondents, namely, the plaintiffs were served, there is no appearance either in person or through counsel.

6. The learned counsel for the revision petitioner contended that the suit itself is not maintainable and the Civil Court has no jurisdiction to entertain such a suit in view of the Section 34 of the Act. The decree passed by the learned Subordinate Judge, Ambasamudram is without jurisdiction. He further contended that since the counsel in the trial Court has not properly followed the case and the pronouncement of the orders were not informed in time, they could not prefer the first appeal in time.

7. I have carefully perused the affidavit filed in support of the condonation of the delay and the counter filed by the respondents/plaintiffs in the said application.

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8. It is seen from the plaint averments that after initiation of proceedings under the Act as against the first defendant, the present suit for partition has been filed by the children of the first defendant seeking 3/4th share in the suit schedule properties. The plaintiffs have also prayed an injunction as against the Bank, not to auction the suit schedule properties with regard to their 3/4th share. Though the second defendant bank has raised the maintainability of the suit before Civil Court in para 9 of the written statement, no issues have been framed by the trial Court with regard to the same. I am satisfied with the reasons assigned by the second defendant Bank in I.A.No.327 of 2011 seeking to condone the delay. The learned District Judge had committed an error in not properly appreciating the reasons assigned by the Bank for condonation of delay, especially when it is the case of the Bank that the Civil Court has no jurisdiction to entertain the suit. I.A.No.327 of 2011 in unnumbered A.S in the learned Principal District Court, Tirunelveli stands allowed. The Principal District Court, Tirunelveli is directed to dispose of the appeal on or before 31.12.2022.

9. This Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Principal District Judge,
Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,Madurai.

C.R.P(MD)No.2755 of 2012
25.04.2022

MGJ(10.06.2022) 3P 4C

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