



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2022

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P(MD)No.1971 of 2022
and
WMP(MD)No.1702 of 2022

Viswanathan

... Petitioner

vs.

1) The Debt Recovery Appellate Tribunal,
7th Floor,
Additional Office Building,
Shastri Bhawan,
Haddows Road,
Chennai.

2) The Authorized Officer,
Indian Overseas Bank,
Lalgudi Branch,
No.41, Popular Arcade,
Main Road,
Tiruchirappalli District.

3) Edwin Rethinam

4) The District Collector,
Tiruchirappalli District,
Tiruchirappalli.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to impugned order in A.I.R(SA)No.120/2015 dated 07.11.2016 passed by the DRAT, Chennai and quash the same and consequently direct the DRAT, Chennai, to take the main appeal filed by the petitioner and proceed in accordance with law.

For Petitioner	: Mr.N.Shanmugaselvam
For R2	: Mr.N.Dilipkumar
For R4	: Mr.S.R.A.Ramachandran
	Additional Government Pleader



ORDER

(Order of the Court was made by
PUSHPA SATHYANARAYANA, J.)

The writ petition is directed against the order passed by the DRAT, Chennai, in A.I.R(SA)No.120/2015 dated 10.01.2017 which is directed against the order passed in S.A.No.234/2012 on the file of DRT, Madurai.

2. In the SARFAESI Application, the question was whether the sale was conducted in accordance with the rules and the procedure prescribed by the Act or not. The debt amount was quantified at Rs.5,75,879/-. Section 18 of the SARFAESI Act provides for an appeal to the Appellate Tribunal as per which, appeal has to be preferred within 30 days. The first proviso to Section 18 states that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower. The second proviso states that no appeal shall be entertained unless the borrower had deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less.

3. In this case, the Debts Recovery Tribunal itself in its order dated 07.11.2016 has stated as follows:-

'However, in place of 50%, I hereby direct the appellant to make pre-deposit of Rs.1,40,000/- within a month.'

4. So, when a specific amount has been directed to be deposited, as per the proviso while preferring the appeal before the DRAT, the said amount ought to have been made as a pre-deposit. Since the petitioner herein had not deposited the said amount, DRAT, Chennai, has passed the order on 10.01.2017 as follows:-

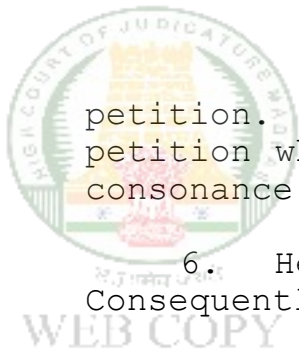
'Id. Counsel for Appellant submits that DD for a sum of Rs.1,40,000 has been raised and fairly concedes that he did not comply the order dated 07.11.2016 in strict since because demand drafts were raised only after 07.12.2016 only.

In view of the provisions of Section 18 of SARFAESI Act, DRAT cannot entertain without compliance of pre-deposit. Admittedly on 07.12.2016 there was no compliance of the order of pre deposit. Delayed compliance cannot be treated as compliance in words and spirits, according to provisions of Section 18 of SARFAESI Act.

Dismissed for want of compliance.'

The abovesaid order is under challenge in this writ petition.

5. When the said order is passed on 10.01.2017, copy of the order was received on 23.01.2017. The writ petition is filed only on 25.01.2022. The petitioner having not explained the reasons for the delay is guilty of delay and laches in filing the above writ



petition. Therefore, we see no reason to entertain this writ petition which is filed belatedly and the order impugned is also in consonance with Section 18 of the SARFAESI Act and the proviso.

6. Hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)

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To

1) The Debt Recovery Appellate Tribunal,
7th Floor,
Additional Office Building,
Shastri Bhawan,
Haddows Road,
Chennai.

2) The District Collector,
Tiruchirappalli District,
Tiruchirappalli.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-3795[F] dated 02/02/2022)

+1 CC to M/s.N.SHANMUGASELVAM, Advocate (SR-4029[F] dated 03/02/2022)

+1 CC to M/s.SPL.GP (SR-4206[F] dated 04/02/2022)

W.P(MD)No.1971 of 2022

DATED : 02.02.2022

MGJ(14.02.2022) 3P 6C