



W.P.No.8748 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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Ganesamoorthy

.. Petitioner

Vs

- 1.M/s.Canara Bank,
rep. by its Authorised Officer,
No.5/4, 1st Floor, RVR Building,
Head Quarters Road,
Coimbatore-641 018.
- 2.M/s.Ganesh Agencies,
rep. by its Proprietor Indiramani,
No.2/2, ART Nagar,
FCI Road, Ganapathy,
Coimbatore.
- 3.M/s.Ganesh Hollow Blocks,
rep. by its Proprietor N.Mylsamy,
No.2/2, ART Nagar,
FCI Road, Ganapathy,
Coimbatore.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the Debts Recovery Tribunal, Coimbatore to number the Second Appeal in Diary No.361 of 2023 which was filed on 27.02.2023 without insisting demand notice and possession notice of M/s.Ganesh Agencies/2nd respondent.

For the Petitioner : Mr.B.Gopalakrishnan

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

The petitioner has filed this writ petition for issuance of a writ of mandamus directing the Debts Recovery Tribunal, Coimbatore to number the SA in Diary No.361 of 2023 without insisting on the production of demand notice and possession notice of the second respondent.

2. Learned counsel for the petitioner would submit that the petitioner stood as guarantor for the credit facilities availed by respondents 2 and 3 from Syndicate Bank, Avinashi Branch Road, Coimbatore, which has been now merged with the first respondent



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bank. Due to the default committed by respondents 2 and 3, the erstwhile Syndicate Bank had issued notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, "*the Act of 2002*"], followed by notice under Section 13(4) of the Act of 2002. In the aforesaid two notices, the property of the petitioner has been mentioned and the erstwhile Syndicate Bank has not issued any notice to the petitioner.

3. Learned counsel for the petitioner further submitted that after coming to know about the issuance of sale notice dated 23.01.2023 by the first respondent to respondents 2 and 3, the petitioner has filed appeal under Section 17 of the Act of 2002 before the Debts Recovery Tribunal, Coimbatore on 27.2.2023 in Diary No.361 of 2023. The Tribunal returned the papers by insisting the petitioner to produce notices issued under Sections 13(2) and 13(4) of the Act of 2002 by the first respondent to respondents 2 and 3. He would submit that the petitioner had filed the appeal along with all the documents available with him and the insistence



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by the Tribunal to produce the non-served copies of the demand notice and possession notice is against law. Hence, the petitioner has been advised to file the present writ petition.

4. As per Section 17 of the Act of 2002, any person, including a guarantor, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his Authorised Officer, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken. When the petitioner has filed SA in Diary No.361 of 2023 under Section 17 of the Act of 2002 before the Debts Recovery Tribunal, Coimbatore, the Registry of the Tribunal has no justification to keep it pending, if the papers are in order.

5. In the case on hand, the petitioner has not shown the defects pointed out by the Registry of the Tribunal. If the petitioner is aggrieved by the non-numbering of his appeal, he can always make a mention before the Presiding Officer of the Debts Recovery Tribunal,



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Coimbatore, ventilating all his grievances. Without availing such course before the Debts Recovery Tribunal, the petitioner cannot straightaway knock the doors of this Court under Article 226 of the Constitution of India.

6. The writ petition fails and the same is dismissed. There will be no order as to costs.

(T.R., ACJ.) (D.B.C., J.)
21.03.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

The Authorised Officer,
Canara Bank,
No.5/4, 1st Floor, RVR Building,
Head Quarters Road,
Coimbatore-641 018.



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THE HON'BLE ACTING CHIEF JUSTICE
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D.BHARATHA CHAKRAVARTHY, J.

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