



WP No.8891 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

CORAM

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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M/s.Faraz

S.S.Modular Commercial Kitchen Equipments,
rep. By its partner N.Shanaz

... Petitioner

versus

1.The Presiding Officer,
Debt Recovery Tribunal, Coimbatore.

2.Union Bank of India,
rep. By its Authorized Officer
Krishna towers, 3rd Floor
Lakshmi Mills Junction,
Avinashi Road,
Coimbatore 641 037

3.Mohammed Rafeek

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the 1st respondent to dispose of SA No.477 of 2020, pending on the file of te 1st respondent as expeditiously as possible.

For the Petitioner : Mr.S.Venkatesh



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ORDER

(Made by the Hon'ble Acting Chief Justice)

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The petitioner has filed this writ petition without approaching the Debt Recovery Appellate Tribunal and without complying with the conditional order of stay passed by the Debts Recovery Tribunal, Coimbatore, dated 14.12.2020, in I.A.No.1786 of 2020, wherein the petitioner prayed for stay of operation of the sale notice dated 19.10.2020, issued by the respondent bank, fixing 15.12.2020 as the date of auction.

2. Learned counsel for the petitioner would submit that the petitioner is engaged in the business of Kitchen equipment and allied products in the name and style of 'Farraz S.S.Modular Commercial Kitchen Equipment' and she borrowed a sum of Rs.30 lakh from the second respondent bank, giving properties situate at S.F.No.582/2A, laid into house sites approved DTP No.281/1992 Site No.13, Kuniamuthu Village, Coimbatore South Taluk to an extent of 2860 sq.ft. and residential house situate in S.F.No.292/1, Sri Viveka Gardens, Site No.6, to an extent of 1485 sq.ft, with house, situate at Kinathakadavu Othakal Mandapam Village, Madukkarai Taluk, Coimbatore South, as security. The petitioner was unable to repay the loan amount due to non-operative of business. Therefore, the petitioner's account was brought under



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non-performing asset and notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the Act of 2002) was issued. Thereafter, sale notice dated 19.10.2020 was issued and auction sale was fixed on 15.12.2020. Later, the petitioner challenged the sale notice by filing SA No.477 of 2020 before the Debts Recovery Tribunal, Coimbatore, and also moved IA No.1786 of 2020, for stay of the operation of the sale notice.

3. Learned counsel for the petitioner would submit that when the matter was taken up on 14.12.2020, learned Debts Recovery Tribunal, has passed a conditional order directing the petitioner to deposit a sum of Rs.27 lakh to the respondent bank; out of which, a sum of Rs.13.50 lakh to be paid on or before 11.01.2021 and another sum of Rs.13.50 lakh to be paid on or before 08.02.2021. But the petitioner was unable to comply with the said order. Therefore, the petitioner was unable to enjoy the benefit of the order of stay. Auction was conducted and sales certificate was issued on 06.05.2021 to the third respondent. According to the petitioner, sale has not been confirmed so far. Seeking a direction upon the Debts Recovery Tribunal to dispose of SA No.477 of 2020 expeditiously, the present writ petition has been filed.



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4. We are unable to find any merits in the arguments advanced by learned counsel for the petitioner. When the petitioner was granted an order of stay with a condition that the petitioner should pay a sum of Rs.27 lakh in two instalments, without complying with the said condition, the petitioner cannot seek a direction to the Tribunal to dispose of the Sarfaesi Application expeditiously. Secondly, the petitioner has to workout her remedy by filing an appeal before the Debt Recovery Appellate Tribunal against the order passed by the Debts Recovery Tribunal. The petitioner is not entitled to come directly to this Court under Article 226 of the Constitution of India, without exhausting the remedy of appeal.

5. For the reasons mentioned above, this writ petition fails and the same is dismissed. There will be no order as to costs.

(T.R., ACJ.) (D.B.C., J.)
23.03.2023

Index : Yes/No
Neutral Citation : Yes/No
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