WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.10.2023	Delivered on: 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P.(MD)No.1275 of 2023
and
C.M.P.(MD)Nos.6252 and 9910 of 2023

1. D.S.Manohar

2.I.Manjula

3.S.Manikandan

4.S.P.Manimala

5.S.Mahendran .. Petitioners / petitioners 1, 3to 6/ applicants 1, 3 to 6

Vs.

1.The Chief Judicial Magistrate,
Chennamanayakkanpatti,
Dindigul - 624 004.

2.The Authorized Officer,
Canara Bank,
RC Church Compound,
Madurai Dindigul Road,
Batlagundu,
Dindigul District. ... Respondents / respondents / defendants

https://www.mhc.tn.gov.in/judis

WEB COPY

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the Debts Recovery Tribunal, Madurai, in I.A.No.172 of 2023 in S.A.(NDN)No.52 of 2023, dated 31.03.2023.

For Petitioners	:	Mr.C.Ezhilarasu
For Respondents	:	Mr.P.Pethu Rajesh for R2
	:	R1 Court

ORDER

(Order of the Court was made by P.B.BALAJI,J.)

The borrowers from the second respondent Bank are the revision petitioners before us.

2. I.A.No.172 of 2023 has been filed seeking condonation of delay of 19 days in filing SARFAESI application against the order passed by the Chief Judicial Magistrate, Dindigul, in Crl.M.P.No.14162 of 2022, dated 08.11.2022.

3. It is the case of the first petitioner that he is doing business in fertilizers and he had approached the second respondent Bank, for finance

https://www.mhc.tn.gov.in/judis

WEB COPY

assistance to the tune of Rs.30,00,000/-. The petitioners 2 to 6 stood as guarantors for the loan availed by the first petitioner. In course of time, the first petitioner defaulted in payment and Section 13 (2) of SARFAESI Act was invoked by the second respondent Bank which was followed by a sale notice, dated 12.05.2016 and a possession notice dated 25.01.2018, under Section 13 (4) of the SARFAESI Act. According to the petitioners, the act of the second respondent in taking symbolic possession of the property is illegal and in violation of the SARFAESI Act and the Rules framed thereunder. It is the further case of the petitioners that the second respondent filed Cr.M.P.No.14162 of 2022, seeking assistance to take physical possession of the mortgaged property and an order was passed on 08.11.2022 in favour of the second respondent, appointing a Commissioner, to go about taking over the physical possession of the property. The first petitioner challenged the said order before this Court in W.P.(MD)No.28136 of 2022. The Division Bench of this Court held that the writ petition is not maintainable and dismissed the Writ Petition giving liberty to the first petitioner to approach the Appellate Court to work out remedy. Thereafter, SARFAESI application came to be filed on 11.01.2023 with a delay of 19 days in filing the said application.

https://www.mhc.tn.gov.in/judis

WEB COPY

4. The Debts Recovery Tribunal, Madurai, in and by order, dated 31.03.2023, dismissed the said application seeking condonation of delay. Aggrieved by the said order, the present Civil Revision Petition has been filed.

5. We have heard Mr.C.Ezhilarasu, learned counsel appearing for the appellant and Mr.P.Pethu Rajesh, learned counsel appearing for the second respondent and we have perused the materials available on record.

6. The learned counsel for the petitioners would submit that the impugned order was passed in violation of principles of law and when the delay was only 19 days, the Tribunal ought to have offered an opportunity to the petitioners to contest the SARFAESI application on merits, instead of refusing to condone the delay, which has caused serious prejudice to the petitioners. The learned counsel for the petitioners would also bring to our notice that in pursuance of the order of this Court, dated 13.03.2023 in W.P.No.5347 of 2023, a sum of Rs.5,00,000/- has also been paid to the second respondent Bank and without considering all these factors, the

https://www.mhc.tn.gov.in/judis

WEB COPY

Debts Recovery Tribunal has simply refused to condone the delay of 19 days.

7. Per contra, the learned counsel for the second respondent would submit that the C.M.A. itself is not maintainable as an alternative remedy is available before the Debt Recovery Appellate Tribunal, under Section 18 of the SARFAESI Act. Further, the learned counsel for the second respondent would also state that an E- auction was conducted and a sale certificate was also issued to the successful bidder as early as on 19.04.2022, which also came to be registered on 28.04.2023 and that even thereafter, the petitioners refused to hand over physical possession of the property, which necessitated the Bank to file Cr.M.P.No.14153 of 2022 and the same came to be rightly allowed. It is the further contention of the learned counsel for the second respondent Bank that any order passed under SARFAESI Act has to be challenged within 45 days and admittedly, the petitioners have not challenged the order of the Chief Judicial Magistrate, Dindigul within a period of 45 days.

8. The learned counsel for the second respondent also relied on

https://www.mhc.tn.gov.in/judis

WEB COPY

the judgment of the Division Bench of this Court in ***CRP(NPD)No.3785 to 3787 of 2012 etc., (M/s.Velar Engineering Works Pvt. Ltd., V. The Authorized Officer / Chief Manager), dated 05.09.2023***, in support of his contention that the revision petition before this Court is not maintainable. The learned counsel for the second respondent, therefore, prayed for dismissal of the Civil Revision Petition.

9. It is not in dispute that the first petitioner, after suffering an order in Crl.M.P.No.14162 of 2022, dated 08.11.2022, on the file of the Chief Judicial Magistrate, Dindigul, approached this Court in W.P.(MD)No.28136 of 2022 and in and by order dated 15.12.2022, this Court taking note of the fact that an appeal remedy was available against such possession notice, dismissed the Writ Petition, granting liberty to the writ petitioner to work out the remedy before the appropriate Forum.

10. This Court gave liberty to the first petitioner to move the appropriate forum for relief and merely because liberty was granted to the first petitioner in the above referred writ petition, it does not in any manner indicate or imply that the petitioners are entitled to move this Court by way

https://www.mhc.tn.gov.in/judis

WEB COPY

Revision under Article 227 of the Constitution of India.

11. In an identical circumstance, a Division Bench of this Court, in CRP(NPD)No.3785 to 3787 of 2012 etc., dated 05.09.2019, in the case of ***M/s.Velar Engineering Works Pvt. Ltd., V. The Authorized Officer /Chief Manager)***, has held as follows:

> *"20.All the three applications were filed on the same set of facts and properties involved in three different cases. Further, all the three applications were filed under Section 5 of the Limitation Act to condone the delay in filing the Securitisation Appeals under Section 17 of the SARFAESI Act. As already stated, the Debts Recovery Tribunal has no jurisdiction to condone the delay in filing a Securitisation Appeal under Section 5 of the Limitation Act.*
>
> *21.The Debts Recovery Tribunal ? III, Chennai has rightly dismissed all the three applications. Further, the petitioner has filed the above Civil Revision Petitions challenging the orders passed by the Debts Recovery Tribunal, without exhausting the appeal remedy under Section 18 of the SARFAESI Act.*
>
> *22.The Supreme Court in The Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C., reported in (2018) 3 SCC 85 and Agarwal Tracom Private Limited Vs. Punjab National Bank and others, reported in (2018) 1*

https://www.mhc.tn.gov.in/judis

WEB COPY

SCC 626 held that the aggrieved parties cannot challenge the SARFAESI proceedings directly by filing the Civil Revision Petitions under Article 227 of the Constitution of India without exhausting the appeal remedy available to them.

23.In a recent decision of the Supreme Court in ICICI Bank Limited v. Umakanta Mohapatra, reported in 2018 SCC Online SC 2349, the Supreme Court has referred to the decision in Mathew K.C. case, referred supra, and has observed that despite several judgments, including the decision of Mathew K.C., cited supra, the High Courts continue to entertain matters which arise under the SARFAESI Act and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Supreme Court held that Writ Petition filed by the aggrieved party without exhausting the statutory remedy available under the SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, is not maintainable."

12. We have already noticed that under Section 18 SARFAESI Act, an appeal remedy is available to the petitioners before the Debt Recovery Appellate Tribunal. Following dictum of the Hon'ble Supreme Court, which has also been followed by the First Bench of this Court, we

https://www.mhc.tn.gov.in/judis

WEB COPY

have no hesitation to hold that the present Civil Revision Petition is not maintainable. The Debt Recovery Tribunal has considered all these aspects in a judicious manner and passed a reasoned order, which is impugned in the present Revision and we do not see any grounds warranting any interference.

13. In fine, the Civil Revision Petition stands dismissed and the order passed by the Debts Recovery Tribunal, is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(T.K.R.J.) & (P.B.B.J)
10.10.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
Ls

To

1. The Debts Recovery Tribunal,
   Madurai,

https://www.mhc.tn.gov.in/judis

WEB COPY

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

https://www.mhc.tn.gov.in/judis

WEB COPY

RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J.

Ls

order in
C.R.P.(MD)No.1275 of 2023

10.10.2023

https://www.mhc.tn.gov.in/judis