



Rev.Aplw(MD).No.158 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.08.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

Review Application Writ(MD).No.158 of 2023

in

W.P.(MD).No.9367 of 2016

and

W.M.P.(MD).Nos.16641 and 16642 of 2023

N.S.Balaji

.. Review Petitioner/Petitioner

Vs.

- 1.The Presiding Officer,
Debt Recovery Tribunal,
3rd and 4th Floor,
Kalyani Towers,
Madurai – Melur Road,
Uthangudi,
Madurai – 625 107.
- 2.The Recovery Officer,
Debt Recovery Tribunal,
3rd and 4th Floor,
Kalyani Towers,
Madurai – Melur Road,
Uthangudi,
Madurai – 625 107.
- 3.Dena Bank, Madurai Branch,
No.67, Kamarajar Salai,
Madurai by it Senior Manager.



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4.Bharat Overseas Trading Company,
Represented by its partner,
Exports of Spice and Papaads,
No.51-A, Khanpalayam 3rd Street,
Kamarajar Salai,
Madurai – 625 009.

5.N.S.Gnaswaran,
Partner,
Bharat Overseas Trading Company,
No.51-A, Khanpalayam 3rd Street,
Kamarajar Salai,
Madurai – 625 009.

6.N.S.Krishnakumar,
Partner,
Bharat Overseas Trading Company,
No.51-A, Khanpalayam 3rd Street,
Kamarajar Salai,
Madurai – 625 009.

7.N.G.Bharathi

8.N.S.Madan Lal

9.T.E.Sharmila

10.T.K.Ramesh Babu

11.P.Mahalingam

.. Respondents

PRAYER: Review Petition filed under Order 47 Rule 1 read with Section 114 of CPC, to allow the Review Petition and consequently set aside the order of this Court passed in W.P.(MD).No.9367 of 2016 dated 31.07.2023.



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For Petitioner : Mr.P.Wilson
Senior Counsel
for Mr.A.Veerassamy

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

In our earlier order dated 31.07.2023 passed in W.P.(MD).No.9367 of 2016, we had dismissed the Writ Petition challenging the sale proceedings of the second respondent under the SARFAESI Act, on the sole ground that the Writ Petition against a Bank/ARC that initiates action under the SARFAESI Act for recovery of the default amount, is not maintainable. For such a reasoning, we had placed reliance on the decision of the Hon'ble Supreme Court in the case of *Phoenix ARC Private Limited Vs. Vishwa Bharati Vidya Mandir* reported in (2022) 5 SCC 345. The present petition seeks for review of this order.

2. The learned Senior Counsel appearing for the petitioner contended that there were serious irregularities in the auction sale and that the defaulter had died pending O.A.No.246/2001 and therefore, the consequential auction held without impleading his legal heirs is one such irregularity. This apart,



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the learned Senior Counsel further attempted to place reliance on Article 300-A of the Constitution of India to claim right over the property, for which purpose, he had canvassed on the factual merits of the case.

3. The present Review Petition has been filed raising various grounds, which were already raised in the Writ Petition in W.P.(MD).No.9367 of 2016. However, we had consciously refrained ourselves from addressing any of these factual grounds while passing final orders in view of our decision to reject the Writ Petition on the ground of its maintainability. We reiterate that we had adopted the ruling of the Hon'ble Supreme Court in *Phoenix ARC Private Limited's case* and held that the Writ Petition against a Bank/ARC would not be maintainable and had observed that there are other efficacious remedies provided under the SARFAESI Act. While that being so, the present Review Petition seeks to re-agitate the merits of the case once again.

4. Incidentally, none of the grounds raised by the review petitioner suggests that there are errors apparent on the face of the order passed in the Writ Petition, nor have any grounds been raised to substantiate as to how the



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decision in *Phoenix ARC Private Limited's case* (supra) is not applicable or that the Writ Petition would be otherwise maintainable. In this background, we do not find any merits to review the earlier order passed by us in the Writ Petition.

5. Accordingly, the Review Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(M.S.R.,J.) (M.N.K.,J.)
30.08.2023

NCC : Yes / No
Index : Yes / No
Lm

To
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Uthangudi, Madurai – 625 107.

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and
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