



W.P.No.3085 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.3085 of 2024

1. P.Rajesh
2. Pachamuthu
S/o Muthusamy .. Petitioners

v.

1. The Registrar
Debts Recovery Tribunal-III
Department of Financial Services and
Ministry of Finance
Shastri Bhavan 3rd Floor
Chennai

2. The Authorised Officer
Canara Bank
Assets Recovery Management Branch
1st Floor, Regional Office
Muthiah Towers
Williams Road, Trichy 620 001

3. Mohanraj
S/o Rajendran .. Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in SA.SR 11367/2023 in EDN.No.4462/2023 dated 03.01.2024 and quash the same as illegal, incompetent and without jurisdiction and further direct the 1st respondent to number the application filed by the petitioner under Section 17 of the SARFAESI Act, 2002 on 16.08.2023 and decide the issue on merits.

For Petitioner :: Mr.V.Raghavachari
Senior Counsel for
Mr.Avinash Wadhwani

For Respondents :: R1-Tribunal
Mr.Varun Srinivasan for R2
No appearance for R3

ORDER

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

W.M.P.No.3382 of 2024 seeking to permit the petitioners to file a single writ petition stands allowed.

2. This writ petition is filed for issuance of a writ of certiorarified mandamus to quash the order of the 1st respondent in SA.SR No.11367/2023 in EDN.No.4462/2023 dated 03.01.2024 and to direct the 1st respondent to number the application filed by the petitioner under Section



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17 of the SARFAESI Act, 2002 on 16.08.2023 and decide the issue on merits.

3. The brief facts that are necessary for the disposal of this writ petition are as follows:-

(a) The petitioners are borrowers, who have availed financial assistance from the second respondent-Bank to the tune of Rs.60 lakhs. Pursuant to the declaration of the petitioners' loan account as 'NPA', proceedings were initiated under the SARFAESI Act and it is not in dispute that the first sale notice was published on 27.09.2022. Since the first auction had not come through, the properties of the petitioners were brought for public auction by issuing the sale notice dated 26.12.2022. However, the auction was deferred again. The properties were once again brought for auction on 10.03.2023, as per the sale notice dated 08.02.2023.

(b) The case of the petitioners is that they have submitted a proposal for one time settlement in March, 2023 and also deposited a substantial amount of Rs.12 lakhs as per the conditions for considering the one time settlement proposal submitted by them. However, it is the case of petitioners that disregarding the one time settlement proposal submitted by them, the



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respondent Bank proceeded with the auction notice. The petitioners had filed a writ petition earlier in W.P.No.9179 of 2023 with a prayer to forbear the respondent Bank from conducting the e-auction proceedings. Now it is admitted before this Court that the e-auction proceeded successfully and the auction was concluded in favour of the third respondent on 17.05.2023. When it was reported before this Court, the earlier writ petition was disposed of, by order dated 31.07.2023, in the following lines:-

“2. Learned counsel for the petitioners submits that after the filing of the present writ petition, subsequently, sale certificate has been issued. The petitioners may be permitted to challenge the said sale certificate.

3. The same is a subsequent event. The petitioners may assail the said sale certificate, as permissible under law. In that event, all the contentions of the respective parties are kept open.

4. In view of that, the writ petition stands disposed of. There will be no order as to costs. Consequently, W.M.P.Nos.9304 & 9305 of 2023 are closed.”

(c) Pursuant to direction of this Court as above, the petitioners filed the Sarfaesi application before the Debts Recovery Tribunal under Section



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17(1) of the SARFAESI Act. However, the Presiding Officer of the Tribunal, by a detailed order dated 03.01.2024, dismissed the appeal only on the ground that the appeal is barred by limitation. Challenging the same, the above writ petition is filed by the borrowers mainly on the ground that the Debts Recovery Tribunal has not considered the spirit of the order passed by this Court in W.P.No.9179 of 2023.

4. The learned Senior Counsel appearing for the petitioners states that the order of the Tribunal is against the principles of natural justice and that the calculation adopted by the Tribunal was ignoring the law and settled principles.

5. The learned counsel appearing for the second respondent, however, submitted that the prayer in the earlier writ petition was only to forbear the respondent Bank from proceeding with the sale and that the sale was not challenged before this Court in the earlier writ petition. Therefore, he would submit that the application filed by the petitioners before the Tribunal had been rightly dismissed, as the petitioners cannot seek exclusion of the period



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during which the previous writ petition was pending. Even though the learned counsel for second respondent further submitted that the second respondent should be given an opportunity atleast to contest the matter on the question of limitation before the Debts Recovery Tribunal once again, this Court, having regard to the admitted facts, is inclined to dispose of this writ petition finally on the question of limitation.

6. The writ petition in W.P.No.9179 of 2023 was filed on 16.03.2023. This writ petition itself was immediately after depositing a sum of Rs.12 lakhs in anticipation of a favourable consideration of the one time settlement proposal submitted by the petitioners. When the earlier writ petition was pending, the respondent Bank had proceeded with the e-auction and the properties were brought for auction on 17.05.2023. Therefore, the earlier writ petition was disposed of after taking note of the subsequent event with a liberal observation to the petitioners to approach the Debts Recovery Tribunal by filing an independent application on the same cause. Hence this Court is of the view that the petitioners should be given the full period time which is available to anyone to challenge the sale or sale certificate atleast



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from 31.07.2023.

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7. It is admitted before this Court that the application filed by the petitioners before the Debts Recovery Tribunal under Section 17(1) of the SARFAESI Act is on 16.08.2023. Therefore, the application filed by the petitioners before the Debts Recovery Tribunal within two weeks from the date of order and immediately after receipt of a copy of the order, cannot be dismissed on the ground of limitation. The Tribunal ought to have considered the dates and events keeping in mind the purpose and object of the Act. This Court is unable to sustain the order passed by the Debts Recovery Tribunal on the question of limitation and at no stretch of imagination, the application filed by the petitioners within 17 days from the date of order of this Court giving liberty to the petitioners, should not have been dismissed. Therefore, the impugned order is set aside and the matter is remitted back to the Debts Recovery Tribunal to dispose of the Sarfaesi Application on merits after hearing the parties. The writ petition stands allowed. Consequently, W.M.P.Nos.3383 & 3384 of 2024 are closed. No costs.



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Index : yes/no

Neutral citation : yes/no

ss

To

(S.S.S.R.,J.)

(N.S.,J.)

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AND

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