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WP.No.13445 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

WP.No.13445 of 2024
WMP.No.14602 of 2024

B.K.Dilli

Petitioner

Vs

1. The Authorised Officer, Sundaram Home Finance Limited
Chennai-14

2. B.Karthik

Respondents

Prayer:- This Writ Petition has been filed, under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 04.03.2024 made in IA.No.364 of 2023 in AIR.SA.No.1249 of 2023, passed by the Debt Recovery Appellate Tribunal, Chennai and to quash the same and consequently to direct the Debt Recovery Appellate Tribunal, Chennai to number the AIR.SA.No.1249 of 2023 and decide it on merits.

For Petitioner : Mr.T.Mohan, SC

For Respondents : Mr.K.J.Parthasarathi-R1
Mr.D.R.Arun Kumar-R2

ORDER

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

1. This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order dated 04.03.2024 passed in



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IA.No.364 of 2023 in AIR.SA.No.1249 of 2023, by the Debt Recovery Appellate Tribunal, Chennai and to quash the same and consequently to direct the Debt Recovery Appellate Tribunal, Chennai to number the AIR.SA.No.1249 of 2023 and decide it on merits.

2. This Court heard the learned counsel on either side, considered their submissions and also the perused material records placed before this Court.
3. The Petitioner applied for a housing loan to the 1st Respondent and availed a sum of Rs.13 lakhs in the year 2013 from the 1st Respondent. However, the account of the Petitioner was declared as Non Performing Asset (NPA) and a demand notice under Section 13(2) of the SARFAESI Act was issued on 02.06.2018 for a sum of Rs.18,51,748/-. Following that, possession notice under Section 13(4) of the Act was also issued on 05.02.2020. The sale notice dated 01.10.2021 to bring the secured asset for sale 25.10.2021 was challenged by the Petitioner in the SARFAESI application in SA .No.6 of 2022 before the Debt Recovery Tribunal I, Chennai and the same was later transferred to the Debt Recovery Tribunal II, Chennai and renumbered as TSA.No.182 of 2023. Though there was an interim order by the Tribunal, the Debt Recovery Tribunal II, Chennai dismissed the TSA.No.182 of 2023 by an order dated 07.07.2023.
4. It is to be noted that the prime objection raised by the Petitioner before the Debt Recovery Tribunal was that the valuable building, which was mortgaged along with the land, was not even shown in the sale notice and



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that therefore, it is a material irregularity. Though this fact was not acknowledged by the Tribunal, it is stated that non inclusion of the building in the sale notice is not material and therefore, dismissed the application in TSA.No.182 of 2022. Aggrieved by the same, the Petitioner preferred an appeal before the Debt Recovery Tribunal in AIR.SA.No.1249 of 2023 along with a petition in IA.No.364 of 2023 to condone the delay of 19 days. The Petitioner's application to condone the delay of 19 days was dismissed, by the impugned order, stating that the reasons assigned by the Petitioner for the delay in filing the appeal are not satisfactory and convincing.

5. The Petitioner before the Appellate Tribunal submitted that the copy of the order dated 07.07.2023 was received only on 25.07.2023 and hence, the appeal could not be filed within time as the Petitioner was looking to mobilise funds to satisfy pre deposit. The reasons stated by the Petitioner was rejected without application of mind and serious prejudice is likely to be caused to the Petitioner.
6. The Tribunal has observed that the inability of the Petitioner to mobilise 50% of the amount due, which is a condition precedent at the time of filing the appeal, cannot be accepted. The reasoning by the Tribunal shows the ignorance of settled principles of law in condoning the delay by the Tribunal.
7. It is to be noted that under the SARFAESI Act, the Petitioner can seek waiver of pre-deposit in appropriate cases. This Court and the Honourable Supreme Court has, time and gain, considered the situation of the borrowers and reiterated that the vulnerable situation of the borrower should not be



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exploited by the Respondent Bank and in regard to the situation to which the Petitioner is faced, the Tribunal ought not to have dismissed the application to condone the delay of 19 days even after explaining the reasons for the delay. This Court finds that the impugned order is arbitrary and hence, it is liable to be set aside.

8. In fine, this Writ Petition is allowed, setting aside the impugned order. No costs. Consequently, the connected MP is closed. The Tribunal is directed to consider the appeal on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. In the meanwhile, the Respondents are directed to maintain status quo till the disposal of the appeal by the Debt Recovery Tribunal.

(S.S.S.R.J.) & (N.S.J.)
24.07.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
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