



W.P(MD)No.7251 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P(MD)No.7251 of 2023
and
WMP(MD)No.6842 of 2023**

K.Paranthaman
Rep. by his Power Agent
M.Raja

... Petitioner

vs.

The Authorized Officer,
Bank of Baroda, (Erstwhile Dena Bank)
Raj Towers, No.V.N.Nagar,
Karur Bye Pass Road,
Near Kalaingar Arivalayam,
Trichy-620 002.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the Learned In-charge Presiding Officer, Debts Recovery Tribunal, Madurai dated 22.02.2023 made in S.A.No.410 of 2016 and quash the same and consequently direct the Debts Recovery Tribunal Madurai to hear the S.A.No.410 of 2016 on merits in accordance with law along with contempt petition in I.A.No.678 of 2022.

For Petitioner : Mr.S.Suresh
For Respondent : Mr.M.Prakash



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ORDER

(Order of the Court was made by **R.SUBRAMANIAN, J.**)

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Challenge in this writ petition is to the order of the Debts Recovery Tribunal dismissing the SARFAESI appeal filed by the petitioner on the ground that it has become infructuous inasmuch as the auction was not conducted pursuant to the auction notice that was challenged.

2. The learned counsel appearing for the petitioner would submit that the challenge in the SARFAESI Appeal No.410 of 2016 was to the sale notice as well as the possession notice. The Bank filed a petition to advance the hearing of the appeal and after hearing the counsel for the Bank, the hearing was advanced to 22.02.2023 from 09.03.2023 and in the absence of the counsel for the applicant, the SARFAESI appeal was dismissed as infructuous / default. It is the contention of the learned counsel appearing for the petitioner that principles of natural justice stood violated inasmuch as no notice was given to the counsel for the applicant after advancing the hearing of the SARFAESI appeal from 09.03.2023 to 22.02.2023. The Bank's counsel alone was heard. Since the SARFAESI appeal challenges both the sale notice as well as the possession notice, the Debts Recovery Tribunal ought to have heard the petitioner.



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3. The learned counsel appearing for the Bank would vehemently contend that there is a provision for appeal to the Debt Recovery Appellate Tribunal against the orders of the Debts Recovery Tribunal and therefore, the writ petition itself is not maintainable.

4. The Bank was directed to maintain status-quo while entertaining the writ petition.

5. No doubt, there is an alternative remedy available under the statute. The availability of alternative remedy is not an absolute bar to exercise the jurisdiction under Article 226 of the Constitution. In the case on hand, we find that there is a violation of principles of natural justice. The Debts Recovery Tribunal admittedly did not hear the petitioner after hearing was advanced to 22.02.2023. Orders have been passed only on the submission made by the counsel for the Bank. The procedure adopted by the Debts Recovery Tribunal to say the least is intriguing. The Debts Recovery Tribunal ought to have heard the counsel for the applicant instead of hastily closing the proceedings.



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6. In the light of the above, we exercise our powers under Article 226 of the Constitution of India, since we find that driving the petitioner to the alternative remedy that too after a lapse of almost a year and half from the date of filing of the writ petition, would amount to further denial of opportunity.

7. We, therefore, allow the Writ Petition. The order of the Debts Recovery Tribunal dated 22.02.2023 is set aside. The SARFAESI Appeal No. 410 of 2016 will stand restored. The Debts Recovery Tribunal will dispose of the same on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M, J.) (L.V.G, J.)
28.08.2024

Index : Yes / No
Neutral Citation : Yes / No
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R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

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ORDER MADE IN
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