BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

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THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.P(MD)No.15166 of 2024
and
W.M.P.(MD)No.13281 of 2024

S.R.Ratheesh ... Petitioner

vs

1.The Authorized Officer / Chief Manager,
M/s.Cholamandalam Investment and Finance
Company Limited,
DARE House, 1st Floor, No.2, N.S.C. Bose Road,
Parrys, Chennai – 600 001.

2.Arulanandham Bersyril Antow ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the learned Presiding Officer to expedite and disposed of the SARFAESI Appeal (SA)No.323 of 2022 on the file of the Debts Recovery Tribunal, Madurai, within the time frame fixed by this Court.

For Petitioner : Mr.S.Anandha Rajagopal

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ORDER

(Order of this Court was made by **G.ARUL MURUGAN, J.**)

The petitioner, who is a borrower, had filed this Writ Petition to direct the learned Presiding Officer, Debts Recovery Tribunal, Madurai, to expedite and dispose of the SARFAESI Appeal in S.A.No.323 of 2022 on the file of the Debts Recovery Tribunal, Madurai, within a fixed time frame.

2.In view of the order, which we propose to pass, notice to the respondents is dispensed with.

3.It is the case of the petitioner that he had availed loan from the first respondent Bank for a sum of Rs.5,00,00,000/- by mortgaging two of his residential properties. The loan was sanctioned by adjusting and closing the earlier loan and the petitioner had mortgaged highly valuable properties. Due to some disturbances in the business activities and also the COVID-19 pandemic, there was a default in repayment of the loan amount, due to which, the account was classified as non performing asset on 05.07.2017 and the respondent Bank had initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (hereinafter referred to as “SARFAESI Act”), by issuing a demand notice, dated 07.06.2018 under Section 13(2) of the SARFAESI Act for an outstanding sum of Rs.5,10,97,446.45/-, as on 29.05.2018.

4.As the petitioner has not repaid the amount, possession notice under Section 13(4) of the SARFAESI Act was also issued on 19.09.2018 and also the first respondent Bank had taken physical possession of the property on 17.03.2020. Pursuant to which, the first respondent Bank had issued auction sale notice fixing the auction on 15.06.2022, in which, the second respondent was the successful purchaser and the sale was also confirmed in his favour on 15.06.2022. Alleging that there were several flaws and irregularities in conducting the sale proceedings, the petitioner had challenged the sale before the Debts Recovery Tribunal, Madurai, in S.A.No.323 of 2022, wherein, the second respondent, auction purchaser, was also made as a party. Even though the SARFAESI Appeal has been taken on file and notice has been issued to the respondents, the counter of the respondents is yet to be filed and there is no progress in the appeal. Since the valuable properties of the petitioner has been sold, which is the subject matter of the appeal before the Debts Recovery Tribunal, Madurai, the petitioner has preferred the above Writ Petition to expedite the hearing.

5.Heard the learned Counsel for the petitioner and perused the materials available on record.

6.The learned Counsel for the petitioner by reiterating the averments made in the affidavit submitted that he will be contended that if the proceedings pending before the Debts Recovery Tribunal, Madurai, is expedited, where, the petitioner will be able to agitate his grievance.

7.The petitioner had, admittedly, availed loan from the first respondent Bank by mortgaging the properties. Since the petitioner committed default in repayment of the loan dues, the account was classified as non performing asset on 05.07.2017 and the first respondent Bank resorted to the proceedings under the SARFAESI Act. A demand notice, dated 29.05.2018 under Section 13(2) of the SARFAESI Act was issued calling upon the petitioner to pay a sum of Rs.5,10,97,446.45/- as on 29.05.2018 within a period of sixty days. As the amounts were not repaid, the respondent Bank had issued possession notice under Section 13(4) of the SARFAESI Act on 19.09.2018 and pursuant to which, the respondent Bank had also taken physical possession of the property on 17.03.2020. Thereafter, the Bank had issued the sale notice by fixing the auction on 15.06.2022. The second respondent was the successful bidder in the auction and the sale was also confirmed on 15.06.2022. The petitioner complaining that there had been some irregularities in the manner in which, the auction sale proceedings were conducted by the respondent Bank, had challenged the same before the Debts Recovery Tribunal, Madurai, in S.A.No.323 of 2022.

8.From the certified order copy issued by the Tribunal enclosed in the typed set of papers, it could been seen that the appeal was listed for hearing on 16.09.2022 and notice was ordered to the respondents and the matter stood adjourned to 07.10.2022 for filing proof of service on the respondents. Further, the case has been adjourned to 14.10.2022 and 16.12.2022 for filing affidavit of service. Thereafter, the case has been adjourned to 18.01.2023, 16.06.2023, 14.11.2023, 31.05.2024 and 06.09.2024.

9.It is not made clear as to whether the petitioner had completed service on the respondents and have filed necessary proof of service, as indicated in the earlier two hearings. Further, when the SARFAESI Appeal is pending before the statutory authority, the Debts Recovery Tribunal, Madurai, it is for the Tribunal to fix the hearing in respect of the case pending before the Tribunal, as per their calender and we cannot, in any way, supervise the proceedings, which are pending and undertaken before the Tribunal.

10.Be that as it may, since the properties of the petitioner had already been sold to the second respondent and confirmed as early as on 15.06.2022 and in this regard, challenging the sale, the petitioner had filed SARFAESI Appeal in S.A.No.323 of 2022 before the Tribunal and it is pending for the past two years, we only direct the Debts Recovery Tribunal, Madurai, to expedite the proceedings pending in S.A.No.323 of 2022 and decide the same as expeditiously as possible. It is made clear that we have not expressed any opinion on the merits of the case and this order will also not stand in any way affecting the rights of the second respondent, auction purchaser to deal with the property.

11.With these directions, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
09.07.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

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To

The Presiding Officer,
Debts Recovery Tribunal, Madurai.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.15166 of 2024

09.07.2024