

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29/9/2016

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.16798 of 2015

1. Indira
2. M.Padma
3. R.Kuppusamy
4. R.Ranganathan
5. R.Rajan
6. R.Mohan

...Petitioners

Vs

1. M/s. State Bank of India
rep. By its Branch Manager
Chengam Branch, 925 Bangalore Road,
Thiruvannamalai District.
2. K.Purushothaman
3. P.Lavanya
4. The Registrar
Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55 Ethiraj Salai
Chennai 600 008.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the order dated 1/10/2014, in I.A.No.281 of 2014, in A.I.R.No.843 of 2013, on the file of the fourth respondent and quash the same.

For petitioners : Mr.G.Vijayakumar

For respondents : Mr.Ilayaraja Kumar
for M/s.Ramalingam Associates
for R.1.

O R D E R
(Order of the Court was made by S.Manikumar,J)

Writ Petition has been filed praying to quash the order, dated 1/10/2014, made in I.A.No.281 of 2014, in A.I.R.No.843 of 2013, on the file of the fourth respondent.

2. On 9/9/2016, we have passed the following order:-

"Record of proceedings shows that on 20/6/2016, this Court has directed status-quo to be maintained. Subsequently, the interim order has been extended. On 30/8/2016, this Court has ordered as hereunder:-

"At request of the learned counsel for the petitioners. List on 9/9/2016. By the time, the petitioners shall settle all the liabilities to the respondent/Bank."

2. Today, learned counsel for the respondent Bank submitted that amount has not been settled as ordered.

3. Learned counsel for the writ petitioner seeks two weeks time as last chance for settling liabilities. Accordingly, time is granted.

Post on 19/9/2016."

3. On 28/9/2016, when the matter came up for hearing, the first respondent has filed a memo, dated 28th September, 2016, wherein he has contended that the impugned order, dated 1/10/2014 passed by the Debt Recovery Appellate Tribunal, Chennai/fourth respondent herein, is a self operating order, and for not depositing a sum of Rs.58,74,059/- in the Tribunal, on or before 31/12/2014, order made in A.I.R.No. 843/2013 in O.A.No.73 of 2011 stands automatically dismissed.

4. Order impugned in this writ petition in A.I.R.No. 843/2013, dated 1/10/2014, is extracted hereunder:-

"Learned counsel appearing on behalf of the petitioner stated that a time of three months may be given to make the amount of pre-deposit that may be determined in this case.

Ld. Counsel appearing on behalf of R.1 bank reiterated his contention made on 29/9/2014 and stated that orders may be passed today itself.

There is no representation on behalf of R.2 and R.3.

Heard the Ld. Counsel appearing on behalf of the petitioners and the Ld. Counsel appearing on behalf of the first respondent Bank.

It is seen that the amount due as on the date of filing of the appeal i.e., on 16/12/2013 is Rs.1,17,48,117.49 and it is also seen that the petitioners have not paid any money after the borrowal.

Therefore, in view of the fact that no payment has been made by the petitioner after the availment of loan, in view of the fact that public money is involved, in view of the fact that three months time is sought for by the petitioners for payment of the predeposit that may be determined by this Tribunal, in view of the fact that the petitioners have not made out a case for reduction of the amount of waiver to that 25% of the amount due as on the date of filing or a complete waiver this Tribunal driven to pass the following order:

"The petitioners are directed to deposit a sum of Rs.58,74,059/- into the Tribunal on or before 31/12/2014. In the event the petitioners fail to deposit the said sum of Rs.58,74,059/- into this Tribunal on or before 31/12/2014 this I.A shall stand automatically dismissed."

5. Perusal of the above, shows that on behalf of the petitioner, submission has been made by the learned counsel for the petitioner that three months' time may be granted to make the pre-deposit. Vide order, dated 1/10/2014, the Debt Recovery Appellate Tribunal, Chennai, has directed the writ petitioner, to deposit a sum of Rs.58,74,059/- on or before 31/12/2014. Tribunal has also noticed that on the date of filing of the appeal, i.e., from 16/12/2013, a sum of Rs.1,17,48,117.49 was due and payable. For not depositing the above said sum, e-auction sale of mortgaged properties at

Chengai Village, Thiruvannamalai District was scheduled to be held, on 16/4/2015.

6. Writ petitioner has filed I.A.No.525 of 2015 in D.R.C.No.246/2013 on the file of the Debts Recovery Tribunal III, Chennai, to defer, e-auction notice and that the said Interim Application has also been dismissed, vide order, dated 15th April 2015. The same is extracted hereunder:-

"In the above matter, E-auction sale of mortgaged properties located at Chengam Village, Thiruvannamalai District is scheduled to be held on 16/4/2015 at 11.00 a.m., to 12 noon with 3 minutes span of bidding. This application has been filed on 13/4/2015 with a prayer to defer the auction.

2. The Ld counsel for the petitioner pleaded that the petitioners were only guarantors and the bank has sanctioned loan to the borrowers only. The petitioners have not availed any loan from the bank, their signatures were obtained in blank papers and the loan has been sanctioned by the bank in collusion with the borrowers/Def 1 & 2. The Ld counsel for the petitioner has also stated that they have filed an appeal before the Hon'ble DRAT, Chennai in AIR 840/2014 which was pleased to pass a conditional order to deposit 50% of DRC amount on or before 31/12/2014 and they are preferring an appeal before the higher forum. The Ld counsel for the petitioner pleaded for deferment of the auction by presenting three Dds in favour of SBI Chengam/M/s. Kanthamma Diary A/c for Rs.17 lakhs.

3. The last date for submitting EMD is 13/4/2015 and there were no bidders for the auction scheduled for 16/4/2015. As such the IA has become infructuous and is liable to be dismissed. Accordingly, the same is hereby dismissed. The DDs are retained by the undersigned and the respondent bank is directed to collect the same for appropriating to the loan account."

7. On 28/9/2016, when the matter came up for hearing, there was no representation on behalf of the petitioner and therefore, Registry was directed to post the writ petition under the

caption "for dismissal". Even today, there is no representation, on behalf of the petitioner, either in person or through pleader. In the light of what is extracted above, we do not find any merits in the writ petition.

8. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Registrar
Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55 Ethiraj Salai
Chennai 600 008.
2. The Branch Manager, State Bank of India
Chengam Branch, 925 Bangalore Road,
Thiruvannamalai District.

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MP(CO)
EU 22.11.16

सत्यमेव जयते

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