

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/12/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Writ Petition No.24016 of 2014

G. Kaliyaperumal

... Petitioner

Vs

Indian Bank
rep. By its Manager
Mannargudi Branch
Mannargudi.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the order dated 8/5/2013, passed by the Debts Recovery Appellate Tribunal, Chennai, in I.A.No.1109 of 2012 in A.I.R.No.883 of 2012, the order of the DRT - III, dated 7/9/2012 passed in M.A.No.44 of 2012 in T.A.No.3 of 2007 and quash the same and consequently issue direction to DRT - III, Chennai to proceed T.A.No.3 of 2007 on merits and in accordance with law.

For petitioner ... Mr.P.Krishnan

For respondent ... Mr.Jayesh B.Dolia

O R D E R

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

Material on record discloses that late Mr.Govindasamy Thevar, father of the writ petitioner, borrowed loan from Indian Bank, Mannargudi branch, Pondicherry, for a sum of Rs.17,54,101/- together with future interest, at 8% p.a., over the RBI lending rates with a minimum of 18% p.a., with quarterly rests.

2. The claim was originally filed in Sub-Court,

Nagapattinam in O.S.No.56 of 1996 and transferred to Debts Recovery Tribunal - I, Chennai as T.A.No.1771 of 1997 and thereafter, transferred to Debts Recovery Tribunal - II, Chennai and renumbered as T.A.No.211 of 2001 and subsequently, transferred to the Debts Recovery Tribunal - III, Chennai and renumbered as T.A.No.3 of 2007.

3. Pending disposal of the abovesaid proceedings, R.Govindasamy Thevar/borrower, died and the writ petitioner has been impleaded as legal representative. He was set ex parte on 2/11/1999. On 13/12/2010, there was no representation on behalf of Mr.Ganesh Thevar and S.N.Uthrapathi Thevar, respondents and right to file counter in I.A.No.354 of 2010 was closed. Subsequently, after considering the averments made in T.A.No.3 of 2007 and documentary evidence adduced by the Indian Bank, Pondicherry/respondent herein, Debts Recovery Tribunal - III, Chennai, passed final order in T.A.No.3 of 2007, and granted the following reliefs:-

(i). The applicant bank is entitled to recovery certificate as prayed for against the defendants personally, jointly and severally for the sum of Rs.17,54,101/- (Rupees Seventeen lakhs fifty four thousand one hundred and one only) with further interest @ 18% p.a., with half yearly rest from the date of filing of the suit i.e., 30/4/1996, till realisation with costs and by sale of the TA schedule property.

(ii). The applicant bank is directed to produce costs memo within two weeks from the date of receipt of the order.

(iii). The Registry is directed to issue recovery certificate in favour of the applicant bank in terms of the final order.

(iv). Communicate copy of this order to the parties in terms of Rule 16 of DRT (Procedure) Rules, 1993.

4. Material on record further discloses that to set aside the final order made in T.A.No.3 of 2007, dated 26/3/2012, on the file of the Debts Recovery Tribunal - III, Chennai, writ petitioner, son of the original borrower has filed M.A.No.44 of 2012, on the file of the Debts Recovery Tribunal - III, Chennai.

5. Supporting the prayer sought for, he has contended that the watchman of Samy Theatre, for which loan was received, had received the copy of the order made in T.A.No.3 of 2007, dated 26/3/2012, which was made ready by the Debts Recovery Tribunal - III, Chennai, on 4/4/2012 and sent through Registered Post, on

5/4/2012 by the Registry of the Tribunal. After receiving the order, the writ petitioner has filed M.A.No.44 of 2012, to set aside the ex parte order, dated 26/3/2012.

6. Before the Debts Recovery Tribunal - III, Chennai, Indian Bank has filed counter affidavit, opposing the prayer, to set aside the final order, dated 26/3/2012 and consequently, prayed to dismiss the petition. Bank has submitted that despite knowledge of the pendency of the transferred application, writ petitioner has not taken steps, to defend the same. M.A.No.44 of 2012 has also been opposed, on the ground that it is barred by limitation. A reply affidavit has been filed by the writ petitioner.

7. Adverting to the rival submissions and by observing that M.A.No.44 of 2012 in T.A.No.3 of 2007 filed on 1/5/2012, was without an application for condonation of delay, Debts Recovery Tribunal - III, vide order, dated 7th September 2012, dismissed M.A.No.44 of 2012.

8. Challenging the order made in M.A.No.44 of 2012, the writ petitioner has filed an appeal in AIR No.88 of 2012 before the Debts Recovery Appellate Tribunal, Chennai.

9. I.A.No.1109 of 2012 has been filed for waiving payment of the deposit.

10. After hearing the learned counsel for the parties, vide order, dated 8/5/2013, Debts Recovery Appellate Tribunal, Chennai has declined to waive the entire deposit, but directed the writ petitioner, to deposit a sum of Rs.75 lakhs, into the Tribunal, on or before 22/7/2013 and in the event of failure to deposit the said sum, A.I.R.No.883 of 2012, would stand automatically dismissed.

11. In I.A.No.1110 of 2013, the Debts Recovery Appellate Tribunal, Chennai has ordered that in the light of the orders passed in I.A.No.1109 of 2012, to await the outcome of the order.

12. Aggrieved against the aforesaid orders, the petitioner has filed the instant writ petition, praying for a writ of certiorarified mandamus, to call for the records pertaining to the order, dated 8/5/2013, passed by the Debts Recovery Appellate Tribunal, Chennai, in I.A.No.1109 of 2012 in A.I.R.No.883 of 2012, order of the Debts Recovery Tribunal - III, Chennai, dated 7/9/2012, passed in M.A.No.44 of 2012 in T.A.No.3 of 20076 and to quash the same and consequently, prayed

for a direction to Debts Recovery Tribunal - III, Chennai, to proceed T.A.No.3 of 2007, on merits and in accordance with law.

13. Inviting the attention of this Court to the photocopy of the date and seal, affixed in T.A.No.3 of 2007 of the Debts Recovery Tribunal - III, Chennai, filed in the typed set of papers, Mr.P.Krishnan, learned counsel for the writ petitioner submitted that though an ex parte order was passed, on 26th March 2012, copy of the same was made ready, on 4/4/2012 and as per Section 16 of the Debts Recovery Tribunal (Procedure), Rules 1993, a free copy of the order has to be supplied. By a registered letter, dated 5/4/2012, the said order was communicated. According to the learned counsel for the petitioner, copy of the order was received on 9/4/2012.

14. During the course of hearing of the instant writ petition, records from Debts Recovery Tribunal - III, Chennai was called for.

15. Under Section 19 (21) of RDBFI Act, 1993 r/w. Section 16 of DRT (Procedure) Rules, 1993, a free copy has to be supplied. The concerned Registrar has received the same, on 4/4/2012. By Registered Post, the same has been communicated. According to the writ petitioner, free copy of the order was received, on 9/4/2012 and within one month, petition to set aside the ex parte order has been filed, on 1/5/2012, which was well within the time. In the above said circumstances, there was no delay in filing an application, to set aside the ex parte order dated 26/3/2012, in T.A.No.3 of 2007 and therefore, submitted that the Tribunal has erred in dismissing M.A.No.44 of 2012, on the sole ground of non filing of an application for condonation of delay, which does not arise, on the facts and circumstances of the case.

16. According to the learned counsel for the petitioner, if this Court accepts the above said contention, then there is no need to file appeal as against the order passed in A.I.R.No.883 of 2012 and seek for waiver. Question of waiver arises only after setting aside the ex parte order.

17. We have gone through the files and satisfied that Assistant Registrar of the Debts Recovery Tribunal - III, Chennai has received the copy of the order, on 4/4/2012 and the Registry of the Tribunal, sent the copy, on 5/4/2012, which is stated to have been received by the petitioner, on 9/4/2012. Though Indian Bank has contended that there is a delay, the same has not been substantiated.

18. On the contra, records produced before this Court, support the contention of the writ petitioner that there was no delay in filing the application, to set aside the ex parte order, dated 26/3/2012, in T.A.No.3 of 2007. As rightly contented by the learned counsel for the writ petitioner that M.A has not been dismissed on merits, but the same has been dismissed only on the ground of limitation. M.A.No.44 of 2012 has been filed within the time. Therefore, we are inclined to set aside both the orders made in M.A.No.44 of 2012, dated 7/9/2012 and A.I.R.No.883 of 2012 dated 8/5/2013.

19. In the result, this writ petition is allowed. Orders made in M.A.No.44 of 2012, dated 7/9/2012 and A.I.R.No.883 of 2012 dated 8/5/2013 are set aside. In view of the time consumed, in this litigation, this Court is inclined to direct Debts Recovery Tribunal - III, Chennai, to take up the waiver application, on priority basis and dispose of the same, in accordance with law, within a period of two months, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition No.1 of 2014 is closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

mvs.

To

1. The Manager
Indian Bank
Mannargudi Branch
Mannargudi.
2. The Debts Recovery Appellate Tribunal,
Chennai.
3. The Debts Recovery Tribunal III,
Chennai.
4. SO & Writ Section, Madras High Court,
Madras(for sending records)

+lcc to Mr. Jayesh and Dolia sr.72954

+lcc to Mr.P.Krishnan sr.72961

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skv(co)

ss(10/01/2017)