

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 3.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. No.40953 of 2015

Corporation Bank
Mettupalayam-641301
Coimbatore District. petitioner

versus

M/s. N M S Hospitals
(P) Limited Rep. by its Director Dr.Manoj
Raja No.1542 G-5 Nirupama Nilayam Kovai
Road K.K.Nagar Mettupalayam-641301
Coimbatore District. respondent

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to order dated 26.11.2015 in MA No.106 of 2015 passed by the DRAT (Debt Recovery Appellate Tribunal) and quash the same.

For petitioner : Mr.N.Sivabalan

For Respondent : Dr.S.R.Kalyani

O R D E R

(made by HULUVADI G.RAMESH, J.)

The petitioner/Corporation Bank has come forward with this Writ Petition challenging the order dated 26.11.2015, passed by the Debts Recovery Appellate Tribunal, Chennai, in M.A.No.106 of 2015.

2. It is seen from the affidavit filed in support of the Writ Petition that the respondent availed financial assistance from the petitioner and failed to repay the same. To recover the loan amount, the petitioner filed O.A.No.41 of 2013 and the same is stated to be still pending. In the meanwhile, the petitioner filed an interlocutory application for sale of the hypotheca, on the ground that the hospital building was already sold under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act to a third party and possession of the building was also handed over the auction purchaser. However, the machinery are still inside the hospital. An Advocate Commissioner was appointed at the request of the

petitioner and the Commissioner has taken an inventory and evaluated the hypothecated items. Challenging the said order, the respondent filed an appeal before the Debts Recovery Appellate Tribunal. The Appellate Tribunal granted liberty to the respondent to remove the hypotheca from the premises within a period of one month and in the failure, to auction the movables. Challenging the said order, the petitioner has come forward with this Writ Petition.

3. The learned counsel for the petitioner submitted that the respondent cannot be allowed to remove the machinery straightaway, and submitted that the respondent should be directed to deposit the value of the hypotheca, as per the valuation report submitted by the valuer.

4. The learned counsel for the respondent on the other hand submitted that the Appellate Tribunal has granted only one month time for removing the machinery from the hospital and in the event of failure, the Advocate Commissioner was given liberty to auction the movables. Hence, he prayed that the petitioner may be allowed to remove the machinery.

5. On a careful consideration of the rival submissions, this Court is of the view that in case the petitioner needs any modification of the order passed by the Debts Recovery Appellate Tribunal, it should only approach the authority concerned. The Appellate Tribunal has passed an order permitting the respondent to remove the machinery with a condition that in case of failure to remove within one month, the Advocate Commissioner was permitted to auction all the movables or to remove part of the movables. Therefore, no relief could be granted as regards removable of machinery is concerned.

6. It is brought to our knowledge that original application is pending before the Debts Recovery Tribunal, Coimbatore. The Debts Recovery Tribunal is directed to dispose of O.A.No.41 of 2013, within a period of six months from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the Tribunal for an early disposal of the original application.

7. The Writ Petition is disposed of accordingly. No costs. Consequently, M.P.No.2/2015 is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

tar

To

1. The Manager
Corporation Bank
Mettupalayam-641301
Coimbatore District.641 301

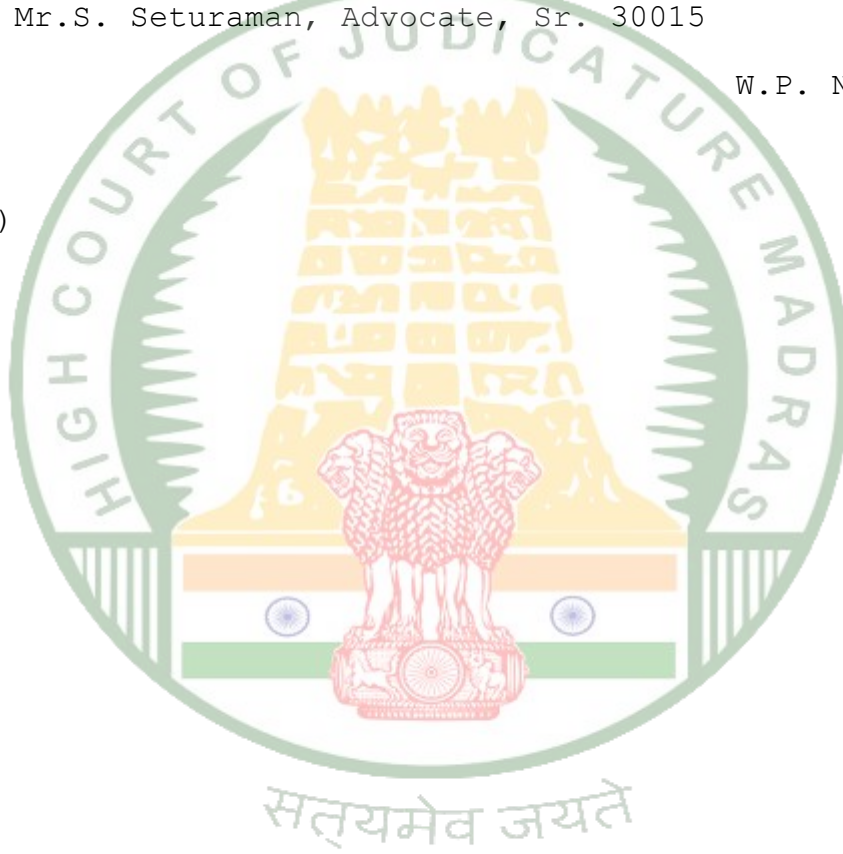
2. The Debts Recovery Tribunal,
Coimbatore

1 cc to Dr.S. Kalyani, Advocate Sr. 29697

1 cc to Mr.S. Seturaman, Advocate, Sr. 30015

W.P. No.40953 of 2015

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