

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.23242 of 2016
and
WMP.Nos.19937 and 19938 of 2016

1.B.Sakunthala
2.K.Bakthavatchalam

...Petitioners

Vs.

1.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

2.The Presiding Officer,
Debts Recovery Tribunal-II
Chennai - 600 002.

3.HDFC Bank Limited,
Remedial Management Unit,
rep. by its Senior Manager,
No.30, Cenotaph Road,
Teynampet, Chennai- 600 018.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent to permit the petitioners to cross examine the PW-1, Bank witness in O.A.No.50 of 2015 or otherwise direct the second respondent to defer the proceedings in O.A.No.50 of 2015 on the file of the second respondent pending disposal of the appeal filed in AIR No.118 of 2016 on the file of Debts Recovery Appellate Tribunal, Chennai.

For Petitioners : Mr.R.Munuswamy

For R3 : Mr.K.Rajasekaran
R1 & R2 - Tribunal

ORDER

(Order of the Court was made by HULUVADI G. RAMESH,J.)

The prayer made in this Writ Petition is to issue a Writ of Mandamus, directing the second respondent to permit the

petitioners to cross examine P.W.1 - Bank witness or otherwise to defer the proceedings in O.A.No.50 of 2015 pending on the file of the second respondent till the disposal of the appeal in AIR No.118 of 2016 by the first respondent herein.

2. The facts leading to the filing of this writ petition are as follows:

2.1 The first petitioner is the proprietrix of a petrol and diesel retail outlet, running under the name and style of M/s.Sri Mookambika Enterprises and the second petitioner is the husband of the first petitioner. For the purposes of business or personal needs, the petitioners had availed several loans from the erstwhile Centurion Bank of Punjab, which was subsequently merged with the third respondent Bank with effect from 23.05.2008. Thereafter, the petitioners have continued to repay the dues to the third respondent. However, the third respondent has not issued statement of accounts, despite several requests made by the petitioners.

2.2 While so, the third respondent has initiated recovery proceedings against the petitioners herein by filing an application in OA.No.78 of 2012 before the Debts Recovery Tribunal-I, Chennai. Pending the same, the third respondent bank has also issued a notice dated 05.07.2012 under section 13(4) of the SARFAESI Act to the petitioners for taking possession of the secured assets. Challenging the same, the petitioners preferred an appeal in S.A.No.103/2012 before the Debts Recovery Tribunal-I, Chennai.

2.3 During the pendency of the original application and the second appeal, the petitioners have approached this Court by way of W.P.No.19728 of 2014, which was disposed of, by order dated 07.08.2014, by directing the Debts Recovery Tribunal-I to dispose of O.A.No.78 of 2012 and S.A.No.103 of 2012 within a period of eight weeks. Pursuant to the same, both O.A.No.78 of 2012 and S.A. No.103 of 2012 were transferred to the file of the Debts Recovery Tribunal-II, Chennai and renumbered as O.A.No.50 of 2015 and SA.No.80 of 2014 respectively. Subsequently, the said second appeal was allowed on 01.05.2015.

2.4 Thereafter, the petitioners have taken out an application in IA.No.645 of 2015 in O.A.No.50 of 2015 seeking permission to cross examine the bank witness, contending that the third respondent has not aware of the transactions between the petitioners and the erstwhile Centurion Bank of Punjab and the third respondent had sent certain communications, highlighting certain material facts, which necessitated the petitioners to cross examine the witness of the bank, who sworn the affidavit on behalf of the bank. The said application was seriously resisted by the third respondent bank. Ultimately, the Debts Recovery Tribunal dismissed the application by order dated 16.02.2016,

against which, an appeal in AIR.No.118 of 2016 was filed and is pending. In the mean while, O.A.No.50 of 2015 stood adjourned for arguments. Therefore, the present writ petition came to be filed by the petitioners before this Court.

3. Learned counsel for the petitioners submitted that in view of the allowing the appeal filed against the SARFAESI proceedings initiated by the third respondent bank, it is necessary for the petitioners to cross examine the bank witness in respect of the accounts classified as Non-performing Assets. He further submitted that the petitioners have paid the entire dues to the third respondent- bank.

4. Mr.K.Rajasekaran, learned counsel, undertakes to file vakalath for the third respondent. He is permitted to file vakalath on behalf of the third respondent.

5. We have considered the submissions made on either side and also perused the materials placed before this Court.

6. This writ petition is arising out of the order, rejecting permission to the petitioners to cross examine the bank witness in O.A.No.50 of 2015. The Debts Recovery Tribunal-II, Chennai has assigned various reasons for cancellation of the permission to the petitioners. However, considering the submissions made by the learned counsel for the petitioners, particularly, the petitioners have paid the entire dues to the third respondent, we are of the view that if an opportunity is given to the petitioners to cross examine the bank witness, no serious prejudice or hardship would be caused to the third respondent-bank. Therefore, we are inclined to set aside the impugned order and to permit the petitioners to cross examine the bank witness.

7. Accordingly, the writ petition is allowed. The order dated 16.02.2016 made in IA.No.645 of 2015 in O.A.No.50 of 2015 by the Debts Recovery Tribunal-II, Chennai is hereby set aside and the petitioners are permitted to cross examine PW1 -bank witness on 28.07.2016, on which date, the Debts Recovery Tribunal-II, Chennai is directed to facilitate the petitioners to cross examine the bank witness and thereafter, pass further orders in O.A.No.50 of 2015 on merits and in accordance with law. No costs. Consequently, connected Miscellaneous petitions are closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

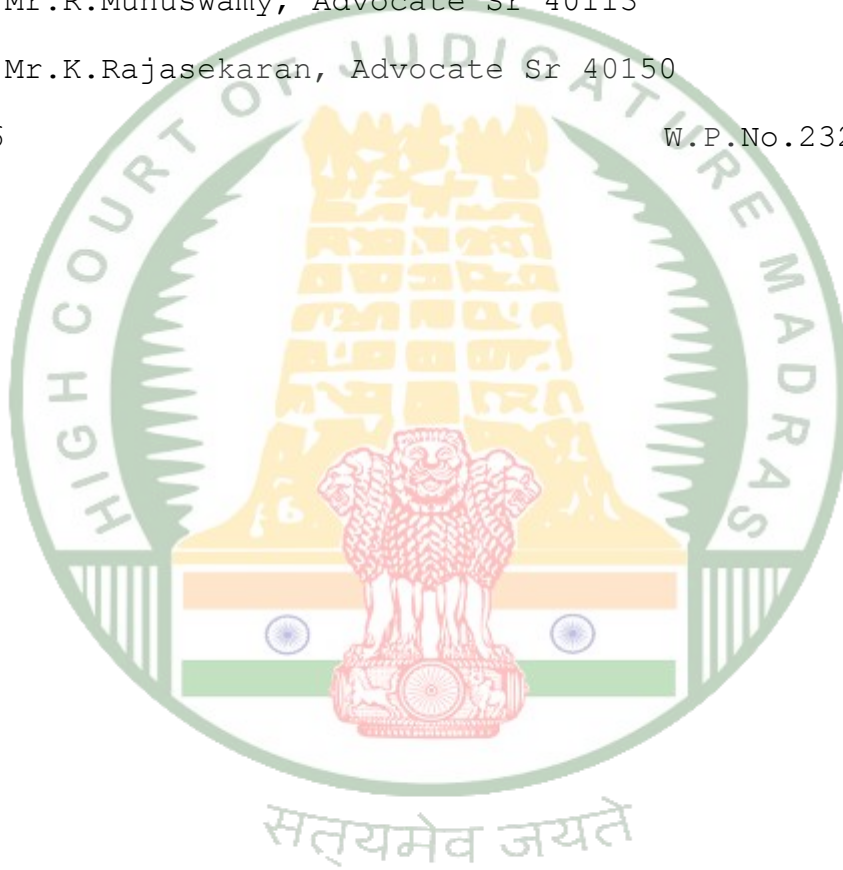
2.The Presiding Officer,
Debts Recovery Tribunal-II,
Chennai - 600 002.

+ 1 cc to Mr.R.Munuswamy, Advocate Sr 40113

+ 1 cc to Mr.K.Rajasekaran, Advocate Sr 40150

KR/26/7/16

W.P.No.23242 of 2016



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