

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7/10/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice N.Authinathan

Writ Petition No.35623 of 2016

Mrs.S.Sangeetha
Proprietor of M/s. Surya Tech Zone
Chennai 600 099. Petitioner

Vs

1. The Presiding Officer
Debts Recovery Tribunal - II
4th Floor, No.770 A
Anna Salai
Chennai 600 002.
2. The Recovery Officer
Debts Recovery Tribunal - II
4th Floor, No.770 - A
Anna Salai
Chennai 600 002.
3. M/s. The Lakshmi Vilas Bank Ltd
rep. By its Branch Manager
K.R.Building, 12 L.B.Road
Adyar
Chennai 600 020. Respondents

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 impugned order dated 14/9/2016, made in I.A.SR.No.8380 of 2016 in A.P.No.23 of 2015 on the file of the first respondent and quash the same and consequently grant two weeks time to the petitioner to comply with the order dated 22/8/2016 made in Appeal No.23 of 2015 on the file of the first respondent.

For petitioner Mr.L.Chandrakumar
for Mr.J.Arunprasad

For respondents Tribunal for R.R.1 and 2.

Mr.A.V.Radhakrishnan
for R.3.

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O R D E R

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

Aggrieved by the order, made in A.P.No.23 of 2015, dated 14/9/2016, on the file of the Debt Recovery Tribunal - II, Chennai, instant writ petition is filed for a writ of certiorarified mandamus, to call for the records pertaining to the impugned order, dated 14/9/2016, made in I.A.SR.No.8380 of 2016 in A.P.No.23 of 2015, on the file of the first respondent and to quash the same and consequently, grant two weeks time, to the petitioner, to comply with the order, dated 22/8/2016, made in Appeal No.23 of 2015, on the file of the first respondent.

2. When the matter came up, on 6/10/2016, we permitted the learned counsel for the petitioner, to serve the entire cause papers on the bank/third respondent.

3. Material on record discloses that the petitioner has filed A.P.No.23 of 2015 against M.A.Nos.71, 72, 102 and 103 of 2015 in D.R.C.No.144 of 2012 in O.A.No.51 of 2011 before the Debts Recovery Tribunal - II, Chennai.

4. Having regard to the rival submissions, vide common order, dated 22/8/2016, in the above Appeal No.23 of 2015, at paragraph No.12, Tribunal has ordered as hereunder:-

"In the result, the impugned order passed by the Ld. Recovery Officer is set aside on condition that the appellant shall deposit e-auction sale amount of Rs.20,50,000/- with interest @ 12% from the date of sale and also the expenses incurred for conducting the e-auction sale within two weeks from the date of receipt of this order. If the appellant fails to deposit the conditional amount, the appeal shall automatically stand dismissed and the Recovery Officer's order will be upheld. Recovery Officer is hereby directed to return the sale amount with 12% interest to the auction purchaser forthwith after the compliance of the order by the appellant. It is further directed that the sale deed has to be returned to the appellant herein if the appellant deposits the above said conditional amounts. With this observation, the MA is disposed of."

5. It could be further deduced that the petitioner has made payment of Rs.10 lakhs, on 9/9/2016. The last date, before which, the balance payment of Rs.10,50,000/-, with interest, ought to have been made, as per the common order, dated 22/8/2016 is 11/9/2016. Before the expiry of the said

date i.e., 11/9/2016, the petitioner has filed a Miscellaneous Petition, in I.A.SR.No.8380 of 2016, on 8/9/2016, seeking extension of time i.e., from 12/9/2016, for a period of two weeks, i.e. from 12/9/2016 to 25/9/2016, to deposit the balance amount of Rs.14,27,050/-.

6. The said Miscellaneous Petition seemed to have been returned and represented along with a memo, dated 12/9/2016, in Memo SR.No.8409. Thereafter, application in IASR No. of 2016 in A.P.No.23 of 2015 has been posted before the Debts Recovery Tribunal - II, Chennai. On 14/9/2016, there was no representation. Hence the Tribunal has passed the following order:-

"No representation for the petitioner. Conditional order dated 22/8/2016 is not complied by the petitioner/appellant. The reasons stated in I.A.SR for extension of time is not satisfactory. Hence IA.SR is dismissed.

7. In the Memorandum, dated 12/9/2016, the petitioner has stated as follows:-

"Received today 12/09/2016 A.N. The Hon'ble P.O in his order dated 22/08/2016 has granted time for two weeks to the appellant/petitioner/JD/Defendant Mrs.S.Sangeetha to deposit 'e' auction sale amount of Rs.20,50,000/- with interest @ 12% from the date of sale and expenses incurred for conducting 'e' auction sale of the subject property. This two weeks time came to end on 5/9/2016. But in this memo, at para 3, the counsel for defendant has stated that copy of order dated 22/8/2016 of the Hon'ble P.O was received on 29/8/2016 and hence the two weeks time ends on 11/9/2016.

The defendant has filed a petition before the Hon'ble P.O on 11/9/2016, seeking extension of 2 weeks time till 25/9/2016 to remit the balance amount.

The present request to receive the DD for Rs.10,000/- and to stop further proceedings in this matter for two weeks, is not maintainable before the R.O, since the Hon'ble P.O has already ordered vide order dated 22/8/2016, that if the defendant herein fails to deposit the conditional amount, the appeal shall

automatically stand dismissed and R.D's order will be upheld. Since the entire amount was not paid within time stipulated by Hon'ble P.O, this memo along with DD is returned."

8. From the above, it could be deduced that the petitioner has filed I.A.SR.No.8380 of 2016 in Appeal No.23 of 2015, on 8/9/2016, well before the expiry of time, fixed to deposit a sum of Rs.20,50,000/-.

9. It is also the submission of the learned counsel for the petitioner that before the expiry of the last date, for the balance amount of Rs.14,50,000/- with interest, at the rate of 12%, a demand draft for Rs.14,50,000/- was sought to be deposited with the Recovery Officer, but he had not accepted the same.

10. During the course of hearing, we are informed that the Tribunal does not function on second Saturdays.

11. It could be further deduced that 9/9/2016 is the only working day. As stated supra, on 12/9/2016, a memo has been filed. However, on 14/9/2016, there was no representation before the Tribunal.

12. The conditional order has not been complied with before 11/9/2016, but the fact remains that the petitioner has filed an application I.A.SR.No.8380 of 2016, on 8/9/2016, for further extension of time, but by observing that the reasons are not satisfactory, Tribunal has dismissed the same.

13. During the course of hearing, Mr.A.V.Radhakrishnan, learned counsel for the Bank submitted that the sale certificate has been issued and the auction purchaser was also put in possession.

14. Mr.L.Chandrakumar, learned counsel appearing for the petitioner, on record submitted that the sale certificate has been challenged.

15. Reading of the order impugned before us, does not spell out the reasons assigned by the petitioner, for extension of time, nor the reasons as to why the Tribunal was not satisfied with the same. The impugned order is not a speaking order. Needless to state that the reasons are the heart beat of any decision, either administrative or Judicial. In as much as we do not find any reasons, in the impugned order, we are inclined to set aside the same.

16. As we have set aside the order, made in I.A.SR.No.8380 of 2016, we refrain from adverting to the other aspects contended before us above said aspects, as the matter is pending with the Tribunal. The Tribunal is directed to pass a speaking order, after numbering I.A.SR.No.8380 of 2016.

17. In the result, this writ petition is allowed, only to the limited extent, as indicated above. No costs. Consequently, the connected Miscellaneous Petition No.30617 of 2016 is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Presiding Officer
Debts Recovery Tribunal - II
4th Floor, No.770 A
Anna Salai
Chennai 600 002.

2. The Recovery Officer
Debts Recovery Tribunal - II
4th Floor, No.770 - A
Anna Salai
Chennai 600 002.

+1 cc to Mr.A.V.Radhakrishnan,advocate,sr.58018

+1 cc to Mr.J.Arunprasad,advocate,sr.58093

rsy(co)
krd 10/11

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