

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.NO.7373 OF 2016

AND WMP.NO.6580 OF 2016

P.Soundarapandian ... Petitioner

Vs.

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

2.UCO Bank,
Chetpet Branch,
No.779, Poonamallee High Road,
Chennai-600 010.

3.P.Jayachandran,
Prop: Geethanjali Exports,
No.1, Sanyasipuram Main Street,
Kilpauk, Chennai-10.

4.P.Chandrasekar

5.P.Raghupathi

6.Thimmakkal ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorari, calling for the records on the file of the First Respondent in M.A.No.33 of 2015 dated 09.09.2015 and quash the same as illegal, irregular and without jurisdiction.

For Petitioner : Mr.Dr.G.Krishnamurthy

O R D E R

[Order of the Court was made by
M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in calling for the records on the file of the First Respondent/Debts Recovery Appellate Tribunal, Chennai in M.A.No.33 of 2015 and to quash the same as illegal, irregular one and also without jurisdiction.

2.According to the Petitioner, the Second Respondent/UCO Bank, Chetpet Branch, Chennai-10 had extended financial assistance to one Geethanjali Exports and further, the Second Respondent in respect of certain issues, initiated action under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 in O.A.No.26 of 2005 before the Debts Recovery Tribunal, Chennai for recovery of a sum of Rs.41,40,585.23 with interest.

3.The categorical stand of the Petitioner is that the matter was referred to the Lok Adalat and on 09.12.2006, a settlement was arrived at and that the Bank had agreed to receive a sum of Rs.20 lakhs towards full and final settlement of the entire dues. Further, on failure of complying with the terms of settlement, the Bank was entitled to proceed in accordance with law and that a payment of Rs.6,52,000/- was accepted by the Bank.

4.The Learned counsel for the Petitioner submitted that the Writ Petitioner had met with an accident and therefore, he was to be hospitalised in Malaysia and further, he was in coma stage and came to know that there was a delay in payment. The Petitioner immediately approached the Bank and expressed his willingness to repay the amounts with interest for the delay that had occasioned as per the Prime Lending Rate. However, for the reasons best known to the Second Respondent/Bank, the officers of the Second Respondent/Bank refused to accept the same and projected an Application [Sr.7402/2012 in O.A.No.153 of 2008 (formally O.A.No.26 of 2005)] before the Debts Recovery Tribunal-I, Chennai and on 16.11.2012, the Debts Recovery Tribunal-I, Chennai had passed an order inter-alia to the effect that "... the Defendants have to pay the balance amount along with 12.5% Simple Interest. Since the final order is already passed, based on the Award passed an order dated 18.12.2006, the Applicant Bank is entitled for a Recovery Certificate. The Defendants may approach the Bank for payment of the amount as per the Award. RC may be drawn accordingly."

5.The Learned counsel for the Petitioner brings it to the notice of this Court that on 02.07.2013, the Debts Recovery Tribunal had recorded the fact that the Petitioner was willing to pay a higher interest, equivalent to the Prime Lending Rate and that a demand draft was available for the sum prescribed by the settlement. The relevant portion of the order runs as under:

"Counsel for Defendant present and submitted a DD for Rs.24,73,912/- as per their submissions made on 09.05.2013 that they will make payment on the basis of Lok Adalat Award of 09.12.2006 with interest at 1% more than the interest specified in the Lok Adalat award. The amount comprises of Rs.13.50 lakhs with interest @ 13.5% from 25.03.2007 till 13.05.2013. The applicant bank is directed to receive the D.D. from the Registrar of this Tribunal and credit the same to the account of the defendant. Registry is directed to send a letter to the applicant bank to collect the D.D. Call on 23.09.2013".

6.The Learned counsel for the Petitioner takes a stand that even as on 02.07.2013, on the directions of the Tribunal, the amount was received and no objections were raised at any point of time and the Second Respondent/Bank was aware of all the proceedings, as they were the applicant in the main proceedings.

7.The Learned counsel for the Petitioner urges before this Court that surprisingly, the Second Respondent/Bank had issued a change of vakalat and objections were raised and indeed, the Tribunal, recorded the fact that the Bank had not taken steps from 16.11.2012 and that the amount was also deposited. That apart, on 22.01.2014, the Tribunal noted that there was no default clause existent in the settlement agreement drawn up before the Lok Adalat and further noted that a sum of Rs.24,75,912/- was released in Bank's favour. Added further, it was recorded that the Award was passed on consent and there could not be a contrary stance as against the same etc.

8.The Learned counsel for the Petitioner projects an argument that the Second Respondent/Bank had filed an Appeal before the First Respondent/Debts Recovery Appellate Tribunal, Chennai in AIR.No.288 of 2014 and the Appeal was filed with an application for condonation of delay of 80 days and ultimately, the delay was condoned. The Appeal was numbered as M.A.No.33 of 2015.

9.The primordial stand taken on behalf of the Petitioner is that the First Respondent/Debts Recovery Appellate Tribunal, Chennai had allowed I.A.No.630 of 2014 in AIR No.288 of 2014 by

passing an order, bereft of reasoning and after numbering M.A.No.33 of 2015 (filed by the Second Respondent/Bank) passed an order on 09.09.2015 which runs as under:

"Mr.S.P.S.IIamvazhudhi filed vakalat for R1 & R5. He has also filed vakalat for R2 in place of the Advocate on record with no objection endorsement. R3 & R4 already set ex parte. Call on 04.12.2015. Learned counsel for appellant is requested to furnish copies of record to the Learned counsel for respondents within a week from today."

10.The Learned counsel for the Petitioner refers to Section 21 of the Legal Services Authorities Act, 1987 under the caption "Award of Lok Adalat" and forcefully contends the ingredients of Section 21(2) of the Act, that 'No Appeal' lies against the Award of Lok Adalat. Viewed in that perspective, the Appeal preferred by the Second Respondent/Bank is per se not maintainable in Law and is an illegal one, besides the same being without jurisdiction.

11.At this stage, this Court very pertinently points out that the Award passed by the Lok Adalat is the decision of the Court itself though arrived at by the simpler method of conciliation instead of the process of arguments in Court. The effect is the same as per decision P.T.Thomas V. Thomas Job, [AIR 2005 Sc at page 3573].

12.It is to be remembered that the 'Award' of Lok Adalat has to be regarded as final and it cannot be called in question in another original suit, application or execution proceedings. After all, 'Lok Adalat' is a creation of statute and derives jurisdiction from it. It cannot be gainsaid that the scope of interference by the High Court under Article 226 of the Constitution of India in such type of matters is extremely limited.

13.Be that as it may, on a careful consideration of the contentions advanced on behalf of the Petitioner/Second Defendant and also this Court keeping in mind, the entire conspectus of the attendant facts and circumstances of the present case in an encircling manner, at this stage, simpliciter without going into the merits of the matter, by directing the Petitioner to make a request before the First Respondent/Debts Recovery Appellate Tribunal, Chennai to refer the dispute in the subject matter in issue before the Lok Adalat and if such a request is made by the Petitioner, then, the First Respondent/Debts Recovery Appellate Tribunal, Chennai, shall consider the same as expeditiously as possible.

14.With the aforesaid observations and directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

2.The Branch Manager,
UCO Bank,
Chetpet Branch,
No.779, Poonamallee High Road,
Chennai-600 010.

+1cc to Mr.S.V.S.Ilamvazhuthi, Advocate sr.12443

W.P.No.7373 of 2016
and WMP.No.6580 of 2016

msm(CO)
srg(21/03/2016)

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