

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 3.3.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P. No.7651 OF 2016

1.M.Balathandayutham
2.S.Manimegalai ... petitioners
versus

- 1 Indian Bank
Nungambakkam Branch rep. by its Branch
Manager No.125 Valluvar Kottam High Road
Nungambakkam Chennai-34
- 2 The Presiding Officer
Debts Recovery Tribunal-I Chennai 6th Floor
Spencer Plaza Anna Salai Chennai ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records files relating to and the docket order made in I.A.SR. No.2429 of 2015 in O.A.No.539 of 2001 dated 5.10.2015 on the file of the 2nd respondent and quash the same and to direct the 2nd respondent to hear arguments.

For petitioners : Mr.K.S.Sundar

For Respondent R1 : Mr.Jayesh B.Dolia
for M/s.Aiyar & Dolia

O R D E R

(made by K.K.SASIDHARAN, J.)

This Writ Petition is directed against the order dated 5 October 2015, returning the application filed by the petitioners to set aside the order dated 22 June 2015 in O.A.No.539 of 2001 and re hear the matter and thereafter to pass orders on merits.

2. Heard the learned counsel for the petitioners and the learned senior counsel for the first respondent.

3. The petitioners availed financial assistance from the Nungambakkam Branch of Indian Bank. Since repayment was not made as per schedule, the bank initiated proceedings in O.A.No.539 of 2001

before the Debt Recovery Tribunal-I. The original application was allowed by order dated 13 January 2009. The appeal preferred before the Debts Recovery Appellate Tribunal against the said order was dismissed by DRAT by order dated 4 July 2012. The appellate order was challenged before this court in W.A.No.22307 of 2012. This court set aside the order passed by the Debt Recovery Tribunal-I, and the related order passed by the Debts Recovery Appellate Tribunal and remanded the matter to the Debts Recovery Tribunal No.1 for fresh consideration. The petitioners were given liberty to mark the relevant documents before the Debt Recovery Tribunal-I. The Tribunal was directed to consider and dispose of the matter within a period of four months.

4. The Debt Recovery Tribunal-I, received additional documents filed by the petitioners. Thereafter, arguments were heard. The Tribunal reserved orders on 30 January 2015. The then Presiding Officer demitted office before pronouncing orders. Thereafter, Debt Recovery Tribunal-II was put in charge of Debt Recovery Tribunal-I. It is the grievance of the applicant that Debt Recovery Tribunal-II without issuing notice to the parties or their counsel and without a fresh hearing, passed final orders and a certificate was granted in favour of the bank. The said order was challenged before the Debts Recovery Appellate Tribunal. The petitioners thereafter, filed application before Debt Recovery Tribunal-I, to set aside the order dated 22 June 2015 in O.A.No.539 of 2001. The application was returned primarily on the ground that the order was on merits. Feeling aggrieved, the petitioners have come up with this application.

5. The affidavit filed in support of the Writ Petition clearly shows that the then Presiding Officer, Debt Recovery Tribunal-I, heard the arguments and reserved the matter for orders on 30 January 2015. Thereafter, without pronouncing the orders, the Presiding Officer demitted office. The matter was taken up by Debt Recovery Tribunal-II, who was given additional charge.

6. It is the grievance of the applicants that the Presiding Officer of the Debt Recovery Tribunal-II in his capacity as Debt Recovery Tribunal-I, took up the matter and passed orders on 22 June 2015, without hearing the parties.

7. The contention taken by the petitioners that even the bank was not heard by the Debt Recovery Tribunal before passing orders is not disputed by the first respondent.

8. The order passed by Debt Recovery Tribunal on 22 June 2015 does not refer to the order passed by this Court in W.P.No.22387 of 2012. Since the matter was heard by another Presiding Officer, before passing final orders by that officer, notice should have been given to the counsel for the petitioners and the first respondent. The Debt Recovery Tribunal-II, has simply recorded the names of the counsel for the petitioners and the bank. The order passed by the Debt Recovery Tribunal-II on 22 June 2015 does not

contain any indication that arguments were advanced on behalf of the petitioners or by their counsel. Similarly, there is no endorsement indicating that the counsel for the bank had advanced arguments. The applicant is therefore correct in their contention that reasonable opportunity was not given to put-forth their submissions before the disposal of the matter.

9. The Debt Recovery Tribunal returned the application filed by the petitioners on the ground that the order passed on 22 June 2015 was on merits. Merely because the Tribunal referred to the documents filed by the bank and decreed the suit, it cannot be said that the order was on merits. There should be a factual adjudication by Debt Recovery Tribunal-II taking into account the documents filed by the parties. Since no such effort was taken by Debt Recovery Tribunal-II, we are inclined to set aside the order.

10. The order dated 22 June 2015 in O.A.No.539 of 2001 is set aside and the matter is remitted to the Debt Recovery Tribunal-I, for fresh consideration.

11. The Debt Recovery Tribunal-I is directed to permit the petitioners to mark additional documents on their side and thereafter decide the matter on merits, after giving a fair hearing to both the parties.

12. The Writ Petition is disposed of with the above direction. No costs. Consequently, W.M.P.No.6881 of 2016 is closed.

Sd/-

Asst.Registrar (AS)

/true copy/

Sub Asst. Registrar

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To

1 The Branch Manager, Indian Bank
Nungambakkam Branch
Manager No.125 Valluvar Kottam High Road
Nungambakkam Chennai-34

2 The Presiding Officer
Debts Recovery Tribunal-I Chennai 6th Floor
Spencer Plaza Anna Salai Chennai

1 cc to M/s. Aiyar and Dolia, Advocate, Sr. 14094
2 ccs to Mr.K.S. Sundar, Advocate, Sr. 13659

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