

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.5473 of 2017

and

W.M.P.Nos.5828 to 5830 of 2017

N.Chinnammal

.. Petitioner

Vs.

1 The Authorised Officer,
Chief Manager,
State Bank of Mysore,
Salem Branch,
Car Street, Salem.

2. M/s.Adhi Parasakthi Textiles,
Prop. N.Arthanarisai

3. M/s.Sri Magal Textiles,
Prop. A.Saradhamani

4. M/s.Om Sakthi Textiles,
rep. by Partners a.Saradhamani

5. A.Ramya

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records in I.A.No.52 of 2015 in AIR No.62 of 2015 dated 22.02.2017 on the file of the Debt Recovery Appellate Tribunal and consequently permit the petitioner to deposit a sum of Rs.13,03,753/- towards the waiver application in I.A.No.52 of 2015 in AIR No.62 of 2015 on the file of Debt Recovery Appellate Tribunal.

For Petitioner

: Mr.G.Jeremiah

For Respondents

: Mr.N.Sivabalam
for 1st respondent

ORDER

(Order of the Court was made by the Acting Chief Justice)

Mr.N.Sivabalan, learned counsel takes notice for the first respondent.

2. The learned counsel for the petitioner has filed a memo stating that respondents 2 to 5 are formal parties and they were already given up before the DRAT, Chennai and therefore, sought permission to give up respondents 2 to 5 in the writ petition.

3. The petitioner has filed this writ petition seeking to quash the order dated 22.2.2017 in I.A.No.52 of 2015 in AIR No.62 of 2015 on the file of the Debt Recovery Appellate Tribunal, Chennai and consequently permit the petitioner to deposit a sum of Rs.13,03,753/- towards the waiver application in I.A.No.52 of 2015 in AIR No.62 of 2015 on the file of Debt Recovery Appellate Tribunal, Chennai.

4. It is the case of the petitioner that the first respondent had issued possession notice and had also issued consequential sale notice, against which, the petitioner has filed S.A.No.115 of 2014 and the same was dismissed by the DRT, Madurai. Aggrieved over the same, an appeal in AIR No.62 of 2015 was filed before the DRAT, Chennai along with waiver application in I.A.No.52 of 2015. The property in question viz. the secured asset was destroyed due to fire accident on 18.2.2015 and the petitioner had incurred huge loss of Rs.93,99,512/-. An amount of Rs.18,51,127/- was sanctioned by the Insurance Company, which was also directly paid to the first respondent bank and credited into the loan account on 03.7.2015. Possession of the secured asset was also taken by the first respondent under Section 14 of the Act on 04.01.2017 and the petitioner was thrown on street and once again the property was brought for sale. Therefore, the petitioner has filed waiver application in I.A.No.52 of 2015 before the DRAT, Chennai seeking for grant of waiver of 25% of the amount demanded, after giving credit to the amount of Rs.18,51,127/- which was paid after filing of the appeal to the first respondent bank by SBI General Insurance Company and credited into the loan account. The DRAT, Chennai vide order dated 22.02.2017 directed the petitioner to deposit a sum of Rs.31.05 lakhs in two installments, a sum of Rs.16.00 lakhs to be deposited within four weeks and another Rs.15.50 lakhs in another four weeks, failing which, the appeal will automatically be dismissed. Challenging the said order, the petitioner has filed the writ petition seeking the relief stated supra.

5. The first respondent has filed the counter stating that the time granted for deposit of Rs.16.00 lakhs has already expired and nothing survives for consideration in the writ petition. It is stated that the petitioner is dragging the matter for the past four years under one pretext or the other abusing the process of Court and the bank is unable to recover the huge amount of public money. The order passed by the DRAT is in terms of the statute and therefore, there is no abuse or misuse of the discretion. Hence, prays for dismissal of the writ petition.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the first respondent.

7. It appears that to maintain the waiver application, the DRAT, Chennai has directed the petitioner to deposit 50% of the amount in two installments. Challenging the said order, the petitioner has filed the writ petition stating that the DRAT, Chennai has failed to take note of the amount realized through the Insurance Company to the tune of Rs.18,51,127/- and the petitioner may be permitted to deposit a sum of Rs.13,03,753/-.

8. On hearing the learned counsel for parties, without going in the merits of the contentions urged before us, it is directed that the DRAT, Chennai to reconsider the matter in accordance with law and pass order. In the mean time, the petitioner has also take efforts to pay part of the amount to maintain the appeal, that could be subject to the adjustment, which shall be in respect of the dues payable by him.

9. Accordingly, the order of DRAT, Chennai dated 22.2.2017 is set aside and the writ petition is allowed, giving liberty to the petitioner to urge all the contentions before DRAT, Chennai and the DRAT, Chennai to consider the matter afresh in accordance with law. The petitioner is directed to appear before the DRAT, Chennai on 05.04.2017 and also to take efforts to make part payment. The DRAT, Chennai to take note of the amount realized through the Insurance Company while calculating 50% of the amount to be deposited. No costs. Consequently, W.M.P.Nos.5828 to 5830 of 2017 are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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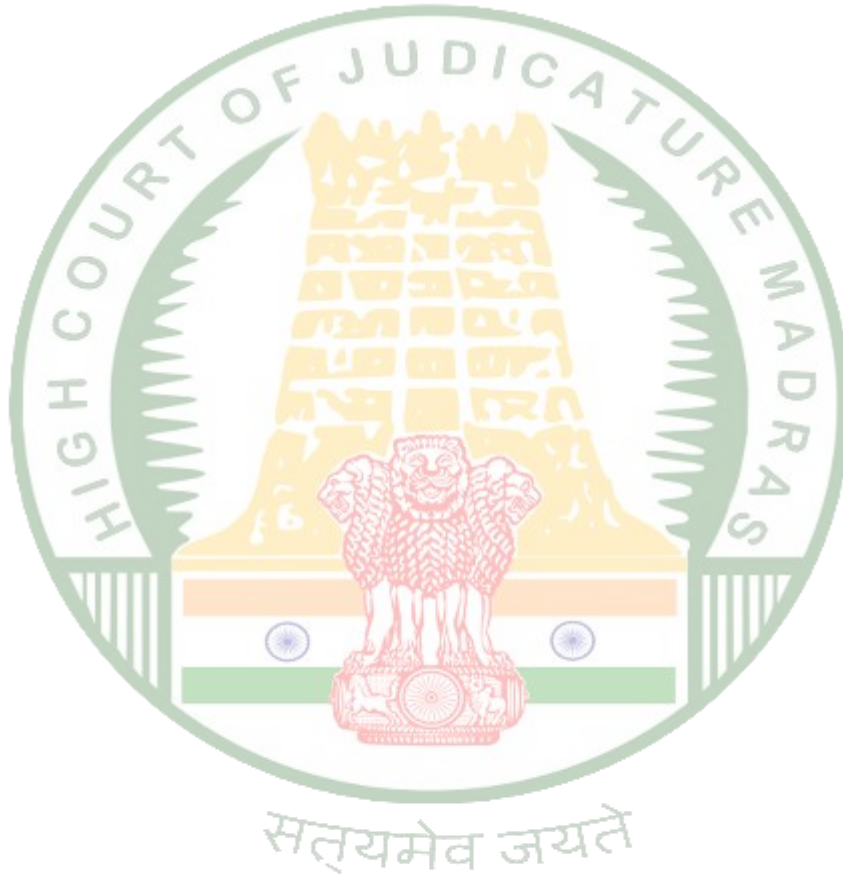
To:

The Debt Recovery Appellate Tribunal,
Chennai.

+ 1 cc to Mr.G.Jeremiah, Advocate Sr.19081

W.P.No.5473 of 2017

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