

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/10/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Civil Revision Petition No.3274 of 2014

1. Nattar Exports & Imports
rep. by its Sole Proprietor
No.A-11/31 St. Thomas Road
Thendral Nagar
Maharaja Nagar Post
Tirunelveli 627 011.

2. Mr.S.Nagarajan

3. Mrs.Nattathy

... Petitioners

Vs

Central Bank of India
rep. by its Principal Officer and
Senior Manager
No.26-H S.N.High Road
Tirunelveli 627 011.

... Respondent

Petition filed under Article 227 of the Constitution of India,
praying to set aside the order dated 29/4/2014 passed in I.A.No.272 of
2014 in AIR No.2 of 2014 on the file of Hon'ble DRAT, Chennai,
directing the Hon'ble Chairperson, DRAT, Chennai, to take on file the

appeal filed in A.I.R.No.2 of 2014, without any precondition as to deposit and dispose it of in accordance with law.

For Petitioner ... Mr.V.Bhiman

For respondent ... Mr.T.M.Hariharan

ORDER

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

Challenge in this Civil Revision Petition is to an order made in I.A.No.272 of 2014, filed for waiver of pre-deposit, in A.I.R.No.2 of 2014, dated 29/4/2014, on the file of the Debt Recovery Appellate Tribunal, Chennai.

2. Material on record discloses that initially, Bank has filed O.A.No.140 of 2016, on the file of the Debt Recovery Tribunal - II, Chennai, for the following reliefs.

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a. Directing defendants 1 and 2 jointly and severally to pay the applicant the sum of Rs.16,76,600/- with future interest thereon from 16/11/2006 at the rate of 15.5% p.a., with monthly rests till the date of recovery in full;

b. Directing the defendants to pay the applicant the costs of the proceedings;

c. Directing simultaneous sale of properties, more fully described Schedule A hereunder and to appropriate the sale proceeds after defraying the sale expenses towards amounts due to the applicant under paras a & b supra, interest thereon, and costs of the proceedings;

(d) Directing defendants 1 & 2 to disclose the properties immovable and movables in which they have a right, title or interest and to order sale of such properties and to appropriate the sale proceeds after defraying the sale expenses towards amounts due to the applicant under paras a & b supra, interest thereon, and costs of the proceedings;

(e). Granting personal decree against defendants 1 & 2 for realisation of the amounts due to the applicant under paras a & b supra, interest thereon and costs of the proceedings.”

3. Subsequently, O.A.No.140 of 2006 has been transferred to the Debt Recovery Tribunal, Madurai and renumbered as T.A.No.90 of 2007. Nattar Exports & Imports, represented by the sole proprietor and S.Natarajan, joined together have filed a counter claim O.A.No.1

of 2007, on the file of the Debt Recovery Appellate Tribunal, Madurai. After considering the submissions and material on record, vide order, dated 15/10/2013, in Transfer Application No.90 of 2007, Debt Recovery Tribunal, Madurai, has granted the following reliefs:-

(a). The defendants 1 and 2 are personally, jointly and severally to pay the applicant Bank the original application claim of a sum of Rs.16,76,600/- with interest thereon at the rate of 15.5% p.a., per annum with monthly rests from 16/11/2006 the date of application and till realisation along with cost.

(b). In case of the default of payment by the above mentioned defendants, the applicant Bank is at liberty to proceed against the defendants as per the provisions of law.

(c). Any amount remitted by the defendants during the course of this proceedings shall be given due credit to the loan account of the defendant Nos.1 and 2.

(d). Recovery Certificate may be prepared as per the directions given above of this judgment and be issued accordingly. A copy of the order is to be communicated to the parties concerned, immediately by the Registrar of DRT.

(e). It is further ordered that 15 days time is granted to the applicant Bank to file cost memo from the date of receipt of this order, so as to prepare the recovery certificate with costs and future interest and also to direct the Recovery Officer to proceed with the matter in accordance with law. In case, cost memo has not been filed before the above mentioned time, Recovery Certificate will be prepared with available records of the case and then the Recovery Officer is directed to proceed with the matter in accordance with law.”

4. Being aggrieved by the order made in T.A.No.90 of 2007, dated 15/10/2013, on the file of the Debt Recovery Tribunal, Madurai, defendants therein/writ petitioners have filed A.I.R.No.2 of 2014 along with I.A.No.272 of 2014, for waiver of pre-deposit. In the said application, Bank has contended that as on the date of filing of the appeal by the writ petitioners/appellant therein i.e., as on 3/1/2014, a sum of Rs.53,90,603/-, was due and payable by the writ petitioners. Bank has prayed to pass orders, for pre-deposit of 75% of the said amount, under Section 21 of RDDBFI Act.

5. Considering the rival submissions, vide order, dated 29/4/2014, the Debts Recovery Appellate Tribunal, Chennai, has directed the petitioners, to make deposit of Rs.26,95,302, into the Tribunal, on or before 31/7/2014, failing which, I.A would stand automatically dismissed, contrary to the observation made in the penultimate made paragraph of the said order, wherein the Debt Recovery Appellate Tribunal has observed that concession of 25% has been given, while making the order of pre-deposit, out of a sum of Rs.53,90,603/-, stated to be due from the writ petitioners, as on the date of filing of A.I.R.No.2 of 2014, i.e., as on 3/1/2014.

6. Though the interim order made in I.A.No.272 of 2014 in A.I.R.No.2 of 2014, dated 29/4/2014, on the file of the Debt Recovery Appellate Tribunal, Chennai, is challenged on the grounds inter alia that sufficient payment has been made, which has not been taken note of by the appellate forum, having regard to the fact that I.A.No.272 of 2014 would have been dismissed as on 31/7/2014, as ordered, and consequently, the appeal in A.I.R.No.2 of 2014 also would have been dismissed, at this length of time, challenge to the interim order, does

<http://www.judis.nic.in> not survive. Having regard to the statutory provision, Section 21 of the

RDDBFI Act, enabling the Debt Recovery Appellate Tribunal, Chennai, to exercise its jurisdiction, to restrict pre-deposit to 25% and on the facts and circumstances of the case, we are of the view that such exercise has not been done, we permit the writ petitioners, to make pre-deposit of 25% of Rs.53,90,603/-, within four weeks from today and seek for restoration of appeal in A.I.R.No.2 of 2014.

7. During the course of hearing, both the learned counsel for the parties submitted that R.A.No.24 of 2014 filed as against the dismissal of set off, i.e., Original Application in C.C.O.A.No.1 of 2007 was listed yesterday and is pending. When the said appeal is pending, in the interest of justice, we are of the view that appeal in A.I.R.No.2 of 2014 can also be entertained, subject to the writ petitioner, making pre-deposit of a sum of Rs.15 lakhs (Rupees Fifteen lakhs only), which is slightly above 25% of Rs.53,90,603/-, within four weeks from today.

On such deposit, within the stipulated time, the Debt Recovery Appellate Tribunal, Chennai, is directed to pass appropriate orders, on the restoration application, if any filed. In view of the directions issued in the instant writ petition, it is open to the writ petitioners to file a memo before the Debt Recovery Appellate Tribunal, Chennai and

<http://www.judis.nic.in> make the deposit, as early as possible.

8. With the above directions, C.R.P is disposed of. No costs.
Consequently, the connected Miscellaneous Petition is closed.

(S.M.K., J.) (R.S.K.,J.)
13th October 2017

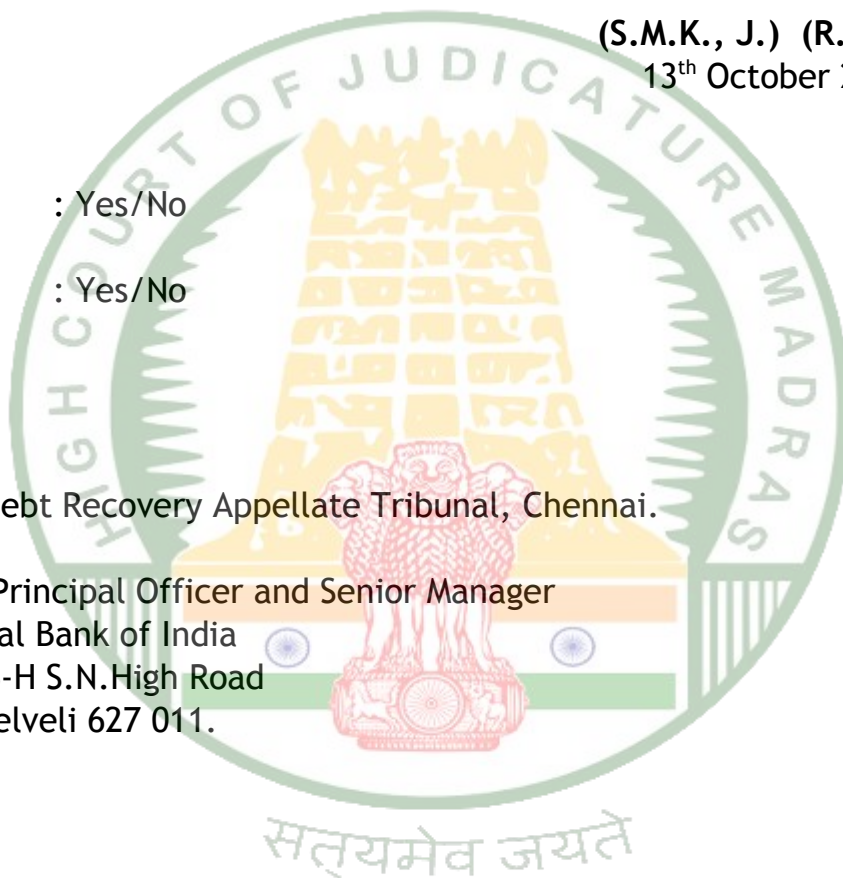
mvs.

Index : Yes/No

Internet : Yes/No

To

1. The Debt Recovery Appellate Tribunal, Chennai.
2. The Principal Officer and Senior Manager
Central Bank of India
No.26-H S.N.High Road
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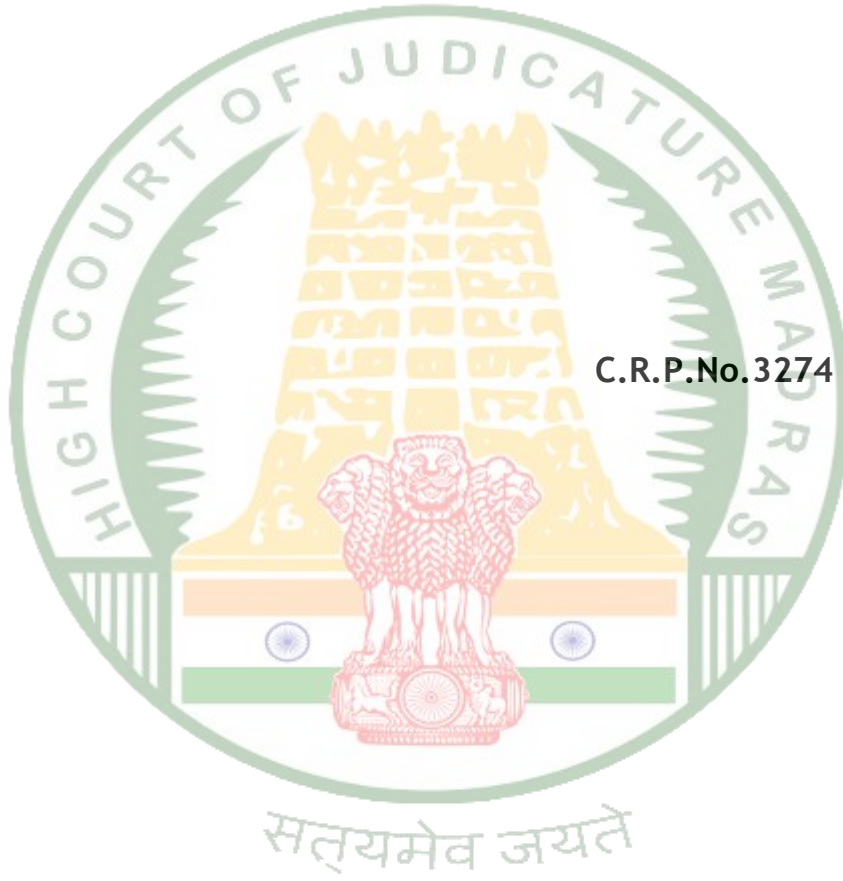
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S.MANIKUMAR,J

&

R.SURESH KUMAR,J

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