

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.21294 of 2017
W.M.P.No.22237 of 2017

A.Sankar

... Petitioner

versus

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

2. M/s.Ind Bank Housing Ltd.,
2nd Floor, 480, Anna Salai,
Chennai 600 035.

3. The Authorised Officer,
M/s.Ind Bank Housing Limited,
2nd Floor, 480, Anna Salai,
Chennai 600 035.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records on the file of the Chairperson, Debts Recovery Appellate Tribunal, Chennai, in M.A.(SA)No.37 of 2011, filed against S.A.No.21 of 2011 (DRT-I, Chennai), dated 06.07.2017 and quash the same, as ex-facie illegal.

For Petitioner

: Mr.V.Raghavachari

For Respondents 2 and 3

: Mr.B.Chandrasekaran

ORDER

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

Writ Petition is filed challenging the order of the Chairperson, Debts Recovery Appellate Tribunal, Chennai, dated 06.07.2017, made in M.A.(SA)No.37 of 2011, filed against S.A.No.21 of 2011.

2. Material on record discloses that Mr.V.Anantha Baskaran, father of the petitioner, has availed a sum of Rs.50,00,000/-, as inter-corporate deposit, from M/s.Ind Bank Housing Ltd. As the said amount was not repaid, statutory notices have been issued, both under Sections 13(2) and 13(4) of the SARFAESI Act, 2002. Mr.V.Anantha Baskaran, has challenged the measures taken out, by the Bank, under Section 17 of the SARFAESI Act, 2002, in S.A.No.82 of 2008. Financial Institution has proceeded with the sale notice, dated 29.12.2010, under Section 13(6) of the Act. The same was also challenged in S.A.No.21 of 2011.

3. Mr.A.Sankar, S/o.Late Mr.P.Anantha Baskaran, petitioner herein, has submitted that some payments have been made. When S.A.No.21 of 2011, was filed, challenging the sale notice, DRT-I, Chennai, has granted interim stay, on condition that the borrower, Mr.P.Anantha Baskaran, should deposit 15% of Rs.8,05,80,000/-. The abovesaid condition was challenged by the petitioner's father, Mr.P.Anantha Baskaran, in M.A.(S.A)No.37 of 2011, before the DRAT, Chennai.

4. I.A.No.582 of 2012, has been filed by petitioner's father, Mr.P.Anantha Baskaran, in M.A.(S.A.)No.37 of 2011, seeking for waiver of pre-deposit. On 04.06.2012, the DRAT, Chennai, has directed the petitioner's father, Mr.P.Anantha Baskaran, to deposit 50% of debt amount of Rs.3.52 Crores. When the matter stood thus, the petitioner's father, Mr.P.Anantha Baskaran, borrower, died on 09.02.2017. Being aware of the proceedings before the DRAT, Chennai, the petitioner has filed I.A.No.91 of 2017, in the abovesaid proceedings.

5. It is the case of the petitioner that without passing orders on the impleading/substitution application in I.A.No.91 of 2017, vide order, dated 06.07.2017, in M.A.(S.A.)No.37 of 2011, the DRAT, Chennai, has dismissed the appeal for non-compliance of the order, dated 04.06.2012. The said order is challenged in this writ petition, on the following grounds,

"(i) That the learned Chairperson has failed to take into consideration of the fact that the present petitioner had come forward to substitute himself in the place of his father and he should have been heard before the appeal is ordered.

(ii) That the learned Chairperson failed to take note of the fact that the legal representatives has failed an application to implead themselves as necessary parties to the appeal pursuant to the death of their father and without passing orders on the same the Hon'ble Chairperson, has dismissed the appeal, in a hasty manner.

(iii) The learned Chairperson has failed to provide an opportunity to the proposed legal representatives to be heard, in the appeal and dismissed the same, without even passing orders in the application to bring on record the legal heirs."

6. On the above averments and grounds, Mr.V.Raghavachari, learned counsel for the petitioner made submissions.

7. By filing a detailed counter affidavit, along with the typed set of papers, Mr.B.Chandrasekaran, learned counsel for respondents 2 and 3 made objections to the prayer sought for in this writ petition. He further submitted that loan was availed in the year 1995 and now, more than two decades have lapsed, without payment.

Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Order, dated 04.06.2012, has been passed by the DRAT, Chennai, directing the borrower, Late Mr.P.Anantha Bhaskaran, to make pre-deposit of 50% of debt amount of Rs.3.52 Crores. Impugned proceedings, dated 06.07.2017, made in M.A.(S.A.)No.37 of 2011, on the file of the DRAT, Chennai, indicates that though an interim order has been passed on 04.06.2012, the said M.A., seemed to have been taken up, after five years. Indisputably, the borrower, Mr.P.Anantha Bhaskaran, died on 09.02.2017. For impleading and substitution, I.A.No.91 of 2017, is stated to have been filed by the writ petitioner, one of the legal representatives of Late Mr.P.Anantha Bhaskaran.

9. As rightly contended by Mr.V.Raghavachari, learned counsel for the petitioner, unless and until, orders are passed in I.A.No.91 of 2017, the appeal filed before the DRAT, Chennai, cannot be dismissed for non-compliance of the order, directing pre-deposit, without impleading the petitioner. Though the cause title of the proceedings, dated 06.07.2017 in M.A.(S.A.)No.37 of 2011, indicates that Late Mr.P.Anantha Bhaskaran, borrower, is represented by his legal heirs, there is no material to indicate that substitution has been ordered.

10. As rightly contended by the learned counsel for the petitioner, in the absence of any objection, I.A.No.91 of 2017, ought to have been ordered for substitution and thereafter, if the legal representatives of the deceased had not complied with the order, dated 04.06.2012, waiver application or the appeal, can be dismissed. In the light of the above discussion, proceedings, dated 06.07.2017, made in M.A.(S.A.)No.37 of 2011, is set aside. The Debts Recovery Appellate Tribunal, Chennai, is directed to take up I.A.No.91 of 2017 and pass appropriate

orders and thereafter, decide the issue of pre-deposit.

11. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

// True Copy//

Sub Assistant Registrar

skm

To

1. The Registrar,
Debts Recovery Tribunal-I,
Chennai-2.
2. The Chairperson,
Debts Recovery Appellate Tribunal,
Chennai.

+1cc to Mr.V.Raghavachari, Advocate SR.No.76671

+1cc to Mr.B.Chandrasekaran, Advocate SR.No.76568

W.P.No.21294 of 2017

VGII(CO)
GN(23/11/2017)

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