

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.12764 of 2017 &
WMP.Nos.13616 and 13617 of 2017

M/s Mercury Transport
Rep by Mr.Abdul Hakeem
Old No.19, New No.286,
Thambu Chetty Street,
Chennai - 600 001.

... Petitioner

Vs.

1. HDFC Bank Ltd.,
"CEEGBROS" 4th Floor,
No.110, Nelson manickam Road,
Aminjikarai, Chennai - 600 029.

2. The Debt Recovery Tribunal - II
Chennai, 4th Floor, Dewa Towers,
770-A, Anna Salai, Chennai - 2.

3. The Debt Recovery Appellant Tribunal
Chennai, 4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution, to issue a writ of certiorari calling for the records of third respondent Debt Recovery Appellate Tribunal, Chennai in relation to the impugned order dated 19/04/2017 passed in I.A.No.401 of 2017 in A.I.R.No.95 of 2017 and quash the same.

For petitioner - Mr.P.Sidharthan

For R.1 - Mr.T.K.M.Saikrishnan

ORDER

(Order of the Court was made by HULUVADI G.RAMESH, J.,)

Seeking to quash the order of the third respondent dated 19.04.2017 in I.A.No.401 of 2017 in A.I.R.No.95 of 2017, the petitioner is before this Court with this writ petition.

2.Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

3.The petitioner had availed financial facility from the first respondent Bank. Since, the petitioner has not repaid the said loan amount, the first respondent initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and had filed an Original Application in O.A.No.106 of 2015 before the Debts Recovery Tribunal for recovery of a total sum of Rs.4,61,77,872.21/- from the defendants therein. The petitioner herein is the second defendant in the said proceeding.

4.The petitioner has filed S.A.No.471 of 2014 before the Debts Recovery Tribunal - III and the conditional order passed by the Tribunal was complied with by the petitioner. During the pendency of the said proceeding, a joint settlement memo was filed and in view of the same, the petitioner made subsequent payments of Rs.3,27,92,113.54/- from total outstanding of Rs.4,61,77,872.21/-. The petitioner has also made subsequent payments. In such view of the matter, seeking to set aside the exparte final order passed against the defendants 1 & 2, the petitioner/D.2 and the first defendant filed M.A.No.97 of 2016. By order dated 19.12.2016, the Tribunal allowed the said application however, with a direction to the defendants to deposit Rs.25 lakhs, on or before 18.01.2017, to the respondent Bank.

5.Since, the petitioner/D.2 is not in a position to mobilize the said amount, he along with the first defendant filed an application in I.A.No.46 of 2017 before the Tribunal, seeking extension of time to make the said amount. However, the Tribunal dismissed the same on 19.01.2017 holding that further time will not be granted.

6.As against the same, the petitioner filed an application before the Debts Recovery Appellate Tribunal in I.A.No.401 of 2017 in A.I.R.No.95/2017. By order dated 19.04.2017, the Appellate Tribunal has passed the following order:-

"In view of the fact that DRAT cannot entertain any Appeal without ensuring the pre-deposit of 50% of the debt amount which cannot be reduced to less than 25% in any case, hence, I hereby direct the appellants to make a pre-deposit of Rs.1.16 crores. Out of this, first instalment of Rs.60 lakhs shall be deposited with the Registrar of this Tribunal within four weeks from today and the second instalment of Rs.56 lakhs shall be paid in next four weeks thereof. It is made clear that in the event of failure to deposit the first instalment of Rs.60 lakhs within the stipulated period, the Appeal shall stand dismissed without reference to this Tribunal."

Challenging the said order of the Debts Recovery Appellate Tribunal, the petitioner is before this Court with this Writ Petition.

7. According to the learned counsel for the petitioner, originally in M.A.No.97 of 2016, the Debts Recovery Tribunal directed the petitioner herein to deposit only a sum of Rs.25 lakhs, within the stipulated period. Seeking extension of time to deposit the said amount, the petitioner filed I.A.No.46 of 2017. The Tribunal dismissed the same on 19.01.2017 holding that no further time will be granted. Challenging the said order, the petitioner moved the Appellate Tribunal. However, the Appellate Tribunal without considering the said facts has straightaway passed the impugned order thereby directing the petitioner to deposit a sum of Rs.1.16 crores in two instalments which is non est in the eye of law. The learned counsel further submitted that to show his bona fide, the petitioner has also regularly paid various amounts due to the respondent Bank. The same has not been taken into consideration by the Appellate Tribunal. Hence, the impugned order passed by the Appellate Tribunal requires interference at the hands of this Court.

8. In view of the above facts and circumstances of the case and in view of the fact that the petitioner is making regular payments to show his bona fide, to the respondent Bank, we direct the Appellate Tribunal to entertain the matter on merits and in accordance with law after affording sufficient opportunity to both parties. Further, if any sale notice is issued by the respondent Bank, time being, the same is stayed till the final decision being taken by the Debts Recovery Appellate Tribunal.

9. With the above directions, the writ petition is disposed

of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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3.The Debt Recovery Appellant Tribunal
Chennai, 4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai.

+1cc to Mr.T.K.M.Saikrishnan,Advocate sr.40727

+1cc to Mr.P.Sidharthan,Advocate sr.40709

W.P.No.12764 of 2017 &
WMP.Nos.13616 and 13617 of 2017

ak(co)
ss(15/6/2017)

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