

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

CORAM:

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

W.P.No.25751 of 2017
and
WMP Nos.27174 & 27175 of 2017

Mr.E.Chandran

... Petitioner

Vs.

1. The Authroized Officer,
ICICI Bank Limited,
Plot No.24, Seventh Space,
Ambattur Industrial Estate,
Ambattur, Chennai - 600 085.
 2. The Proceeding Officer,
The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 8
- ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records culminating the Order AIR (SA) 523/16 in S.A.No.145/2015 dated 1.08.2017 and the consequential order dated 30.08.2017 and quash the same and direct the first respondent bank to consider the Representation dated 27th August, 2015

For Petitioner : Mr.M.Aravind Subramaniam

For Respondent : No appearance

ORDER

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

Though, ICICI Bank Limited, Ambattur Industrial Estate, Ambattur, Chennai-85, the 1st respondent has been served and name shown in the cause list, as per the Registry's note, vakalat has not been filed. Recording the above, this Court proposes to consider the merits of the challenge made to the order impugned.

2. Possession notice dated 18.11.2015 challenged in S.A.NO.145 of 2015, resulted in failure. Borrower filed

appeal in AIR (SA) No.523 of 2016 on the file of DRAT, Chennai. In I.A.No.9 of 2017, borrower sought for waiver of pre-deposit. Having regard to sum of Rs.28.15 Lakhs, sum claimed under notice dated 31.07.2015, issued under Section 13 (2) of the SARFAESI Act, 2002 and sum of Rs.4.35 Lakhs, already deposited by the petitioner with the bank, pursuant to an order passed by DRAT, Chennai, during the pendency of SA, DRAT, Chennai, vide proceedings dated 01.08.2017, directed the writ petitioner to deposit a sum for Rs.7.50 Lakhs with Registrar of DRAT, Chennai, within a period of four weeks from 01.08.2017. For confirmation of pre-deposit, DRAT, Chennai has directed the Registry to post I.A.No.9 of 2017 and AIR (SA) No.523 of 2016, on 29.08.2017.

3. When the matter came up on 30.08.2017, before DRAT, Chennai, learned counsel for the writ petitioner submitted that in compliance of the order dated 01.08.2017, a sum of Rs.3.15 Lakhs alone was deposited. Observing that order dated 01.08.2017 has not been complied with, in letter and spirit, and therefore, appeal in AIR SA No.523 of 2016 has been dismissed for want of compliance of pre-deposit.

4. Being aggrieved by the same, instant writ petition has been filed for a writ of certiorarified mandamus, to quash the order made AIR (SA) 523/16 in S.A.No.145/2015 dated 1.08.2017 and the consequential order dated 30.08.2017. Petitioner has also prayed for a direction to the first respondent bank to consider the Representation dated 27.08.2015.

5. Record of proceedings, shows that when the matter came up for admission on 27.09.2017, a Hon'ble Division Bench of this Court has passed the following order.

"Admittedly, the petitioner has not deposited the amount as per the order of the DRAT, Chennai. The petitioner is permitted to pay the balance amount to be paid as per the order of the DRAT. However, this will not given any right to the petitioner to contend that he has deposited the entire amount.

Issue notice tot he first respondent returnable by 05.10.2017. Private notice is also permitted. Learned counsel for the petitioner shall also serve notice on the concerned counsel for R1 Bank.

Post on 05.10.2017."

6. Thereafter, the matter stood adjourned. On this day, when the writ petition came up for further hearing, Mr.M.Aravind Subramaniam, learned counsel for the petitioner submitted that balance amount of Rs.7.50 Lakhs i.e, 4.35 Lakhs, has been deposited on 21.10.2017 with Registrar DRAT and thus, the entire amount of Rs.7.50 Lakhs, as ordered, in the proceedings dated 01.08.2017, has been deposited. Submission of the learned counsel for the petitioner is placed on record. To that effect, proof filed.

7. Though, Rs.7.50 Lakhs - pre deposit ordered has not been deposited with the Registrar, DRAT, Chennai, in time, considering the bonafides of the writ petitioner in depositing the said amount, pursuant to the observations of this Court made as early as on 27.09.2017, recorded supra, we deem it fit to set aside the portion of the order dismissing the appeal for want of compliance of pre deposit.

8. Accordingly, while sustaining the amount ordered, dismissal of the appeal, on account of non compliance in time, is set aside. Registry, DRAT, Chennai, is directed to process the appeal papers, if in order, assign regular appeal number and dispose of the same, on merits and in accordance with law.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Authroized Officer,
ICICI Bank Limited,
Plot No.24, Seventh Space,
Ambattur Industrial Estate,
Ambattur, Chennai - 600 085.

2.The Proceeding Officer,
The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 8

Copy To

The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai 08.

+1cc to Mr.M.Aravind Subramaniam, Advocate, S.R.No.76466

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