

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.2594 of 2017
and W.M.P.No.2563 of 2017

B.Rajkumar ... Petitioner

-vs-

1.Indian Bank,
Ethiraj Salai Branch, Chennai-600 105.

Now transferred to:
Asset Recovery Management Branch,
No.55, Ethiraj Salai, Chennai-600 008.

2.Debts Recovery Appellate Tribunal,
Chennai,
rep.by its Registrar. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 10.01.2017 passed by the Hon'ble Debts Recovery Appellate Tribunal, Chennai, in I.A.No.61 of 2017 in A.IR.No.376 of 2016, quash the order dated 10.01.2017 and consequently direct the Hon'ble Debts Recovery Appellate Tribunal to entertain the petitioner's appeal on file, without any condition for deposit of money.

For Petitioner : Mr.Ramkumar for
M/s.Ram & Rajan & Associates

For Respondents : Mr.P.V.Muralidhar for R1

ORDER

(Order of the Court was made by
THE HON'BLE ACTING CHIEF JUSTICE)

This writ petition has been filed to quash the impugned proceedings dated 10.01.2017 passed by the Hon'ble Debts Recovery Appellate Tribunal, Chennai, in I.A.No.61 of 2017 in A.IR.No.376 of 2016 and to consequently direct the Debts Recovery Appellate Tribunal to entertain the petitioner's appeal on file, without any condition for deposit of money.

2.The petitioner states that he is the absolute owner of the lands situated in No.57, Aladu Village, Ponneri Taluk, Tiruvallur District, as described in Schedule B to G of O.A.No.795 of 1998 on the file of the Debts Recovery Tribunal-1, Chennai. While so, he was shocked to learn from the officials of the first respondent bank that the said properties were mortgaged to them by one Mahalingam for himself and as the power of attorney holder of M/s.Bharathi, Kuppammal, M.Subramani, Rosammal, Rajagopal Naidu, Aaruthira Naidu and Jayaram Naidu. It was also learnt by him that the first respondent filed O.A.No.795 of 1998 before the Debts Recovery Tribunal-1, Chennai for recovery of a sum of Rs.1,59,07,849/- from one M/s.Balaji Enterprises and others, on account of default in repayment of credit facilities availed by them. However, these properties are owned by the petitioner and purchased by him from the above said persons. When the petitioner inspected the said Original Application filed before the Debts Recovery Tribunal-1, Chennai, it was found that none of the above said persons gave authority to the said R.Mahalingam to mortgage any properties on behalf of them. They authorised Mr.R.Mahalingam only to sell the property, which authority is quite distinct from an authority to create a liability on behalf of the principal. The petitioner filed I.A.No.11 of 2014 in O.A.No.795 of 1998 to implead himself as a party and the same was allowed. Thereafter, the said Original Application was partly allowed, holding that the petitioner had no locus standi to question the validity of the purported mortgage. An appeal was filed before the Debts Recovery Appellate Tribunal, Chennai under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for waiver of deposit of the debts due, which resulted in the passing of an order dated 10.01.2017 directing the petitioner to deposit a sum of Rs.32 lakhs with the Registrar of the Debts Recovery Appellate Tribunal, Chennai, within four weeks, failing which the application would stand dismissed. Aggrieved by the said order, the present writ petition is filed.

3.The learned counsel for the petitioner has submitted that the order of the Debts Recovery Appellate Tribunal in I.A.No.61 of 2017 in A.IR.No.376 of 2016 imposing a condition to deposit a sum of Rs.32 lakhs as a pre condition for entertaining the appeal, is not valid in law. It is particularly emphasised that the Debts Recovery Appellate Tribunal ought to have appreciated that a debt referred to under Section 21 is defined in Section 2 (g) as any liability which is claimed as due from any person by a bank or financial institution and that since no amount is due from the petitioner to the bank, the requirements of deposit of debts due under Section 21 would not apply to the petitioner. Stating so, the learned counsel for the petitioner prayed for quashment of the order impugned.

4.The learned counsel for the first respondent has refuted the averments put forth by the petitioner and submitted that the

petitioner is cultivating and enjoying the mortgaged property and hence he is liable to pay the amount received by his vendors, and he cannot take the plea that he is neither borrower nor guarantor and he is liable to pay the amount as ordered by the Debts Recovery Appellate Tribunal. He relied upon the Division Bench decisions of this Court in Malini Srinivasan v. Canara Bank, reported in 2009-2-L.W.785 and in Kamala v. The Presiding Officer-cum-Chairperson, DRAT, reported in 2012(6) CTC 481, in support of his contention that the petitioner falls within the category of "persons from whom debt is due to Bank" and hence he is required to comply with the pre-deposit condition.

5. We have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and also perused the materials available on record, carefully.

6. There is no dispute that the properties were mortgaged to the bank. The Power of Attorney has sold the property to the petitioner. Ordinary prudence and care would impel a purchaser to undertake an inquiry which would have disclosed the charge, which the petitioner has not done so. Admittedly, there is a charge on the property and till the debt is discharged, the property remains to be subject to the charge. Under the circumstances, the extent of the amount claimed shall be discharged as per the charge on the property and for the remaining, the petitioner is entitled to claim in accordance with law. Of course, the petitioner is at liberty to proceed against his vendors.

7. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar

KM

To

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

+1cc to Mr. Ram&Rajan, Associates sr.13440

+1cc to Mr. P.V. Muralidhar, Advocate sr.13249

W.P.No.2594 of 2017
and W.M.P.No.2563 of 2017

tm(co)

ss(20/3/2017)