

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4/12/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Writ Petition No.26300 of 2017
and
W.M.P.No.27960 of 2017

Mrs.Mekala Raj

...

Petitioner

Vs

1. The Presiding Officer
Debt Recovery Appellate Tribunal
Ethiraj Salai
Chennai.

2. The Authorised Officer
Tamil Nadu Mercantile Bank
No.4 TTK Road
TTK Road Branch
Royapettah
Chennai 600 014.

3. Mr.Manoj Kumar Dugar

...

Respondents

Petition filed under Article 226 of the Constitution of India
praying for the issuance of a writ of Certiorarified mandamus to call
for the records pertaining to order passed in I.A.No.1135 of 2017 in

AIR (SA) No.360 of 2017, dated 12/9/2017 passed by the first respondent and quash the same on the ground of it being arbitrary, illegal, violative of Article 14 and 21 of the Constitution of India and Section 18 of the SARFAESI Act and consequently direct the first respondent to allow the waiver application without any pre-condition for pre-deposit.

For petitioner	...	Mr.SP.Srinivasan
For respondents	...	Mr.Senthil Kumar for Mr.Sethuraman for R.2.

ORDER

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

On 9/10/2017, we have passed the following order:-

Challenge in this writ petition is to an interim order made in I.A.No.1135 of 2017 filed praying for waiver of pre-deposit in AIR (SA) No.360 of 2017 dated 12.09.2017 on the file of Debts Recovery Appellate Tribunal, Chennai. Challenging the sale, guarantor / writ petitioner has filed S.A.No.304 of 2012, before the Debts Recovery Tribunal, Madurai. On 05.08.2015, S.A.No.304 of 2012 has been dismissed.

2. Being aggrieved, the petitioner has filed AIR (SA) No.360 of 2017 with the abovesaid waiver application and during the course of hearing of the waiver application, the appellant has contended that he has made deposit of Rs.80 Lakhs. Notice dated 21.10.2010 under Section 13(2) of the SARFAESI Act, has been issued for recovery of Rs.54.25 Lakhs. Before the tribunal, bank in its counter affidavit has candidly admitted that as per the order of this Court in W.P.No.2721 of 2013 dated 05.02.2013, a sum of Rs.30 Lakhs has been deposited on 15.02.2013, and that the same is kept in a lien account till the disposal of DRAT (AIR) No.1066 of 2012. As on 31.07.2013, outstanding liability in the loan account was Rs.23,89,891/-. As per 2nd proviso to Section 18 of the SARFAESI Act, 2002, "No appeal shall be entertained unless the borrower has deposited with the appellate tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less". As per notice dated 21.10.2010, issued under Section 13(2) of the SARFAESI Act, 2002, amount claimed was Rs.54.25 Lakhs. Even as per the bank's admission a sum of Rs.30 Lakhs has been remitted and kept in lien account. When the petitioner has remitted the abovesaid sum, we are prima facie of the view that there is no need for a further deposit.

3. With the above note, we order notice to the Authorized Officer, Tamilnadu Mercantile Bank, TTK Road Branch, Chennai, 2nd respondent through Court and privately, returnable by 31.10.2017.

4. There shall be an order of interim stay of the impugned proceedings till 01.11.2017.

5. Post on 31.10.2017.”

2. Today, Mr.Senthilkumar, learned counsel for the Bank/second respondent submitted that as per the decision of Allahabad High Court, the subsequent interest on the debt claimed can also be taken note of, while imposing condition to order pre-deposit, under Section 18 of the SARFAESI Act, 2002. As per notice, dated 21/10/2010, issued under Section 13 (2) of the SARFAESI Act, 2002, the amount claimed was 54.25 lakhs. Even, as per the Bank's admission, a sum of Rs.30 lakhs had been remitted and kept in lean account.

3. As per the second proviso to Section 18 of the SARFAESI Act, 2002, no appeal shall be entertained unless the borrower has

deposited with the Appellate Tribunal 50%, of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. As per proviso to Section 18 of the SARFAESI Act, 2002, the Appellate Tribunal may for the reasons to be recorded in writing, reduce the amount to not less than 25% of the debt referred to in the second proviso.

4. Reading of the proviso to Section 18 of the SARFAESI Act, 2002, makes it clear that appeal shall not be entertained, if a person aggrieved, deposits with the Appellate Tribunal, the amount of debt claimed by the secured creditors or determined by the Debt Recovery Tribunal, whichever is less and Section contemplates the amount claimed, which is referable to the notice issued, under Section 13 (2) of the SARFAESI Act, 2002 and it cannot be stretched to meet the amount accrued, after issuance of notice under Section 13 (2) of the Act. By addition of interest on the amount claimed, Proviso has to be taken literal meaning and there cannot be any substitution as argued by the learned counsel for the second respondent/tamil Nadu Mercantile Bank, Chennai.

(2) of the SARFAESI Act, 2002, 30 lakhs had already been remitted and kept in lean account, which represents more than 50% of the debt claimed. In the light of the above discussion, and the statutory provision, order made in I.A.No.1135 of 2015 in A.I.R.(SA) No.360 of 2017, dated 12/9/2017, requires interference.

6. Accordingly, **Writ Petition is allowed** and the order dated 12/9/2017, made in I.A.No.1135 of 2015 in A.I.R.(SA) No.360 of 2017, is set aside. Registrar of Debt Recovery Appellate Tribunal, Chennai, is directed to scrutinise the appeal papers, if it is otherwise in order, assign regular appeal number. No costs. Consequently, the connected Miscellaneous Petition is closed.

(S.M.K., J) (R.P.A.,J)

4th December 2017

mvs.

Index : Yes/No

Internet : Yes/No

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To

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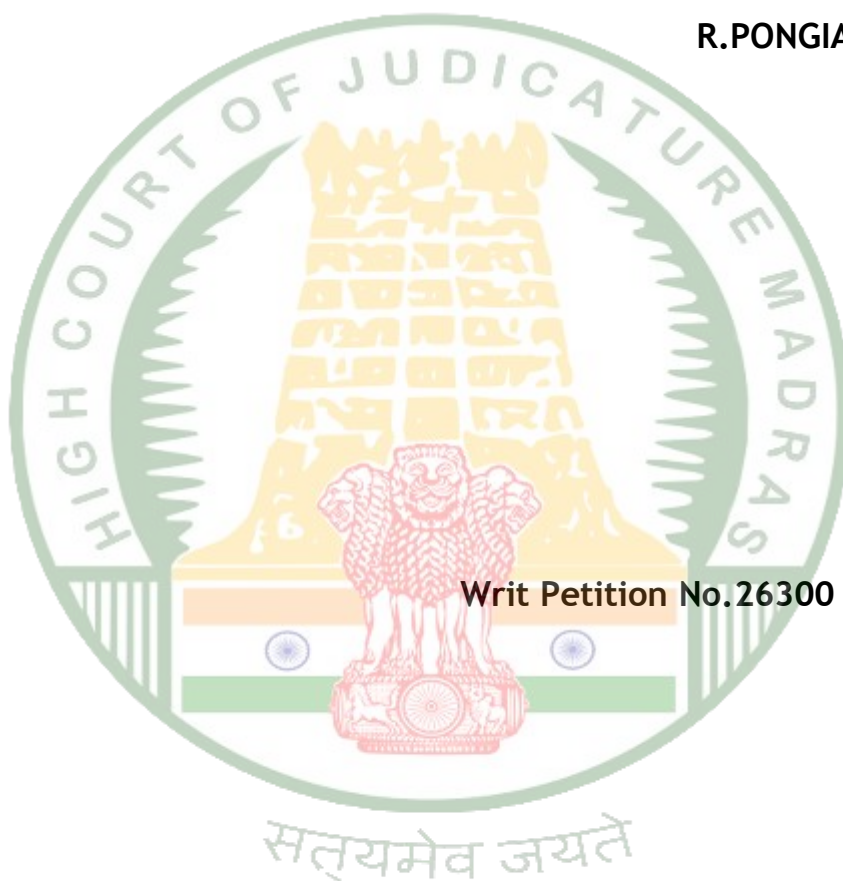
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S.MANIKUMAR,J

&

R.PONGIAPPAN,J

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