

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.27790 of 2017
W.M.P.No.29774 of 2017

Mrs.S.Meena

... Petitioner

versus

1. The Managing Director,
ARCIL, The Ruby,
10th Floor, No.29,
Senapathi Bapath Marg,
Dadar West, Mumbai-28.

2. The Registrar,
Debts Recovery Tribunal-I,
Spencers Tower,
Chennai-2.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records of the respondents in O.A.No.288 of 2014, pending on the file of the Debts Recovery Tribunal-I, Chennai, quash the proceedings, dated 24.10.2017 and consequently, direct the DRT-I, 2nd respondent, not to proceed further with O.A.No.288 of 2014, until the appeal in M.A.No.162 of 2017, is disposed of.

सत्यमेव जयते

For Petitioner : Mr.S.Pugalanthi

ORDER

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

Writ Petition is filed challenging the order made in O.A.No.288 of 2014, dated 24.10.2017, on the file of the Debts Recovery Tribunal-I, Chennai, 2nd respondent herein and consequently, the petitioner has sought for a direction to the 2nd respondent not to proceed further with O.A.No.288 of 2014, until the appeal in M.A.No.162 of 2017, is disposed of.

2. Material on record discloses that M/s.Sri Devi Hospitals, owned by Dr.K.Senthilnathan, availed loan from M/s.Indian Overseas Bank. Mrs.S.Meena, wife of Dr.K.Senthilnathan, stood as guarantor. Mr.Panduranga Reddiar, also stood as guarantor/mortgagor of M/s.Sri Devi Hospitals, borrower. Borrower/guarantors defaulted. Indian Overseas Bank, assigned the loan, to and in favour of the Asset Reconstruction Company India Ltd., Mumbai. O.A.No.288 of 2014, has been filed by the Authorised Officer of Asset Reconstruction Company India Ltd., Mumbai, against M/s.Sri Devi Hospitals and two guarantors, stated supra, on the file Debts Recovery Tribunal-I, Chennai, for the following reliefs,

"(a) To direct the Defendants to jointly and severally pay the Applicant within such time as fixed by the Tribunal, the sum of Rs.31,29,86,328.68 (Rupees Thirty-one crore twenty nine lakhs eighty six thousand and three hundred twenty eight and sixty eight paise), being the aggregate amount due as on 31.08.2014 with further interest towards the following accounts:

Credit Facility	Total Amount
Term Loan - Hospital equipment	Rs.12,615,571.96
Term Loan - Hospital Infrastructure & Equipment	Rs.18,622,986.97
Term Loan - Bangalore Project	Rs.227,280,539.15
Term Loan - Bangalore Project	Rs.19,223,728.42
Cash Credit - Hospital working capital	Rs.35,243,502.18
Grand Total	Rs.312,986,328.68

(b) The claim amount of the Applicant may be allowed to carry further interest at 22% pa., with penal charges, at the rate of 3% p.a., compounded at monthly rest towards the Term Loan and Cash Credit Facility from 31.08.2014, till the date of actual payment in full.

(c) To direct the Second and Third Defendants to discharge their obligation as guarantor of the First Defendants under the Deed of Guarantee, all executed in favour of the Applicant Bank.

(d) To direct the sale forthwith of the current assets belonging to the First Defendant, morefully described in the Schedule-A to this Application, with direction to apply the sale proceeds in discharge of the debt as claimed by the Applicant Bank as in this application;

(e) To direct the sale forthwith of the mortgaged immovable properties belonging to the first Defendant, morefully described in the Schedule-B to this Application, with direction to apply the sale proceeds in discharge of the debt as claimed by the Applicant as in this application, with direction to apply the

sale proceeds in discharge of the debt as claimed by the Applicant as in this application.

(g) To pass an order, directing the Defendants to pay costs of this application."

3. Material on record discloses that earlier, despite the opportunity given, the defendants therein have failed to file counter affidavit. The Tribunal closed the opportunity, after hearing the applicant and posted the matter for orders, to 30.06.2017, giving opportunity to the defendants to file written submissions. At that stage, defendants 1 to 3 have filed petitions, for re-opening and to give further opportunity to file the reply statement. Petitions were allowed and an opportunity was given to file a reply statement.

4. Material on record discloses that just before the date of pronouncement of the orders, ie., 30.06.2017, the defendants have filed I.A.Nos.479 and 480 of 2017, to reopen the case and to receive the counter proof-affidavit of defendants 1 to 3. The Tribunal has received the counter statement. Matter was adjourned for reply statement of the 4th defendant, who had been impleaded subsequently. He had filed only reply statement and failed to file counter proof-affidavit. Then, the chance given was closed and the said Original Application was adjourned to 21.08.2017, for hearing.

5. At this stage, contending inter alia that the loan amount has been fully discharged; documents have been illegally retained by the Indian Overseas Bank; mortgage of the property is at Bangalore; Encumbrance Certificate would prove that there was no subsisting mortgage; the Indian Overseas Bank, in principle, has given 'No Objection Certificate', but colluded with the Asset Reconstruction Company Ltd., Mumbai, applicant in O.A.No.288 of 2014; raising suppression and all the above, could be substantiated only on cross-examination of PW.1, M/s.Sri Devi Hospitals, represented by its Proprietor, Dr.K.Senthilnathan and his wife, Mrs.Meena, co-guarantor, have filed I.A.No.640 of 2017 in O.A.No.288 of 2014, before the Debts Recovery Appellate Tribunal, Chennai, on 22.08.2017, under Section 22(2)(g) r/w. Rule 18 of the Debts Recovery Tribunal (Procedure) Rules, 1993, for cross-examination of PW.1.

6. After considering the statutory rules, Sub-Rule (6) of Rule 12 of the DRT (Procedure) Rules and the decision of the Hon'ble Supreme Court in Re. Union of India v. Delhi High Court Bar Association reported in 2002 (2) CTC 106 and on the facts and circumstances of the case, vide order, dated 23.08.2017, in I.A.No.640 of 2017, the DRT-I, Chennai, has dismissed the said petition.

7. Against which, M/s.Sri Devi Hospitals, represented by its Sole Proprietor, Dr.K.Senthilnathan and the writ petitioner herein, have filed M.A.No.162 of 2017, before the DRAT, Chennai. Pending the abovesaid Miscellaneous Petition, Petition in Sr.Nos.6823 to 6826 of 2017, have been taken up, by the DRT-I, Chennai and as per the record of proceedings, dated 24.10.2017, learned counsel appearing for the parties have been heard, matter stood passed over and thereafter, re-opened and after hearing both sides, for passing orders, posted to 31.10.2017.

8. It is the grievance of the petitioner that when she has been deprived of an opportunity of cross-examining PW.1, by the Tribunal and when the order in I.A.No.640 of 2017, is under appeal in M.A.No.162 of 2017, before the DRAT, Chennai, re-opening and re-hearing the matter by DRT-I, Chennai and thereafter, concluding the proceedings to pass orders on 31.10.2017, would cause prejudice to the interest of the writ petitioner and ultimately, without any cross-examination of PW.1, documents would be taken on record.

9. Though on the above main submission and other grounds, Mr.S.Pugalanthi, learned counsel for the petitioner seek for intervention of the proceedings, dated 24.10.2017 and consequently, prayed for a direction to DRT-I, Chennai, not to proceed with O.A.No.288 of 2014, until the appeal in M.A.No.162 of 2017, is disposed of, this Court is not inclined to accept the said contentions, for the reason that when M.A.No.162 of 2017, is already pending on the file of the DRAT, Chennai, on similar grounds, now raised in the instant writ petition, it is always open to the writ petitioner to seek for intervention of the proceedings, dated 24.10.2017 of the DRT-I, Chennai.

10. In the light of the above discussion, we are not inclined to grant any relief, prayed for.

11. In the result, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

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Assistant Registrar(CS V)
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Sub Assistant Registrar

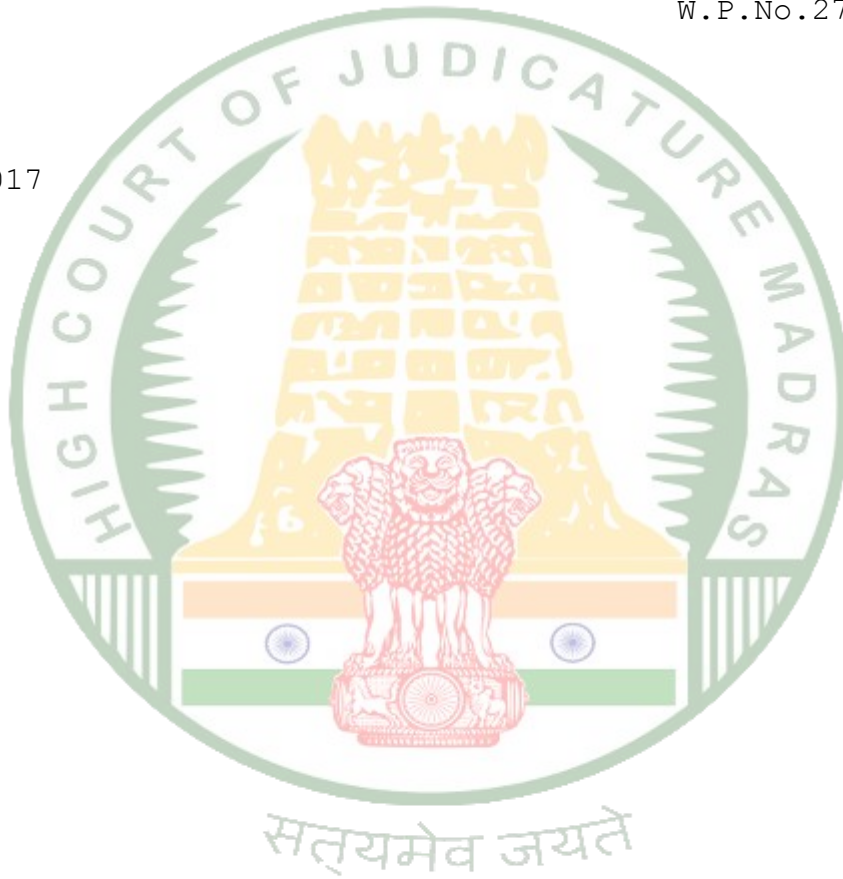
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To

The Registrar,
Debts Recovery Tribunal-I,
Spencers Tower,
Chennai-2.

W.P.No.27790 of 2017

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