

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.17918 of 2017
and
WMP No.19447 of 2017

M/s.Jerin Poly Bags,
Rep. by its Proprietor
Mr.M.S.Lenin Sebas ..Petitioner

vs.

1. The Registrar,
Debts Recovery Appellate Tribunal,
Ethiraj Salai,
Chennai - 600 002.

2. M/s. Canara Bank,
Ashok Nagar Branch,
No.9, First Avenue,
Chennai - 600 083. ...Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records pertaining to the order of the Debts Recovery Appellate Tribunal in I.A.No.342 of 2015 in AIR No.191 of 2015 dated 16.06.2017 in so far as the pre-condition deposit amount of Rs.80,00,000/- to entertain the appeal is concerned and quash the same.

For Petitioner : Mr.C.K.M.Appaji

ORDER

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

Challenge in this writ petition, is to an order made in I.A.No.342 of 2015 in A.I.R (S.A.) 191 of 2015 dated 16.06.2017 on the file of the Debts Recovery Appellate Tribunal, Chennai, by which, the appellate forum directed the writ petitioner to deposit a sum of Rs.80 Lakhs with the Registrar of Debts Recovery Appellate Tribunal, Chennai, as pre deposit, to entertain an appeal. Proceedings dated 16.06.2017 impugned is reproduced.

PROCEEDINGS DATED 16.06.2017

Ld. Counsel Mr.CKM.Appaji for Appellant present.

Ld. Counsel Mr.S.Kesavan for Respondent present.

Heard IA.342/2015, which is an application filed for waiver.

Appellant has challenged the order dated 06.03.2015 passed by DRT-II, Chennai in IA.No.351/2014 in OA.92/2013, by which IA was dismissed.

Appellant fairly concedes that OA was filed by the Respondent Bank for recovery of a sum of Rs.2.70Crores. This appeal has not been preferred against the final order, rather Appeal has been preferred against the interim order, in which prayer to contest the OA on merits was declined on technical grounds.

Per contra, Respondent counsel submits that despite service on Appellant, DRT was bound to pass an exparte order on 25.11.2014. In place of making repayments, Appellant approached the DRT for setting aside the order passed in IA, which is nothing but a delaying tactics and now the amount has increased to Rs.3.96 Crores.

Without going into the merits of the case, in view of the fact that DRAT cannot proceed further in the Appeal filed by any aggrieved person unless and until the Appellant complies with the formalities on pre-deposit up to 50% of debt amount, which can be reduced to 25%, but not less than 25% in any case and for the purpose of hearing this appeal, I consider the debt amount to be Rs.2.70 Crores and I hereby direct the Appellant to make pre-deposit of Rs.80 Lakhs with the Registrar of this Tribunal, out of which Rs.40 Lakhs to be paid by the Appellant within four weeks from today as 1st part of payment and 2nd part of payment of Rs.40 Lakhs will be paid by another four weeks thereafter.

In the event of failure of any part of the amount, the Appeal stands dismissed automatically without any reference by this Tribunal.

IA is disposed of and closed.

List for confirmation of pre-deposit of 1st part of payment of Appellant by 14.07.2017."

2. From the above, it could be deduced that bank has initiated recovery proceedings in O.A.No.92 of 2013. Writ petitioner did not appear. Therefore, an exparte order dated

25.11.2014 has been passed. To set aside the same, petitioner has filed I.A.No.351 of 2014. Said I.A., came to be dismissed on 06.03.2015.

3. Challenging the order made in I.A.No.351 of 2014 in O.A.No.92 of 2013, the writ petitioner has filed AIR (SA) No.191 of 2015. In AIR (SA) No.191 of 2015, the petitioner has filed I.A.No.342 of 2015, praying for a direction to waive pre-deposit by preferring the appeal. By filing counter affidavit, Canara Bank, Chennai, the respondent therein, has opposed the prayer sought for. Bank has further contended that recovery certificate DRC No.367 of 2015 has been issued.

4. Before the Debts Recovery Appellate Tribunal, Chennai, writ petitioner/appellant has conceded that O.A. was filed by the bank, for a sum of Rs.2.70 crores. However, argued that the appeal has not been filed against the final order. The appeal has been filed against an interim order dismissing I.A.No.351 of 2014, filed to set aside the exparte order.

5. Before the Debts Recovery Appellate Tribunal, Chennai, bank has contended that despite service of notice on the appellant, writ petitioner has not chosen to prosecute OA No.93 of 2013 and therefore, exparte order was passed on 25.11.2014. Bank has further contended that a sum of Rs.3.96 Crores is due and payable by the writ petitioner.

6. Without going into the merits of this case, the Debts Recovery Appellate Tribunal, Chennai, considered that the debt amount would be Rs.2.70 Crores and directed the writ petitioner to make pre-deposit of Rs.80 Lakhs with the Registrar of DRAT, Chennai, out of which, Rs.40 Lakhs to be paid within four weeks from the date of passing of the order and the remaining Rs.40 Lakhs. within another period of four weeks, thereafter.

7. Though, Mr.C.K.M.Appaji, learned counsel for the writ petitioner reiterated the very same grounds before this Court and sought for writ of certiorari, this Court is not inclined to accept the said contentions for the reason that as per 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 Debts Recovery Tribunal, whichever is less. Provided also that the appellate tribunal may for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.

8. From the material on record, it could be deduced that when the writ petitioner/appellant had conceded before the tribunal that the debt amount would be 2.70 Crores, the tribunal exercising the powers under the proviso to Section 18 of the SARFAESI Act, 2002, has reduced the amount to 30% of

Rs.2.70 Crores i.e., Rs.80 Lakhs to be deposited with the registry of the appellate forum in two equated instalments. Sufficient time has also been granted to the writ petitioner. OA has been filed in the year 2013. Writ petitioner has remained exparte and that an order has been passed on 25.11.2014. There are no materials indicating that writ petitioner has made any payment. The discretion exercised by the Debts Recovery Appellate Tribunal, cannot be said to be erroneous, warranting interference. There are no merits in the writ petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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TO

The Registrar,
Debts Recovery, Appellate Tribunal,
Chennai -2.

+ 1 cc to Mr.C.K.M. Appaji, Advocate Sr.49905

W.P.No.17918 of 2017
and
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VGI(CO)
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