

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/8/2017

C O R A M

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

W.P.No.17963 of 2017

P. Baskaran ... Petitioner

Vs

1. The Registrar, Debts Recovery Tribunal - III
6th Floor, Deva Towers,
No.770 A, Anna Salai, Chennai 600 002.

2. The Authorised Officer
Bank of India, 33/3 First Main Road,
Gandhi Nagar, Adyar, Chennai 600 020.

3. K. Vijaya, Proprietrix
M/s. Saibaba Traders,
No.68/A Sambosrria Apartments
Flat No.E, 4th Main Road,
Nolambur, Chennai 600 037.

4. E. Velu ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in SA.SR.No.6744 of 2016, on the file of the Debts Recovery Tribunal - III, Chennai, pertaining to the order, dated 7/7/2017 and quash the same and consequently, direct the Tribunal to assign Appeal Number to S.A.SR.No.6744 of 2016 and to consider the appeal on merits and in accordance with law.

For Petitioner ... Mr.L.Chandrakumar
for Mr.H.Manojin

For respondents... Mr.Ashok Rajaraman
for Benjamin George
for R.2

O R D E R

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

Earlier, borrower has filed W.P.No.31009 of 2016, praying for a writ of certiorarified mandamus, to call for the records, in S.A.SR.No.6744 of 2016, on the file of the Debts

Recovery Tribunal No.3, Chennai, in connection with the impugned order, dated 24/8/2016 and quash the same and direct the first respondent therein, to receive the petitioner's appeal, in S.A.SR.No.6744 of 2016, on the file of the Debts Recovery Tribunal No.III, Chennai and to number the same and dispose of the appeal, in accordance with law.

2. Responding to the notice, Authorised Officer, Bank of India, Chennai/second respondent, has entered appearance and submitted that the borrower/writ petitioner therein, ought to have approached the Debts Recovery Appellate Tribunal and filed the appeal against the order impugned therein.

3. On the contra, learned counsel for the petitioner therein submitted that the writ petition can be maintained, in view of the refusal, to entertain the application, under Section 17 of the Debts Recovery Tribunal. He also relied on a decision in Sheeba Philominal Merlin Vs. The Repatriates Co-op Finance & Development Bank Ltd {2010 (5) CTC 449}, wherein it has been held that the writ petition can be maintained, if the authority has acted without jurisdiction, contrary to the provision of Act and in violation of principles of natural justice.

4. Per contra, learned counsel for the respondents 2 to 4 therein, relied on a judgment of this Court in Gudan Paper Mills Ltd Vs. The Presiding Officer, Debts Recovery Tribunal and Others (MANU/TN/2831/2016).

5. Having regard to the rival submissions, this Court in W.P.No.31009 of 2016, dated 21/11/2016, to which one of us is a party (Mr.Justice S.Manikumar), at paragraph No.10, observed as hereunder:-

"Tribunal has not considered the application merits. It is significant to note that the application was not rejected but was only returned. The Debts Recovery Tribunal, refused to entertain the application on the ground that cause of action arose on the date of sale notice (13.5.2016). However, as has already been pointed out, the petitioner has challenged the sale, conducted on 29/6/2016. There is failure on the part of the Debts Recovery Tribunal, to address the issues raised by the petitioner touching the sale proceedings. Therefore, we are of the considered view that the order of the Tribunal could not be sustained. Having regard to the peculiar facts of the present case, we deem it fit to entertain the writ petition."

6. After considering the rival submissions, at para No.12, we set aside the order of the Tribunal, in S.A.SR.No.6744 of 2016, dated 24/8/2016, and further directed

the Debts Recovery Tribunal, to take the case on file and decide the issues, raised by the petitioner, on merits. We also made it clear that it is open to the parties, to raise all the legal points available to them.

7. Pursuant to the above directions, Debts Recovery Tribunal - III, Chennai, has passed an order, in S.A.SR.No.6744 of 2016, on 7/7/2017, dismissing the same, which is impugned in the instant writ petition.

8. One of the grounds urged by the writ petitioner is that when this Court in W.P.No.31009 of 2016, dated 29/11/2016, has specifically directed the Debts Recovery Tribunal - III, Chennai, to take the case on file, meaning thereby, S.A.SR to be numbered as regular appeal, once again, the Tribunal has dismissed in SR stage, which is a breach of the orders of this Court. Other substantial grounds raised by the petitioner is that orders have not been passed on merits, except narrating the case of both parties. In this context, attention of this Court was brought to the penalty made by the Debts Recovery Tribunal - III, Chennai, made in S.A.SR.No.6744 of 2017, dated 7/7/2017.

9. When the matter came up, on 17/7/2017, we ordered notice to the respondents.

10. Mr.Benjamin George has entered appearance on behalf of the second respondent Bank.

11. Mr.Benjamin George, learned counsel for the respondent Bank submitted that proceedings, dated 7/7/2017, in S.A.SR.No.6744 of 2014, is a well considered order and that the same does not require any interference.

12. Heard both parties and perused the materials available on record.

13. Prayer made in W.P.No.31009 of 2006 is for the issuance of a writ of certiorarified mandamus, calling for the records, in S.A.No.6744 of 2006, on the file of the Debts Recovery Tribunal - III, Chennai, in connection with the impugned order, dated 24/8/2016 and to quash the same. Consequently, the petitioner has sought for a direction to the Registrar, Debts Recovery Tribunal - III/first respondent therein, to receive the petitioner's appeal, in S.A.SR.No.6744 of 2016, to number the same, and to dispose the appeal, in accordance with law.

14. After considering the rival submissions, this Court had set aside the order passed by the Debts Recovery Tribunal and directed the Tribunal, to take the case on file and decide the issues raised by the petitioner, on merits.

15. When the case was not taken on file and numbered and vide proceedings in S.A.SR.No.6744 of 2016, the Registrar, Debts Recovery Tribunal, Chennai, has returned the application

and that when the Tribunal has not considered the application on merits, we set aside the order, dated 24/8/2016 and directed the Debts Recovery Tribunal, to take the case on file, meaning thereby that the appeal has to be numbered.

16. As rightly pointed out by the learned counsel for the petitioner, when we directed the Debts Recovery Tribunal, to decide the case, on merits, points raised, should be adjudged and that a decision should be recorded based on these. Proceedings, dated 7/7/2017, in S.A.SR.No.6744 of 2016, the Debts Recovery Tribunal - III, Chennai, has recorded the submissions of both parties and has ordered as hereunder.

"In these circumstances, since there are no legal infirmities in the procedure, the respondent Bank and bringing the property to sale and there are no legal impediments for the concluded sale to be set aside, this Tribunal is of the opinion that the proposed appeal of the appellant is without merits and consequently liable to be dismissed.

In the result, proposed appeal in S.A.SR.No.6744 of 2016 stands dismissed, on merits. However, without costs. "

17. Observation of the Tribunal, since there are no infirmities in the procedure adopted by the respondent Bank, in bringing the property to sale, cannot be treated as conclusion, as it is made simply, after extracting the averments of the Bank. Adjudication means considering rival contentions and arriving at the reasoned conclusion, which in our considered opinion is lacking in the impugned order.

18. For the reasons stated supra, we are in agreement with the submissions of the learned counsel for the petitioner.

19. In the result, this writ petition is allowed and the proceedings, dated 7/7/2017, in S.A.SR.No.6744 of 2016, is quashed and the same is set aside. Tribunal is directed to number the appeal and pass a reasoned, speaking order, by adverting to the rival contentions of the parties, within a period of two months, from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

1. The Registrar
Debts Recovery Tribunal - III
6th Floor, Deva Towers
No.770 A, Anna Salai
Chennai 600 002.

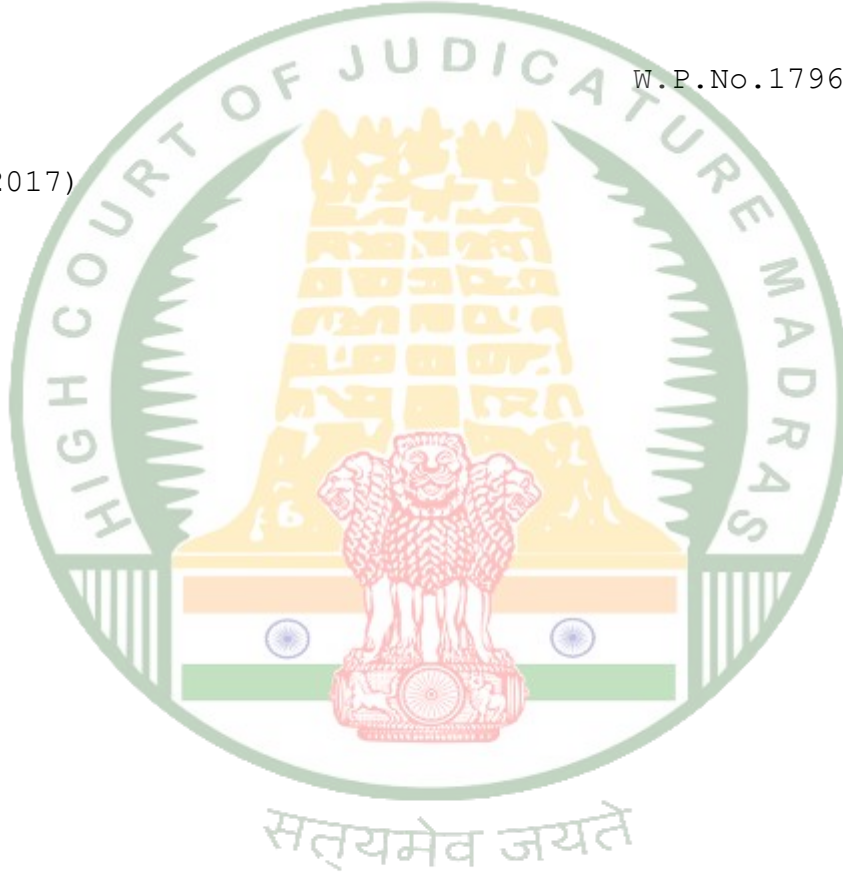
+1cc to Mr.H.Manosin, Advocate SR.No.58663

+1cc to Mr.P.Venkateswar, Advocate SR.No.58767

+1ccc to Mr.P.B.Benjamin George, Advocate SR.No.59129

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GN(01/09/2017)



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