

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.28714 & 28715 of 2017

and

WMP Nos.30898 and 30900 of 2017

1. P.Ravi ... Petitioner in W.P.28714/17
2. P.Ranjith ... Petitioner in W.P.28715/17

vs.

1. The Debts Recovery Tribunal-II,
Rep. by its Registrar,
6th Floor, Spencer Towers,
770-A, Anna Salai, Chennai - 600 002.

2. M/s.UCO Bank,
Rep. by its Asst.General Manager,
Mr.P.A.Thomas,
Flagship Corporate Branch,
212 Ground Floor,
"PLA Rathna Towers",
Ground Floor, Mount Road,
Chennai - 600 006.

... Respondents in both W.Ps.

WRIT Petitions 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 common order dated 11th October 2017
passed by the learned DRT-II in I.A.Nos.768 & 770 of 2017 in
O.A.No.416 of 2016

For Petitioner : Mr.N.Vijaya Narayan, Sr. Counsel

COMMON ORDER

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

W.P.Nos.28714 & 28715 of 2017 have been filed challenging the proceedings dated 11.10.2017 made in I.A.No.768 and 770 of 2017 in O.A.No.416 of 2016 on the file of the Debts Recovery Tribunal-II, Chennai. As facts and submissions are common, both the writ petitions are taken up together and disposed of by a common order.

2. As orders impugned before us are similar, suffice to extract from one writ petition.

OA No.416/16 11.10.2017

Counsel for both sides present. I.A.Nos.767/17 is filed by respondent P.Ravi to advance the hearing. Perused the advance petition in I.A.No.767/17 and I.A.No.767/17 is allowed. I.A.No.768/17 is also filed by Respondent P.Ravi for permission to leave the country. Perused. I.A.No.768/17 is allowed on condition to pay a sum of Rs.1 Crore to the Respondent Bank on or before 16.10.2017.

I.A.Nos.767/17 is filed by Respondent P.Ranjith to advance the hearing. Perused the advance petition in I.A.No.769/17 and I.A.No.769/17 is allowed. I.A.No.770/17 is also filed by Respondent P.Ranjith for permission to leave the country. Perused. I.A.No.770/17 is allowed on condition to pay a sum of Rs.1 Crore to the Respondent

Bank on or before 16.10.2017. Call on 17.10.2017 for compliance. Proof affidavit by then."

3. Assailing the correctness of the order impugned Mr.N.Vijay Narayan, learned senior counsel appearing for the petitioner submitted that M/s.UCO Bank represented by its Assistant General Manager, Chennai filed I.A.No.398 of 2016 in O.A.No.416 of 2016 for a direction to the respondents 2 to 6 therein to surrender their passport with Registrar of DRT-II, Chennai and for further direction to the respondents 2 to 6 therein, not to leave the country without the prior permission from the said tribunal. After adjudication, DRT-II, Chennai, vide order dated 29.06.2017 made in I.A.No.398 of 2016 in O.A.No.416 of 2016, partly allowed I.A.No.398 of 2016, directing the respondents 2 to 6 therein not to leave the country without prior permission of the tribunal. Prayer regarding surrender of passport has been dismissed.

4. Learned senior counsel further submitted that being aggrieved by the order in I.A.No.398 of 2016 in O.A.No.416 of 2016, dated 29.06.2017, an appeal in AIR No.433 of 2017, has been filed before the Debts Recovery Appellate Tribunal, Chennai and that on 14.09.2017, following order has been passed.

" Ld. Counsel Mr.Anand Sasidharan for Appellant present.

Ld. Counsel Mr.v.Suthakar for R1 Bank present.

Heard IA 1449/2017, which is an application for earlier hearing.

In view of the urgency of travelling abroad, IA is allowed and disposed of.

Heard IA.1419/2017, which is an application filed for condonation of delay of 9 days in representation.

Considering the averments made in IA, delay appears to be unintentional, hence delay is condoned and IA is allowed and disposed of.

R1 counsel prays for some time to file counter.

Time granted.

Appellant counsel submits that Appellant has purchased tickets for travelling abroad and prays for a direction to DRT to permit the Appellant to travel.

DRT is directed to consider the permission for travelling abroad sympathetically as and when prayed by the Appellant.

List for final hearing of the matter on 14.11.2017."

5. Learned senior counsel further submitted that in as much as right to travel being a fundamental right, guaranteed under the Constitution of India, at the request of the petitioners, hearing of appeal in AIR No.433 of 2017 has been advanced and after arguments, orders are reserved in AIR No.433 of 2017.

6. Learned senior counsel further submitted that on more than three occasions, petitioners were permitted by DRT-II, Chennai, to travel abroad, and that they have returned to India. While that be so, condition imposed in I.A.Nos.768 and 770 of 2017 in O.A.No.416 of 2016 dated 11.10.2017, directing the petitioners to pay a sum of Rs.1 Crore, to the respondent bank on or before 16.10.2017 is unwarranted and it is an infringement of the constitutional right. For the abovesaid reasons, petitioners have sought for interference.

7. Heard Mr.N.Vijay Narayan, learned senior counsel and perused the materials available on record.

8. Order made in I.A.No.398 of 2016 in O.A.No.416 of 2016, dated 29.06.2017 by the DRT-II, Chennai is already under challenge in AIR No.433 of 2017. Orders are reserved in the appeal.

9. The issue as to whether the petitioners can leave the country, without prior permission is yet to be decided, in the appeal. Nevertheless, it is the contention of the petitioners that they have already been permitted for business purposes and returned to India.

10. When order in I.A.No.398 of 2016 in O.A.No.416 of 2016 dated 29.06.2017 on the file of DRT-II, Chennai, has been challenged before the appellate forum in AIR No.433 of 2017, there is no reason as to why, orders impugned before us also cannot be challenged before the DRAT, Chennai. There is an effective and alternate remedy provided under the scheme of the Act.

11. During the course of hearing, Mr.N.Vijay Narayan, learned senior counsel for the petitioners also submitted that for non compliance of the conditional order of payment of Rs.1 Crore by the petitioners to the respondent bank, on 17.10.2017, DRT-II, Chennai has dismissed both I.A.Nos.768 and 770 of 2017 in O.A.No.416 of 2016, respectively.

12. When I.A.Nos.768 and 770 of 2017 in O.A.No.416 of 2016, have been dismissed, appropriate remedy would be to file appeals against the said orders. What is impugned before us is an interim order. Fact remains that on 17.10.2016, both the applications have been dismissed. On the aspect of entertaining the writ petitions at the interim stage the Hon'ble Supreme Court in ***T.P.Vishnu Kumar Vs. Canara Bank, P.N.Road, Tiruppur and Others*** reported in 2013 (10) SCC 652, at paragraph Nos.10 & 11, held as follows:

"10. Powers of the High Court under [Article 226](#) cannot be invoked in the matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to the party or where such proceedings or action is wholly arbitrary, unreasonable and unfair. When the Act itself provides for a mechanism, by an appeal under Section 20 of the Act, in our view, the High Court is not justified in invoking jurisdiction under [Article 226](#) of the Constitution of India to examine that the rejection of the applications by the Tribunal was correct or not. The petitioner and the contesting respondents have no case that either the Bank or the Tribunal had violated any statutory provisions by rejecting their applications.

11. A writ petition was preferred against the rejection of applications and the same were entertained by the learned Single Judge and decided on merits and which in our view is impermissible while exercising its jurisdiction under [Article 226](#) of the Constitution. If the correctness or otherwise of each and every interim order passed by the Tribunal is going to be tested in a writ Court, it will only defeat the object and purpose of establishing such Tribunal. We have already noticed that due to the intervention of the writ Court, the matter got delayed for four years defeating the very purpose and object of the Act. We therefore, find no merit in these petitions and the same are dismissed."

Writ petitions cannot be entertained at the interim stage.

13. In the light of the above discussion and decision, we are not inclined to entertain the writ petitions. Hence, writ petitions

are dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

(S.M.K., J.) (R.S.K., J.)
10.11.2017

Index: Yes/No.

Internet: Yes

Speaking/non speaking order

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To

1. The Registrar,
Debts Recovery Tribunal-II,
6th Floor, Spencer Towers,
770-A, Anna Salai, Chennai - 600 002.

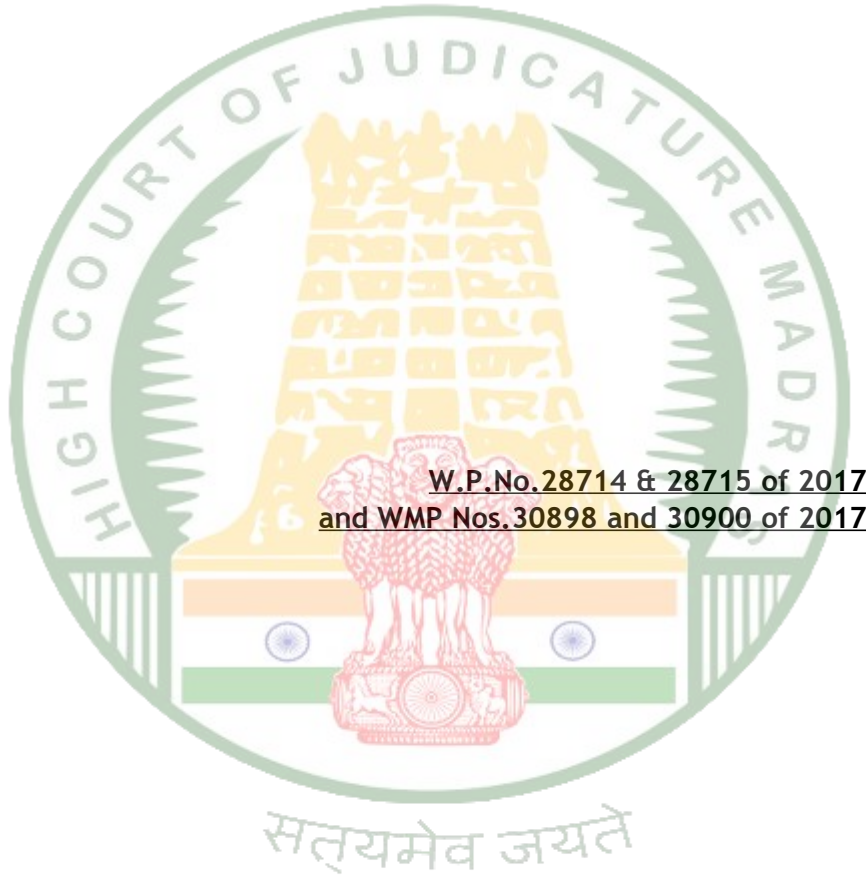
2. The Asst.General Manager,
M/s.UCO Bank,
Flagship Corporate Branch,
212 Ground Floor,
"PLA Rathna Towers",
Ground Floor, Mount Road,
Chennai - 600 006.



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