

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM:

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

W.P.No.28819 of 2017
and
WMP No.31017 of 2017

M/s.Nandhi Dall Mills,
A Partnership Firm
Rep. by its Managing Partner,
Shri S.A.Kumar

Petitioner

vs.

1. Authorized Officer,
Kotak Mahindra Bank Limited,
Plot No.12, S.No.98,
Bharathi Street,
Alagapuram, Salem - 636 004.
2. The Branch Manager,
Kotak Mahindra Bank Limited,
Plot No.12, S.No.98,
Bharathi Street,
Alagapuram, Salem - 636 004.
3. The Chairperson,
The Debts Recovery Appellate Tribunal,
Chennai.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified Mandamus, calling for the records in AIR No.126 of 2017 on the file of the Hon'ble Debts Recovery Appellate Tribunal, Chennai and quash the order dated 10.10.2017 directing the petitioner to make a pre-deposit of Rs.37,00,000/- within a period of 4 weeks and on failure the appeal would stand automatically dismissed and thereby direct the 2nd respondent to receive a sum of Rs.21,31,490/- being the balance amount payable pursuant to the RBI Auditors Expert Report.

For Petitioner : Mr.SR.Rajagopal

ORDER

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

Proceedings impugned before us is an order passed in I.A.No.553 of 2017, in AIR (SA) No.126 of 2017 dated 10.10.2017 on the file of the Debts Recovery Tribunal, Chennai and the same is extracted hereunder

"...

Record reveals that respondent bank has issued a notice under Section -13(4) of SARFAESI Act for recovery of Rs.2.27 Crores on 25.6.2013. In compliance of order of High Court, on 15.7.2016 Appellant paid Rs.79 Lakhs. Whether balance amount would be Rs.1.48 Crores or more as a result of penal interest will be a subject matter of final hearing of the case. But for the purpose of this Appeal, I consider the debt amount to be Rs.1.48 Crores and after extending maximum waiver, hereby direct the Appellant to make a pre-deposit of Rs.37,00,000/- (Rupees Thirty Seven lakhs only) in two instalments. Out of which, first instalment of Rs.18.50 lakhs shall be deposited with the Registrar of this Tribunal within four weeks from today and next instalment of Rs.18.50 lakhs shall be deposited in next four weeks thereof. In case the appellant defaults to pay the first instalment within stipulated period, the Appeal shall automatically stand dismissed without any reference to this Court.

IA-553/2017 waiver application is disposed of.

It is made clear that if pre-deposit is made at earlier point of time, Appellant will be entitled for status quo facility.

List for confirmation of pre-deposit of first instalment of Rs.18.50 lakhs on 7.11.2017."

2. Heard Mr.SR.Rajagopal, learned counsel for the petitioner and perused the materials available on record.

3. Based on the demand of the bank, for Rs.1.48 Crores vide order dated 10.10.2017, DRAT, Chennai, has directed the writ petitioner to deposit 25% of the debt amount i.e. Rs.37 Lakhs (Rupees Thirty Seven lakhs only) in two instalments. Out of which, first instalment of Rs.18.50 lakhs has been directed to be deposited with the Registrar of DRAT, Chennai within four weeks from the date of passing of the order and next instalment of Rs.18.50 lakhs has been directed to be deposited within four weeks thereafter. Debts Recovery Appellate Tribunal, Chennai has directed dismissal of I.A.No.553 of 2017, in AIR (SA) No.126 of

2017, filed for waiver, if the conditional order, is not complied with, the consequential rejection of the appeal, if there is any default. Registry of DRAT, has been directed for listing of the matter on 07.11.2017.

4. Writ petition has been filed on 09.11.2017. As per the interim orders, dated 10.10.2017, finality of the proceedings, would have reached on 07.11.2017, by which date, I.A.No.553 of 2017, in AIR (SA) No.126 of 2017, would have been dismissed, and consequently, appeal, would have been rejected. There are no materials to indicate as to whether the final order made in AIR (SA) No.126 of 2017 has been challenged.

5. Petitioner has not complied with the interim / conditional order. Needless to state that challenge to interim order does not survive, when the main appeal is rejected. If there is any challenge to the order of rejection of appeal, and ultimately, if such rejection is set aside, for any reasons, then the orders, if any passed at the interim stage, would revive, but on the facts and circumstances of this case, in our considered opinion, the converse, is not permissible.

6. For the reasons stated supra, challenge made in this writ petition, has already reached finality. Therefore, giving liberty to the writ petitioner, to raise all tenable grounds to challenge the final order, instant writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS IX)

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Sub Assistant Registrar

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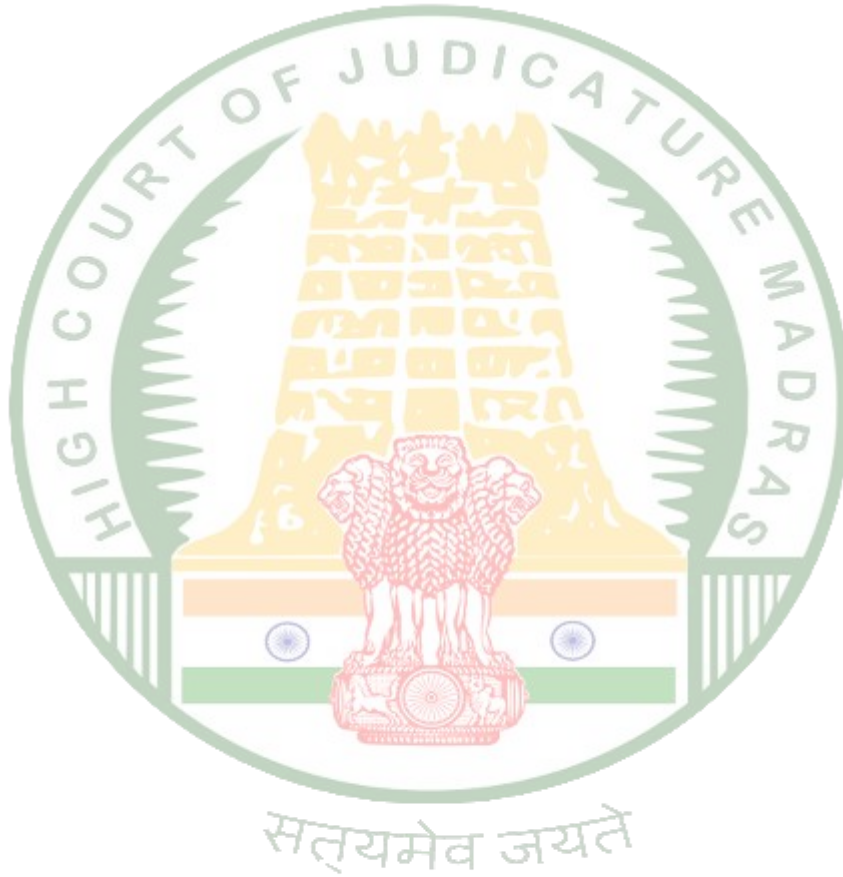
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+1cc to Mr.V.Anil Kumar, Advocate in SR.80246

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RR(CO)
CS/29/11/17



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