

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

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

W.P.No.18688 of 2017
and WMP Nos.20241 & 20242 of 2017

V.Anu Radha

... Petitioner

vs.

1. Canara Bank,
ARM Branch,
Rep. by its Authorised Officer,
Spencers Towers,
No.770-A, Anna Salai,
Chennai - 600 002.

2. M/s.Swastik Enterprises,
Rep. by its Proprietor S.Samraj

3. S.Samraj

.... 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 relating to issuance of the impugned order dated 22.10.2016 made in Crl.M.P.No.6530 of 2015 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai as merged with the order of Debts Recovery Tribunal II, Chennai dated 20.02.2017 made in S.A.No.120 of 2016 and the impugned order passed by Debts Recovery Appellate Tribunal, Chennai made in AIR(SA) No.104/2017 dated 13.07.2017 and quash the same.

For Petitioner : Mrs.Vasudha Thiagarajan

ORDER

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

Order impugned in the writ petition made, in AIR (SA) No.104 of 2017 dated 13.07.2017, is as follows:

"ORDER

Ld. Counsel Mr.R.Thiagarajan for Appellant present.

Ld. Counsel Mr.K.N.Chinnakrishnan for R1 Bank present.

Heard Ld. Counsel for both sides.

Vide order dated 13.03.2017, this Tribunal had directed the Appellant to make a pre-deposit of Rs.4.60 Crores.

Out of which, R.60 lakhs deposit, made in recent past, was taken into consideration. Appellant was directed to deposit Rs.2 Crores within a period of four weeks and remaining Rs.2 Crores in a period of next four weeks thereof.

Vide order dated 17.04.2017, High Court of Madras, in C.R.P.(PD) No.1302/17 and CMP Nos.6073 and 6074/2017, gave a relaxation to the Appellant and in place of pre-deposit of Rs.4 Crores, taking into consideration the deposits of Rs.1.10 Crore, directed the Appellant to make a deposit of Rs.2.90 Crores within a period of eight weeks.

Appellant has neither complied the order dated 13.03.2017 of this Tribunal by making a deposit of Rs.2 Crores nor has complied the order dated 17.04.2017 of the High Court by making a deposit of Rs.2.90 Crores within eight weeks, i.e. before 04.07.2017. (Copy of order dated 17.04.2017 of High Court was made available to the Appellant on 09.05.2017). As on today also, position is the same.

To produce stay order from the High Court, on prayers of the Appellant Counsel, case was listed on 05.07.2017 and on 11.07.2017 also. There remains no doubt to observe that Appellant has failed to comply the direction of the pre-deposit and also failed to produce stay order from the High Court.

In view of the fact that DRAT cannot entertain any Appeal of aggrieved person without ensuring the pre-deposit, no good ground is made out to grant further time.

Appeal stands dismissed for want of compliance. It is made clear that the matter may be revived on application or suo moto, as and when directed by Hon'ble High Court."

2. Perusal of the same shows that vide order made in CRP (PD) No.1302 of 2017 dated 17.04.2017, appellant has been directed to make a deposit of Rs.2.90 Crores within a period of eight weeks, which expired on 04.07.2017. As the petitioner did not make the deposit, as ordered by a Hon'ble Division Bench, Debts Recovery Appellate Tribunal, Chennai, has dismissed, AIR (SA) No.104 of 2017.

3. On this day, when the writ petition came up for further hearing, vide memo dated 31.07.2017, petitioner has contended that subsequently, vide order dated 24.07.2017, the Hon'ble Division Bench which ordered CRP (PD) No.1302 of 2017, was pleased to extend time by eight weeks, for remittance of the balance amount of Rs.2.90 crores. In view of the extension granted by the Hon'ble Division Bench, writ petitioner has filed a memo seeking permission to withdraw the writ petition, with liberty to revive the same, in the unlikely event of the amount not being remitted.

4. The very fact that the petitioner has sought for extension of time shows that it is only to remit a sum of Rs.2.90 crores, as pre deposit for entertaining the appeal and that in CRP (PD) No.1302 of 2017 dated 24.07.2017, a Hon'ble Division Bench has also granted time. In view of the subsequent event, instant writ petition filed against the order dated 22.10.2016, does not survive. Having taken time to deposit the abovesaid amount, the question of granting liberty to revive the challenge, made in the present writ petition, in the unlikely event of the amount not being remitted, does not arise.

5. In view of the above, while dismissing the Writ Petition, it is made clear that no leave is granted to entertain a writ petition on the same cause of action. Writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are dismissed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The Chief Metropolitan Magistrate,
Allikulam Commercial complex,
Park town, Chennai-3

2.The Presiding officer,
The Debts Recovery Tribunal-II,
Chennai

3.The Registrar,
The Debts Recovery Appellate Tribunal,
Chennai.

+1cc to Mr.R.Thiagarajan,Advocate sr.54548

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ss (18/8/2017)