

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/10/2017

C O R A M

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

Writ Petition No.25452 of 2017

Dr.J.Murali Manohar

...

Petitioner

Vs

Bank of Baroda
ARMB
No.10 C.P.Ramasamy Road
Alwarpet
Chennai 600 018.

...

Respondent

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 on the file of the Hon'ble Debts Recovery Appellate
Tribunal, Chennai, in I.A.No.606 of 2017 in A.I.R.No.698 of 2015,
dated 18/4/2017 and quash the same and consequently, extend the
time for payment of the pre-deposit amount of Rs.40,00,000/- by
another four weeks and to direct the Hon'ble Debts Recovery Appellate
Tribunal to restore A.I.R.No.698 of 2015 to file and to consider the

For Petitioner ... Mr.Saikrishnan
for M/s. Sai Bharath & Ilan

For respondent ... Mr.G.S.Vivekmani
for R.1

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ORDER

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

Order impugned is as follows:-

“Ld. Counsel Mr.Sai Bharath & Illan for appellant present.

Ld. Counsel Ms.Akshita representing Ld counsel M/s. Giridhar & Sai for respondent present.

Heard I.A.No.606 of 2017 which is an application filed for extension of time of two weeks for compliance on formalities on pre-deposit.

Vide order dated 14/3/2017 this Tribunal has directed the appellant to make pre-deposit of Rs.40 lakhs in two instalments.

Ld. Counsel for the appellant submits that appellant has intention on repayment which is evident from the impugned order itself. But on account of accident occurred on 18/1/2017 and was hospitalised for treatment and facing financial crunch also, as well as fixed in a position of stand still so he

could not comply with the order of pre-deposit despite all efforts and intention.

Ld. Counsel further submits that regular payments are being made by the appellant in this case to the bank hence by adopting all technical and tough approach appellants will be losing his available rights to address before this Tribunal.

Per contra, ld counsel for respondent Bank submits that according to provisions of Section 21 of RDDB & FI Act, DRAT cannot entertain appeal of any aggrieved person without complying with the formalities on pre-deposit. DRAT cannot proceed further in the appeal filed by any aggrieved person unless and until the appellant deposits 50% of debt amount, which can be reduced to 25% but not less than 25% in any case. OA of the bank is pending since 2999 for Recovery of about Rs.3 crores.

In the present case, the appellant has not complied with the formalities on pre-deposit and no ground is made out in the petition for extension of time. Hence I.A.606 of 2017 is dismissed and AIR 698 of 2015 is also dismissed for want of compliance on formalities on pre-deposit.”

2. After considering the material on record and submissions of

Mr.Saikrishnan, learned counsel for the petitioner, on 22/9/2017, we passed the following order:-

“Bank has initiated recovery proceedings, in O.A.No.715 of 1999 and that the Debt Recovery Tribunal, Chennai, vide order, dated 1/12/2005, granted the relief prayed for. Order of attachment, in D.R.C.No.356 of 2007, dated 31/7/2007, is passed. Petitioner filed M.A.No.791 of 2014, before the Recovery Officer, Debt Recovery Tribunal - II, Chennai, which came to be dismissed, on 29/10/2014. Appeal No.22 of 2014 was filed before the Debt Recovery Tribunal - II, Chennai, which was dismissed, on 9/9/2015.

2. Against which, the petitioner has filed AIR No.698 of 2015, before the Debts Recovery Appellate Tribunal, Chennai, along with waiver petition I.A.No.869 of 2015. Taking note of the recovery proceeding instituted by the Bank, in O.A.No.715 of 1999, on the file of Debt Recovery Tribunal - II, Chennai, for recovery of Rs.2.12 crores and in compliance of the order of Debt Recovery Tribunal, appellant therein has deposited Rs.1.30 crores, outstanding amount being Rs.85 lakhs, vide proceeding, dated

14/3/2017, Debt Recovery Appellate Tribunal, Chennai, directed the writ petitioner, to deposit Rs.40 lakhs, out of which 20 lakhs, to be deposited, within four weeks, from 14/3/2017 and the remaining Rs.20 lakhs, after four weeks thereof. Debts Recovery Appellate Tribunal has also made it clear that in the event of default of first instalment, appeal would stand dismissed, without any further reference to the Tribunal. Debt Recovery Appellate Tribunal, Chennai, has directed the matter to be listed, on 18/4/2017, for confirmation of the pre-deposit of Rs.20 lakhs.

3. Expressing difficulty in making deposit within the said date, on the grounds inter alia that when he was in London, for taking treatment for renal problems, he met with an accident, in the year 2017, as a result of which, he suffered fracture in hip and he was immobilised for three months and hence, he could not mobilise Rs.20 lakhs, petitioner filed I.A.No.606 of 2017 in AIR No.698 of 2015, on the file of the Debt Recovery Appellate Tribunal, Chennai, seeking extension of time, for depositing Rs.20 lakhs, in two weeks and also prayed to extend the time, for depositing the remaining 20 lakhs, as directed by the Appellate

Tribunal, vide order, dated 15/3/2017, in A.I.R.No.698 of 2017.

4. Before the Debt Recovery Appellate Tribunal, Chennai, learned counsel for the petitioner submitted that regular payments have been made and for the above said reasons as to why deposit could not be made in time, the Debt Recovery Appellate Tribunal, Chennai, by observing that the petitioner has made out a case for extension of time, dismissed both I.A.No.606 of 2017 and AIR No.698 of 2015.

5. Vide proceeding, dated 18th April 2017, which was impugned in the instant writ petition, by reiterating the above said reasons, Mr.Saikrishnan for M/s.Sai Bharath & Ilan, learned counsel for the petitioner submitted that a sum of Rs.20 lakhs would be deposited immediately, with the Registrar of Debt Recovery Appellate Tribunal, Chennai and if further time of two weeks is given from today, balance amount of Rs.20 lakhs, as ordered in I.A.No.869 of 2015 in AIR No.698 of 2015, dated 14/3/2017, would be deposited with the Tribunal.

6. Learned counsel for the petitioner

further contended that failure to deposit the amount within time, as directed by the Tribunal, is due to bona fide reason, which the Debt Recovery Appellate Tribunal, Chennai, has not properly averted to, except dismissing I.A.No.606 of 2017, filed for extension of time, on the sole observation that no ground has been made out.

7. As rightly contended by the learned counsel for the petitioner that reasons for not to pre-deposit the amount, within the stipulated time, as directed was sought to be explained that there was an accident, on 18/1/2017, as a result of which petitioner suffered fracture in hip, was immobilised and for the reasons could not mobilise funds, the reasons assigned, ought to have been adverted to and that the Debts Recovery Appellate Tribunal, has to give valid and sufficient reasons, as to why the same are not acceptable. Merely by dismissal of I.A.No.606 of 2017 filed for extension, on the observation that no ground is made out, prima facie amounts to failure to exercise discretion.

forward to deposit a sum of Rs.20 lakhs, with the Registrar of the Debt Recovery Appellate Tribunal, Chennai, in the interest of justice, we deem it fit that permission should be granted. Accordingly, writ petitioner is directed to deposit Rs.20 lakhs with the Registrar of the Debt Recovery Appellate Tribunal, Chennai.

9. Submission of the learned counsel for the petitioner that balance Rs.20 lakhs would be deposited, with the Registrar of the Tribunal, though placed on record, an other fact which requires to be considered is, when the outstanding amount remains to be paid as Rs.85 lakhs, whether the Debt Recovery Appellate Tribunal, Chennai, is right in directing the petitioner, to deposit 50% of the amount, when proviso to Section 21 of Recovery of Debt Due to Banks and Financial Institutions Act, 1993, enable the Appellate Tribunal, to fix the pre-deposit to 25%, for reasons to be recorded in writing, which in our opinion, is conspicuously absent, in the order made in I.A.No.869 of 2015.

10. For the above said reasons, we deem it fit to entertain the instant writ petition. **Issue notice through Court and privately returnable by 13/10/2017.**

11. Mr.Saikrishnan, learned counsel for the petitioner submitted that Bank has issued sale notice.

12. As we have entertained the instant writ petition, for the reasons stated supra, **there shall be an order of interim injunction, till 13/10/2017. Post on 12/10/2017.”**

3. Today, Mr.Sai Krishnan, learned counsel for the petitioner submitted that on 3/10/2017, a sum of Rs.20 lakhs has been deposited and for the balance amount of Rs.20 lakhs, a Demand Draft, dated 12/10/2017, has already been taken. He prayed for time to deposit the amount.

4. Filing a detailed counter affidavit and documents in the form of typed set, Mr.Vivekmani, learned counsel for the Bank objected to the prayer sought for and contended that as on today, a sum of Rs.3 crores is due and payable by the writ petitioner. On 22/9/2017, while directing the petitioner to deposit Rs.20 lakhs, being 50% of the amount, with the Registrar of Debt Recovery Appellate Tribunal, Chennai, we noticed that though the petitioner has made averments

before the Debt Recovery Appellate Tribunal, Chennai, that on account of accident, he had to be hospitalised for treatment and thus could not make deposit in time, Debt Recovery Appellate Tribunal, Chennai, has declined to accept the prayer for extension of time.

5. As per Section 21 of the Recovery of Debts and Bankruptcy Act, 1993,

"Deposit of amount of debt due, on filing appeal - Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal (fifty per cent) of the amount of debt so due from him as determined by the Tribunal under Section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing (reduce the amount to be deposited by such amount which shall not be less than twenty five per cent of the amount of such debt so due) to be deposited under this section."

6. Though the Tribunal has got powers to direct deposit, which shall not be less than 25% of the amount, for the reasons to be recorded in writing, there is absolutely no reason, in the impugned order for rejecting the reasons assigned by the petitioner. Medical records and discharge summary, enclosed in the typed set of papers, indicate that the petitioner had sustained injuries, which includes fracture in the hip, treatment and admitted in a hospital at London.

7. Reasons are the heartbeat of every decision. Except to state that no ground was made out in the petition for extension, Tribunal has not assigned any reasons on the averments and supporting evidence stated to have been filed.

8. Though Mr.G.S.Vivekmani, learned counsel for the Bank submitted that the outstanding amount is Rs.3 crores, and therefore, prayed to dismiss the writ petition, we are not inclined to accept the said contention that even as early as on 14/3/2017, the Tribunal directed the petitioner to deposit Rs.40 lakhs and extension of time has not been granted. Now the petitioner has made a deposit of Rs.20 lakhs, on 3/10/2017, as directed by this Court and has come forward to deposit the balance amount of other Rs.20 lakhs by Monday and

considering the totality of the case, as well as right of an appeal recognised under the statute, we are of the view that interest of justice would sub-serve, if the petitioner is permitted to deposit the balance of Rs.20 lakhs with the Tribunal, within one week, from the date of receipt of a copy of this order for entertaining the appeal. Petitioner is permitted to deposit the balance amount of Rs.20 lakhs, with the Registrar, Debts Recovery Tribunal, on filing a memo stating that the writ Court, vide order, dated 22/9/2017 has permitted the deposit. On such deposit, the Tribunal shall restore A.I.R.No.698 of 2015 and direct the Registry to process the appeal papers, assign regular Appeal number and dispose of the same, on merits and in accordance with law.

9. Mr.Saikrishnan, learned counsel for the petitioner submitted that a sum of Rs.40 lakhs now directed to be deposited with the Registrar of the Debt Recovery Appellate Tribunal, Chennai, under the orders of this Court, be appropriated towards discharge of the remaining loan amount.

10. Submission is placed on record. No sooner, the balance

amount is deposited, it is always open to the Bank, to seek for appropriate orders.

11. With the above direction, this writ petition is disposed of.

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

(S.M.K., J.) (R.S.K.,J.)
20th October 2017

mvs.

Index : Yes/No

Internet : Yes/No

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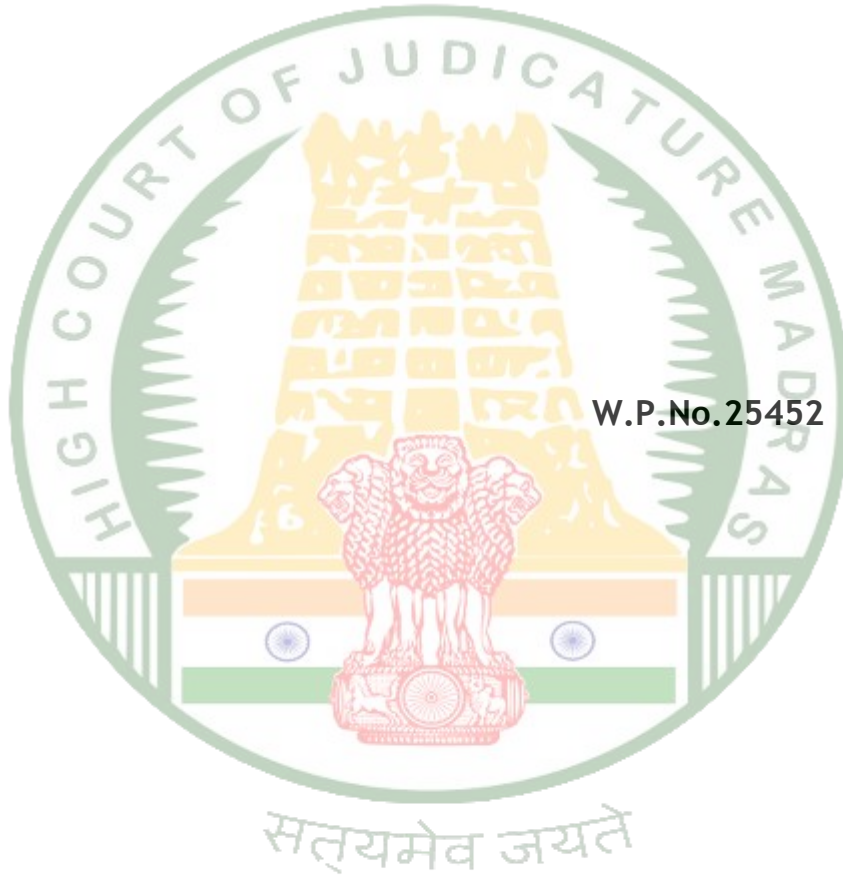
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R.SURESH KUMAR,J

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