BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.20561 of 2017
and
W.M.P.(MD)No.16855 of 2017

Mr.Jeyasingh : Petitioner

-Vs-

The Branch Manager,
Indian Bank,
Tirunelveli Town Branch,
Tirunelveli. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondent Bank to furnish the correct statement of account to the Petitioner pertaining to the loan account of Petitioner's property concern namely J.J.Traders, Thirunelveli, on the basis of Petitioner's representation dated 28.10.2017, within the stipulated time fixed by this Court.

For Petitioner : Mr.D.Selvanayagam,
For M/s.Ahamed Associates

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O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner.

2. To avoid an avoidable delay, notice to the Respondent/Indian Bank, Tirunelveli, is dispensed with, in the interest of justice.

3. According to the Petitioner, he is the sole Proprietor of M/s.J.J.Trades, which had Office at 1, SBN High Road, Tirunelveli Town. As a matter of fact, the Respondent/Bank had provided loan facility to his business Concern. The business had suffered heavy loss and the Respondent/Bank initiated proceedings for recovery of dues by filing a suit for recovery of a sum of Rs.5,53,796/-. During the pendency of the suit, a demand notice dated 27.09.2002 was issued to the Petitioner under SARFAESI Ordinance, 2002.

Later, the Authorized Officer of the Respondent/Bank had issued a possession notice dated 24.03.2005. Indeed, a Writ Petition in W.P.(MD)No.4315 of 2005 filed by the Petitioner was later withdrawn.

4. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Authorized Officer of the Respondent/Bank had issued a sale notice in the Daily 'New Indian Express', Madurai Edition, dated 27.04.2006. Resultantly, the Petitioner projected W.P.(MD)No.4310 of 2006 assailing the auction notice dated 27.04.2006. In reality, the said Writ Petition was disposed of with a direction to approach the Debts Recovery Tribunal, within a period of four weeks and that the Respondent/Bank was allowed to go ahead with the auction scheduled on 02.06.2006 and this Court was pleased to withhold the confirmation of sale for a period of four weeks.

5. It comes to be known that the Debts Recovery Tribunal-I, Chennai, in S.A.No.32 of 2006 was pleased to direct the Petitioner to pay a sum of Rs.1,00,000/- to the Respondent/Bank, within a period of six weeks and directed the Respondent/Bank to defer all further proceedings. It appears that the Petitioner paid a sum of Rs.1,00,000/- to the Respondent/Bank, as directed by the Debts Recovery Tribunal-I, Chennai. But, it is the case of the Petitioner that since he was in a coma condition, because of his brain related ailments, he was not in a position to follow-up the DRT proceedings and ultimately, the proceedings in S.A.No.32 of 2006 came to be dismissed for default. The Respondent/Bank issued the Sale Certificate to the bidder concerned.

6. Subsequently, S.A.No.32 of 2006 was restored to file, based on the petition filed by the Petitioner and later, the proceedings got transferred to the Debts Recovery Tribunal, Madurai and re-numbered as TSA.No.52 of 2007. Ultimately, the Debts Recovery Tribunal, Madurai, was pleased to dismiss TSA.No.52 of 2007. Thereupon, the Petitioner filed W.P.(MD)No.16744 of 2012 before this Court and originally, a status quo order was granted as an interim measure and ultimately, on 09.06.2016, this Court passed final orders granting liberty to the Petitioner to prefer an Appeal within a maximum period of 15 days from the date of the order. Based on the said order, the Petitioner preferred an appeal before the Debts Recovery Appellate Tribunal, Chennai, in RA(SA) No.77 of 2017 and the Learned Appellate Tribunal directed the Petitioner to make a pre-deposit of Rs.3,20,000/- before the Registry and the condition was reportedly complied with by the Petitioner.

7. The Appeal in RA(SA)No.77 of 2017 was finally disposed of by the Learned Appellate Tribunal on 08.09.2017. Once again, liberty was granted to the Petitioner for the relief of redemption as one time measure. Moreover, the Learned Appellate Tribunal had

directed the Petitioner to make one time effort for redemption of the property by making repayment of entire dues within four weeks of the receipt of the final order. The copy of the final order of the Learned Appellate Tribunal was delivered to the Petitioner on 12.09.2017. In fact, the Learned Appellate Tribunal was pleased to issue detailed guidelines to the Respondent/Bank in regard to the preparation and submission of a chart of the debt amount, so that, the facility of retaining possession as one time relief is availed of by the Petitioner. Viewed in that perspective, the Petitioner had addressed a letter of request dated 13.09.2017 to the Respondent/Bank by registered post requesting to furnish him the statment of accounts of dues in the loan account of M/s.J.J.Traders, as per the guidelines issued by the Tribunal in its final order dated 08.09.2017, without delay, so as to enable him to arrange the funds for repayment.

8. The grievance of the Petitioner is that the Respondent/Bank had failed to respond to his letter of request dated 13.09.2017 and, therefore, he was perforced to send a reminder dated 22.09.2017 to the Respondent/Bank requesting to furnish the statement of account in respect of the dues. The Petitioner had also informed the Respondent/Bank that otherwise, he would take steps to approach the Learned Appellate Tribunal for securing suitable orders. Till date, it appears that the Respondent/Bank has not furnished the Petitioner the chart of the debt amount in terms of the directions issued by the Learned Appellate Tribunal in its final order dated 08.09.2017. The deadline in this regard had expired on 10.10.2017. In the Modification Petition filed by the Petitioner before the Learned Appellate Tribunal in I.A.No.1511 of 2017 in RA(SA)No.77 of 2017, a direction was issued to the Petitioner to make a further deposit of Rs.5,00,000/- before the Registry of the Tribunal on 09.10.2017 and the matter was posted for final disposal on 09.10.2017. The conditional order passed by the Learned Appellate Tribunal was reportedly complied with by the Petitioner. On 09.10.2017, when the matter came up before the Learned Appellate Tribunal, a statement was said to have been presented by the Respondent/Bank without giving credit in regard to the already paid amounts, which was brought to the notice of the Learned Appellate Tribunal and in fact, the Learned Appellate Tribunal was pleased to direct the Respondent/Bank to file a correct statement of account, enabling the Petitioner to make the deposit of the amount mentioned in the correct statement of account. In this regard, 30 days time was granted by the Learned Appellate Tribunal to the Petitioner from the date of the said order for making the payment.

9. The deadline of 08.11.2017 is expiring today and the main concern of the Petitioner is that the Respondent/Bank, in a nonchalant fashion, is not complying with the directions issued by the Learned Appellate Tribunal. Therefore, the Petitioner had addressed a letter of request dated 28.10.2017 requesting the

Respondent/Bank to furnish the correct statement of account to him, giving credit to the payments of Rs.5,08,350/- made by him till 02.08.2006 and also the sum of Rs.8,20,000/- deposited in the Registry of the Learned Appellate Tribunal, within seven days of the receipt of his request, so that, he may be able to effect the payment of dues, within a period of 30 days permitted by the Learned Appellate Tribunal (vide its order dated 09.10.2017).

10. At this juncture, a cursory perusal of the order dated 09.10.2017 in I.A.No.1511 of 2017 in RA(SA)No.77 of 2017 passed by the Debts Recovery Appellate Tribunal, Chennai, latently and patently indicates that the Bank had filed a statement of account on 09.10.2017, which points out that the debt amount is Rs.30,33,620/- and the same is disputed by the Petitioner's side. Also, the Petitioner on 28.10.2017 had addressed a representation/communication to the Branch Manager of the Indian Bank, Tirunelveli, whereby and whereunder, a request for the correct statement of amount dues in the loan account of M/s.J.J.Traders was sought for.

11. Considering the fact that the Petitioner only disputes the amount in regard to the debt amount insofar as the statement of account filed by the Bank on 09.10.2017 before the Debts Recovery Appellate Tribunal, Chennai, this Court is of the considered view that the disputed facts pertaining to the statement of account of the Bank in regard to the Petitioner's liability in respect of the account of J.J.Traders cannot be gone into in a summary proceedings under Article 226 of the Constitution of India (notwithstanding the fact that the exercise of jurisdiction under Article 226 is a discretionary one). Viewed in that perspective, the present Writ Petition fails.

12. In fine, the Writ Petition is dismissed. Before parting with the case, it is abundantly made clear that the dismissal of the present Writ Petition will not preclude the Petitioner to approach the competent Forum in regard to his redressal of grievances, of course, in the manner known to law and in accordance with law, if he so desires/advised. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

Order made in
W.P.(MD)No.20561 of 2017
Dated: 08.11.2017

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AM/SKN RSK/SAR 4/08.11.2017/4P/1C