



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2017

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CORAM:

**THE HONOURABLE MR. JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MRS. JUSTICE R. THARANI**

W.P. (MD) No. 22324 of 2017

and

W.M.P (MD) No. 18607 of 2017

Shenbagarama Pandian

: Petitioner

.vs.

The Authorized Officer,
Cholamandalam Investment and
Finance Company Limited,
No.2/3, G.V.Tower, Third Floor,
Melakkal Main Road,
Opp. Fenner Limited,
Madurai - 625 010.

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in I.A.No.2180 of 2017 in I.A.No.1477 of 2017 in S.A.No.292 of 2017 on the file of the Debt Recovery Tribunal, Madurai and to quash the same and consequently to direct the Respondent herein to permit the Petitioner to make final payment of Rs.7,02,000/- in 12 weeks time.

For Petitioner

:Mr.D.Nallathambi,
for M/s.K.Appadurai

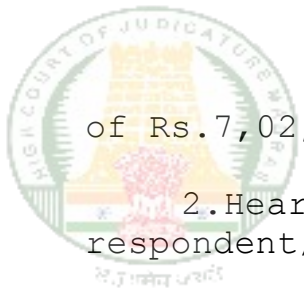
For Respondent

:Mr.K.J.Parthasarathy
Standing Counsel

O R D E R

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

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in I.A.No.2180 of 2017 in I.A.No.1477 of 2017 in S.A.No.292 of 2017 on the file of the Debt Recovery Tribunal, Madurai and to quash the same and consequently to direct the Respondent herein to permit the Petitioner to make final payment



of Rs.7,02,000/- in 12 weeks time.

2. Heard both sides. No counter is filed on behalf of the respondent/Finance Company.

3. By consent, the main Writ Petition itself is taken up for final disposal.

4. Earlier, the Debts Recovery Tribunal, Madurai (DRT) on 29.11.2017 in I.A.No.2180 of 2017 in I.A.No.1477 of 2017 in S.A.No.292 of 2017, at paragraph 5 had observed the following:

'5. Admittedly, the Petitioner has paid the 1st and 2nd installments due within the stipulated period. The Petitioner ought to have paid the third installment due on or before 10.11.2017. This petition was filed on 7.11.2017 praying to grant extension of time by 12 weeks. The reasons stated by the Petitioner are that due to heavy rainfall and due to non-mobilizing of funds in short span of time. The reasons stated by the Petitioner cannot be accepted as valid and convincing reasons to justify his failure to comply with the conditional order passed by this Tribunal in letter and spirit. The petitioner having obtained the ad-interim stay has come filed with this Petition with untenable grounds. There are no valid reasons and merits to grant extension of 12 weeks time to comply with the conditional order.'

and ultimately dismissed the said application.

5. Challenging the dismissal order, dated 29.11.2017, in I.A.No.2180 of 2017 in I.A.No.1477 of 2017 in S.A.No.292 of 2017, passed by the Debt Recovery Tribunal, Madurai, the Petitioner has filed the instant Writ Petition before this Court by taking a plea that the default in question for very few instalments is due to the reason that the recession in the partnership business due to demonetization, which affect the whole country for a year, bringing all the business to a grinding halt. As such, the situation was beyond the control of the Petitioner and his partners and despite the same, the Petitioner was unable to comply with the conditional order of stay for two installments of Rs.7,02,000/- each and only for final installment, the Petitioner had prayed for time.

6. The Learned Counsel for the Petitioner comes out with an argument that the Tribunal had failed to see that the Petitioner's partnership firm having borrowed a sum of Rs.1,25,00,000/- and repaid Rs.1,65,35,000/- in 85 months, out of 120 months. Therefore it is the contention of the Learned Counsel for the Petitioner that the Petitioner was regular in repayment and he is not a chronic defaulter and it is not his intention to commit default, for want of fund.



7. Lastly, it is the submission of the Learned Counsel for the Petitioner that the Petitioner underwent three surgeries and took treatment from 2013 to 2016 in Appollo Hospital, Chennai and that the repayment was regular and even during demonetization, there was not much default in repayment. Before the Tribunal, admittedly, the Petitioner had not produced necessary oral or documentary evidence to show that he underwent three surgeries and took treatment from 2013-2016 in Appollo Hospital, Chennai. The Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner is presently undergoing treatment as out-patient at Meenakshi Mission Hospital, Madurai.

8. Seeking enlargement of time to comply with the certain conditional order passed by a Court or Tribunal is well within the domain/discretion of the concerned Court or Tribunal. A Court or Tribunal is to arrive at a subjective satisfaction in regard to the reasons assigned by a particular person, which prevented him to comply with the condition imposed in a given situation. Undoubtedly, the Petitioner having undergone three surgeries and taking treatment from 2013-2016 at Appollo Hospital, Chennai and presently he is taking treatment as Out-patient in Meenakshi Mission Hospital, Madurai, he had not produced the relevant, convincing, credible, oral or documentary evidence. In an appropriate case, if good/sufficient cause is made out, a Court of Law or Tribunal can extend its discretionary power based on the facts and circumstances, which float on the surface. No wonder, as regards the Petition/application for extension of time, notice to other side is essential, as opined by this Court.

9. Be that as it may, in view of the fact that 'enlargement of time' is a discretion of a Court or a Tribunal, this Court, without going into the merits of the subject-matter in issue, by taking into account of the fact that the Petitioner is now ready to produce oral or documentary evidence to prove that he took treatment from 2013 to 2016 at Appollo Hospital, Chennai and presently he is taking treatment as an Out-patient in Meenakshi Mission Hospital, Madurai, this Court, without dwelling deep into the subject-matter in issue and also not expressing any opinion on the merits of the matter, simpliciter, directs the Petitioner to approach the Debt Recovery Tribunal, Madurai by means of filing an Interlocutory application in pending S.A.No.292 of 2017 on or before 19.12.2017. In the event of filing of the said Interlocutory Application before the Tribunal, the Petitioner is to seek enlargement of time by ascribing necessary qualitative and quantitative details, with supporting documents to show that during the relevant period 2013 to 2016, he underwent three surgeries in Appollo Hospital, Chennai and subsequently, he took treatment as out-patient in Meenakshi Mission Hospital, Madurai and to seek redressal of his grievance, if he so desires/advised. The Tribunal in the said Interlocutory Application is to pass a



reasoned speaking order, of course, after providing necessary opportunity of hearing to the Respondent/Finance Company and also to take into consideration of any objection/representation being made by the Respondent/Finance Company, through its authorised representative or the Learned Counsel, as the case may be and in any event, the Tribunal is directed to pass the orders in the interlocutory Application, within a period of two weeks thereafter.

10. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

The Debt Recovery Tribunal, Madurai.

+1cc to Mr.K.J.PARTHASARATHY, Advocate, SR. 92580

+1cc to Mr.K.APPADURAI, Advocate, SR. 92355

W.P. (MD) No.22324 of 2017
and

W.M.P (MD) No.18607 of 2017
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VSN

KK/SV MMS/SAR 2/13.12.2017/ 4P- 4C/