

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

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

W.P.No.4039 of 2018

M/s.East Coast Constructions & Industries Ltd.,
Buhari Buildings,
No.4, Moore Road,
Chennai - 600 006. Petitioner

vs.

1. IDBI Bank Limited,
Specialised Corporate Branch,
Represented by its Deputy General Manager,
Having Office at No.7,
Chevvalier Sivaji Ganesan Salai,
(South Boag Road), T.Nagar,
Chennai - 600 017.

2. Shri K.T.Ahmed Mustafa

3. Shri S.A.Mohamed Mohindeen 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 the order dated 22.11.2017 passed in I.A.No.724 of 2017 in OA No.471 of 2016 on the file of the Honourable Debts Recovery Tribunal-II, Chennai and quash the same.

For Petitioner : Mr.Anil Relwani

ORDER

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

Order dated 22.11.2017 passed in I.A.No.724 of 2017 in O.A.No.471 of 2016, on the file of Debts Recovery Tribunal-II, Chennai, is impugned in this writ petition and the same is as follows:

"5. Heard both side arguments. On perusal of IA No.724/2017, the petitioners filed this IA to reject

the OA in respect of Rs.28,58,,47,138/- towards bank guarantee. On perusal of OA and documents it is true that at this stage there is no document to prove the guarantee due of Rs.28,58,,47,138/-. But, it has to be decided whether this claim amount is proper or not only in full trial of the OA. At this stage, this petition cannot be allowed.

In the result, IA No.724/2017 is dismissed. No Costs."

2. Mr.Anil Relwani, learned counsel for the petitioner submitted that having observed that there was no document to prove the guarantee due of Rs.28,58,47,138/-, the Debts Recovery Tribunal-II, Chennai, instead of dismissing the OA, with regard to the said guarantee, dismissed I.A.No.724 of 2017.

3. Added further, learned counsel for the petitioner, further submitted that if the abovesaid order in I.A.No.724 of 2017 in O.A.No.471 of 2016 dated 22.11.2017, has to be challenged on appeal, under Section 21 of the Recovery of Debts Due to Bank and Financial Institutions Act, the petitioner would be unnecessarily saddled with an order of pre deposit, which is mandatory. In this context, he also invited the attention of this Court to the bank guarantee.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. Pending Original application, an interim order is passed in I.A.No.724 of 2017 in O.A.No.471 of 2016, and the said order can be challenged by way of revision under Article 227 of the Constitution of India and that no challenge can be entertained under Article 226 of the Constitution of India, by way of a writ petition. Writ petition is misconceived.

6. Further contention of the writ petitioner that when the Debts Recovery Tribunal-II, Chennai had observed that there was no document to prove the bank guarantee, I.A.No.724 of 2017, ought to have been allowed, dismissing OA with regard to said bank guarantee of Rs.28,58,47,138/-, cannot be countenanced, for the reason that Interim order passed inter se between the parties, not reversed or modified or cancelled, can always be taken advantage, at the time of final hearing of the main application, if no document is filed by the bank, to substantiate their case.

7. Contention that if the petitioner has to file an appeal under Section 21 of RDDBFI Act and in such circumstances, the petitioner would be confronted with a pre deposit, is not a ground to prefer either a writ petition under Article 226 of the

Constitution of India or revision petition under Article 227 of the Constitution of India, in the light of the decision of the Hon'ble Supreme Court in Narayan Chandra Ghosh vs. Uco Bank & Ors. reported in AIR 2011 SC 1913, wherein, Hon'ble Supreme Court held that pre deposit is a mandatory requirement for entertaining the appeal. Thus, the course open to the petitioner is either to challenge the order made in I.A.No.724 of 2017 in O.A.No.471 of 2016 dated 22.11.2017, or to take advantage of the Interim order in O.A.No.471 of 2016, if no document is filed by the bank.

8. With the above observation, writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To,

The Presiding Officer,
Debts Recovery Tribunal - II
Chennai.

+1cc to Mr.Anil Relwani, Advocate, S.R.No.13855

RRK(13/03/2018)

W.P.No.4039 of 2018

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