

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.15092 of 2011 and
M.P.No.1 of 2011

1. P.V.R.S.Mani Kumar
Sole Proprietor M/s.Kumar Constructions,
No.6, Jamaliam Nagar,
Perambur High Road,
Chennai - 600 012.
2. P.Bhuvaneswari
3. P.Sathakeerthi .. Petitioners

Vs.

1. Indian Bank,
No.812, 1st Floor,
E.V.R.Periyar High Road,
Chennai - 600 010.
2. The Registrar,
The Debt Recovery Appellate Tribunal,
IV Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records on the file of the Debt Recovery Appellate Tribunal, Chennai in M.A.No.550 of 2010 and to quash the order dated 28.03.2011 passed in M.A.No.550 of 2010 and consequently allow the I.A.No.197 of 2008 in O.A.No.182 of 2007 on the file of the Debts Recovery Tribunal - I, Chennai and thereby permit the petitioners to file the additional written statements.

For Petitioners : Mr.Manoj Sreevatsan

For Respondents : Mr.Jayesh Dolia
for M/s.Aiyer and Dolia (R1)
R2 - Tribunal

O R D E R
(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorari mandamus calling for the records on the file of the Debt Recovery Appellate Tribunal, Chennai in M.A.No.550 of 2010 and to quash the order dated 28.03.2011 passed in M.A.No.550 of 2010 and consequently allow the I.A.No.197 of 2008 in O.A.No.182 of 2007 on the file of the Debts Recovery Tribunal - I, Chennai and thereby permit the petitioners to file the additional written statements.

2.The 1st respondent - Bank filed O.A.No.182 of 2007 on the file of the Debts Recovery Tribunal - I, Chennai for recovery of the amounts stated to be due from the petitioners and two others. The loan was sanctioned to M/s.Kumar Constructions and the petitioners 2 & 3 stood as guarantors for the said loan. The petitioners filed their written statement before the Debts Recovery Tribunal in August 2007. Thereafter, the 1st respondent - Bank filed their proof affidavit before the Debts Recovery Tribunal. Subsequent to the filing of the proof affidavit, an ex parte decree was passed, which was subsequently set aside. Thereafter, on 24.10.2008, the petitioners filed an application in I.A.No.197 of 2008 in O.A.No.182 of 2007 seeking permission to file additional written statement in O.A.No.182 of 2007. The said application was contested by the 1st respondent - Bank stating that the petitioners are seeking to file additional written statement to fill up the lacuna and to get over the vital admissions made by them in the original written statement. The Debts Recovery Tribunal - I, Chennai, by order dated 16.07.2010, dismissed the application. Aggrieved over the same, the petitioners preferred an appeal in M.A.No.550 of 2010 on the file of the Debt Recovery Appellate Tribunal and the Appellate Tribunal also confirmed the order of the Debts Recovery Tribunal - I, Chennai and dismissed the appeal. Challenging the same, the petitioners have filed the above Writ Petition.

3.The learned counsel for the 1st respondent - Bank submitted that the 1st respondent - Bank is not going to file any additional proof affidavit and they would get along with the matter as it stood prior to the filing of the application in I.A.No.197 of 2008 in O.A.No.182 of 2007.

4.It is not in dispute that the said application has been filed by the petitioners after the filing of the proof affidavit by the 1st respondent. In other words, the application has been filed after the commencement of trial. When the 1st respondent - Bank had proceeded with the trial by filing a proof affidavit before the Debts Recovery Tribunal, based on the available pleadings, if the petitioners are allowed to file additional

written statement, that would definitely prejudice the 1st respondent - Bank. When the petitioners had sufficient time to file the written statement raising all defences available to them, they took their own time to file the present application seeking leave to file additional written statement. The Debts Recovery Tribunal, also found that by filing the additional written statement, the petitioners are trying to withdraw the crucial admissions made by them in the original written statement. Though the petitioners are the defendants in the suit and are entitled to raise inconsistent pleas, the admissions made in the original written statement cannot be allowed to be withdrawn. The petitioners are not seeking to file additional written statement based on any new materials, which they got just prior to the filing of the application. All the materials were available even on the date of filing of the original written statement. However, the petitioners chose not to mention about the same in the written statement. The filing of the additional written statement is only to fill up the lacuna, which was rightly rejected by the Debt Recovery Appellate Tribunal and the Debts Recovery Tribunal. In these circumstances, the Writ Petition is devoid of merits and the same is dismissed.

5.The learned counsel for the petitioners submitted that the Debts Recovery Tribunal - I, Chennai may be directed to decide the application in O.A.No.182 of 2007 on merits without being influenced by any of the observations made either by the Debt Recovery Appellate Tribunal or Debts Recovery Tribunal.

6.The learned counsel for the 1st respondent - Bank has no objection for giving such observation.

7.In view of the same, we direct the Debts Recovery Tribunal - I, Chennai to dispose of O.A.No.182 of 2007 on merits and in accordance with law, uninfluenced by any of the observations made either by the Debt Recovery Appellate Tribunal or by the Debts Recovery Tribunal - I, Chennai in I.A.No.197 of 2008, after giving due opportunity of hearing to all the parties as expeditiously as possible. No costs. consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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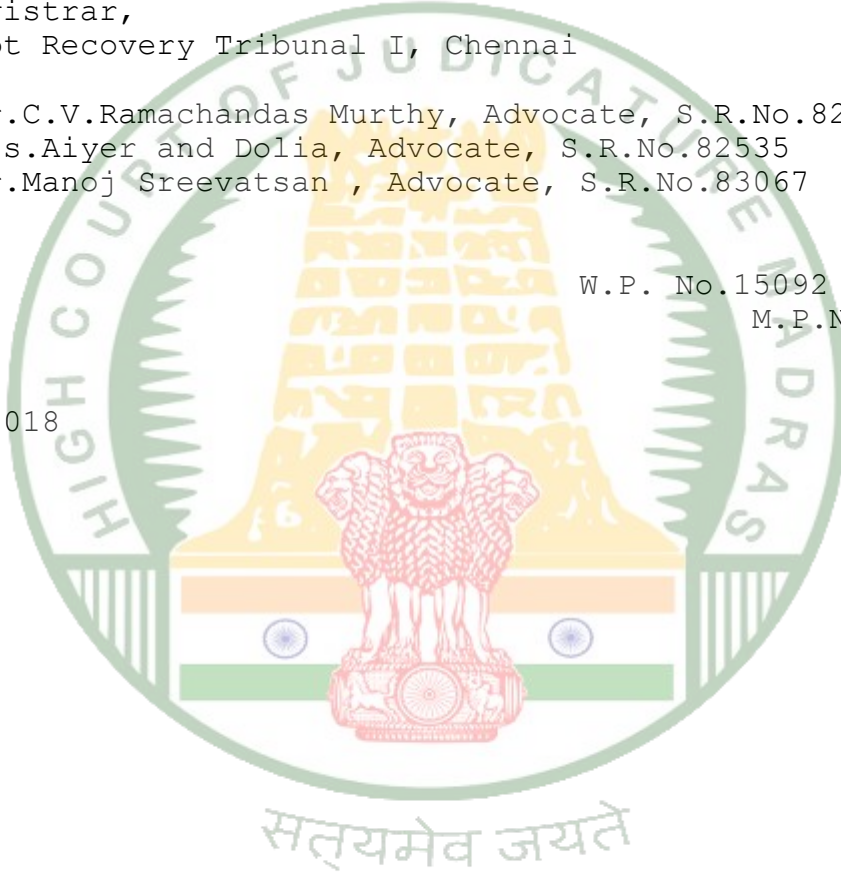
To

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2. The Registrar,
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IV Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai.
3. The Registrar,
The Debt Recovery Tribunal I, Chennai

+1cc to Mr.C.V.Ramachandas Murthy, Advocate, S.R.No.82667
+1cc to M/s.Aiyer and Dolia, Advocate, S.R.No.82535
+1cc to Mr.Manoj Sreevatsan , Advocate, S.R.No.83067

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JP (CO)
CS/26/12/2018



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