

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.20450 of 2018
and WMP No.24024 of 2018
Review Application (Writ) No.96 of 2018
and WMP No.19680 of 2018

Smt.E.Rukmini

... Petitioner in both WP.20450/2018 and Rev.Appln.96/18

vs.

1. Canara Bank,
Hombegowda Nagar Branch,
No.211/62, 11th Cross,
Wilson Garden,
Hombegowda Nagar, Bangalore,
Rep. by its Chief Manager,
Sri.P.M.Kushalappa

2. B.Perumal Swamy

3. C.Jayappa Reddy.

4. H.S.Devaraj

... Respondents in both WP.20450/2018 and Rev.Appln.96/18

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, to call for the records relating to the impugned order dated 25.04.2018 made in AIR No.704 of 2014 on the file of Debts Recovery Appellate Tribunal, Chennai in dismissing the appeal for non-compliance of pre-deposit and to quash the same and consequently, direct the learned Debts Recovery Appellate Tribunal, Chennai to decide the appeal on merits by restoring on its file.

Prayer in Review Appln(Writ)No.96/2018:

To allow the above review application and set aside the order dated 28/03/2018 made in WP.No.7433 of 2018 on the file of this Hon'ble Court.

WP.NO.7433/2018:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction in the nature of Writ, to call for the records relating to the Impugned Order dt 7.3.2018 made in I.A. No. 1780 of 2017 in A.I.R. No.704 of 2017 on the file of Debt Recovery Appellate Tribunal Chennai by directing the petitioner to pay a sum of Rupees Forty Lakhs within a period of four weeks and to quash the same and consequently direct the Learned Debt Recovery Appellate Tribunal Chennai to decide the appeal on merits without insisting the petitioner to make the pre-deposit along with R.A. No. 127 of 2017 jointly within the stipulated time.

For Petitioner : Mr.AR.L.Sundaresan
for Mr.C.Prabakaran

ORDER

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

Material on record discloses that earlier, the petitioner had filed W.P.No.7433 of 2018, challenging the order dated 07.03.2018 made in IA No.1780 of 2017 in AIR No.704 of 2017, on the file of Debts Recovery Appellate Tribunal, Chennai, by which the appellate tribunal, ordered pre deposit of Rs.40 Lakhs, with the Registrar of the appellate tribunal. Sum decreed was Rs.1.27 Crores, together with further interest thereon. Following a decision of the Hon'ble Supreme Court in Narayan Chandra Ghosh vs. UCO Bank & Ors., reported in AIR 2011 SC 1913, a Hon'ble Division Bench of this Court, confirmed the order made by the appellate tribunal.

2. After the dismissal of the writ petition, learned counsel for the petitioner therein sought for extension of time, by four weeks from the date of passing of the order to make pre deposit of Rs.40 Lakhs, with the Registrar of Debts Recovery Appellate Tribunal, Chennai. Considering the request, a Hon'ble Division Bench extended the time to make pre deposit, by four weeks, from the date of passing of the order in WP No.7433 of 2018 dated 28.03.2018. Subsequently, AIR No.704 of 2017, has been dismissed on 25.04.2018 and the order reads thus:

"Ld. Counsel Mr.S.Angamuthu for Appellant present.

Ld. Counsel Mr.H.Md.Hussain for R1 Bank present.

Ld. Counsel Mr.J.Aravind Babu for R4 & R5 present.

Appellant counsel fairly concedes that order of pre-deposit has not been complied with nor any order of stay is passed by Hon'ble High Court in this matter.

DRAT cannot entertain any appeal without ensuring the pre-deposit.

Hence, Appeal stands dismissed for want of compliance of pre-deposit."

3. Material on record further discloses that seeking review of the order made in W.P.No.7433 of 2018, dated 28.03.2018, Review Application (Writ) No.96 of 2018, has been filed. Warrant of attachment of the immovable property in TRC No.2705 of 2017, has been issued and the same reads thus:

"WARRANT OF ATTACHMENT OF IMMOVABLE PROPERTY
TRC NO.2705/17

Between:

Canara Bank ARM Branch II : Certificate Holder

And

Sri R. Perumal Swamy & anr : Defendant / Certificate Debtors

1. Sri. R. Perumal Swamy,
S/o.Ramaiah,
Residing at No.345, H.Siddaiah Road,
Wilson Garden,Bangalore.

2. Smt.E.Rukmini,
W/o. Late R.Eshwara Murthy,
Residing at No.27, 11th Cross,
Wilson Garden, Bangalore.

WHEREAS Sri R. Perumal Swamy & Others was ordered by the Recovery Certificate of this Tribunal passed on the day of second November 2017 in O.A.No.259/2017 to pay to the Applicant Bank / F.I. Rs.1,27,18,855.20 the sum as noted below and whereas the said has not been paid.

Recovery Certificate	Details
Principal	Rs.12718855.20
Interest	Rs.74507171.52
Costs	Rs.190005.00

Recovery Certificate	Details
Further Interest	From 29/04/2018
Total	Rs.87416031.72

This is to command you to attach the immovable property of the said Certificate Debtor as set forth in the Schedule hereunto annexed, or which shall be pointed out to you by the said sum and unless the said shall pay above said sum and the costs of this attachment, to hold the same until further orders from the Recovery Officer.

You are further commanded to return this warrant on or before the 25.06.2018 with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed. Given under my hand and the seal of the Tribunal, this 11th day of

SCHEDULE OF PROPERTY

All that piece and parcel of the Residential Apartment bearing No.002 in Municipal No.18/1, on ground floor of A block in Casa Ansal, Bannerghatta Road, N.S.Palya, Bangalore, measuring 1821 sq.ft. of Built up area and bounded on

East by: open area towards Bannerghatta

West by : Apartment no.003 Block A

North by : Apartment No.A001

South by: Block B in Casa Ansal.

ANURADHA GANESH
RECOVERY OFFICER I
DEBTS RECOVERY TRIBUNAL II
BENGALURU

4. Though petitioner has raised several grounds to set aside the order made in AIR No.704 of 2017 dated 25.04.2018, on the file of Debts Recovery Appellate Tribunal, Chennai, Mr.AR.L.Sundaresan, learned senior counsel for the petitioner submitted that none of the grounds raised in the writ petition are urged. He further submitted that the review application, would not be pressed. Submission of the learned senior counsel is placed on record.

5. Learned senior counsel further submitted that the petitioner has not been properly advised. As right of appeal is statutory, he only requests this Court to extend equity and grant three more weeks from today, to make the pre deposit of Rs.40 Lakhs, otherwise, the petitioner would lose his chance of filing an appeal, against a huge decree of Rs.1.27 Crores. It

is also his contention that bank has also filed, an appeal and no prejudice would be caused, if time is extended by three weeks from today, to make the payment. Except the above, no other submissions were made.

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

7. Appellate tribunal in IA No.1780 of 2017 dated 07.03.2018, has directed the petitioner to deposit a sum of Rs.40 Lakhs, within four weeks from the said date and further directed the Registry to post IA No.1780 of 2017, for confirmation of pre deposit of the petitioner by 04.04.2018.

8. While sustaining the correctness of the order dated 07.03.2018 and on the request of the learned counsel for the petitioner, vide order dated 28.03.2018, a Hon'ble Division Bench has extended the time to make pre deposit by four weeks from 28.03.2018, which expired on 25.04.2018.

9. Petitioner has not deposited the said amount before 25.04.2018. But after 1 1/2 months, seemed to have filed Review Application on 05.06.2018, numbered as Review Application No.96 of 2018. Review Application filed, is also after the dismissal of AIR No.704 of 2017 dated 25.04.2018.

10. Remedy under Article 226 of the Constitution of India is on Equity, Good conscience and Fair Play. Having regard to the only contention of the learned senior counsel for the petitioner that petitioner/appellant has statutory right of appeal and a huge decree amount would be executed, if not challenged, exercising the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and placing on record the submission of the learned senior counsel for the petitioner that pre deposit of Rs.40 Lakhs would be made within three weeks from today, we extend the time, accordingly.

11. There is no error in the order impugned. Petitioner is granted three weeks time, from today, to make the pre deposit. Conduct of the petitioner does not reflect bonafide. Hence, we further direct the petitioner to pay costs of Rs.2 Lakhs to the Canara Bank, 1st respondent herein within a period of three weeks from today. No further extension of time would be granted. It is made clear that petitioner shall not delay citing receipt of the order copy.

12. With the above observations, writ petition is disposed of. Review Application No.96 of 2018, is dismissed as withdrawn. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Chief Manager,
Canara Bank,
Hombegowda Nagar Branch,
No.211/62, 11th Cross,
Wilson Garden,
Hombegowda Nagar, Bangalore.

+1cc to Mr.C.s.Saravanan, Advocate sr.no.54861

W.P.No.20450 of 2018
and WMP No.24024 of 2018
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nr 05/09/2018

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