

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE T.RAVINDRAN

W.P.No.5599 of 2017
and WMP No.5962 of 2017

S.Ramesh

... Petitioner

vs.

1. The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008.

2. The Authorised Officer,
State Bank of India,
SME Ekkaduthangal Branch,
No.5, 2nd Floor, Jawaharlal Nehru Road,
Ekkaduthangal,
Chennai - 600 032.

.... 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 in pertaining to the Order dated 31.01.2017 issued by 1st respondent in AIR (SA) No.346 of 2015 before Debts Recovery Appellate Tribunal and quash the same.

For Petitioner : Ms.G.Jagadeeswari

For Respondents : Mr.AV. Arun (for R2)

ORDER

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

Material on record discloses that earlier Debts Recovery Appellate Tribunal, Chennai passed orders in IA No.372 of 2015 in AIR (SA) No.346 of 2015 dated 20.12.2016, directing the petitioner to deposit Rs.1.10 Crores and for non-compliance IA No.373 of 2015, has been dismissed, resulting in rejection of appeal AIR (SA) No.346 of 2015.

2. Being aggrieved two Civil Revision Petitions viz., CRP (NPD) Nos.285 & 286 of 2017 have been filed. In CRP (NPD) No.286 of 2017, petitioner has sought for an order to set aside the order dated 30.11.2016 passed by Debts Recovery Appellate Tribunal, Chennai in IA No.372 of 2015 in AIR (SA) No.346 of 2015. In CRP (NPD) No.285 of 2017 petitioner has sought for a prayer to set aside the order dated 20.12.2016 passed by Debts Recovery Appellate Tribunal, Chennai in IA No.372 of 2015 and AIR (SA) No.346 of 2015.

3. Taking note of the decision of the Hon'ble Supreme Court in Narayana Chandra Ghosh Vs. UCO Bank & Ors., reported in AIR 2011 SC 1913, Mr.Jesus Moris Ravi, learned counsel, on instructions from the client Mr.S.Ramesh, present in Court, submitted that pre-deposit, as ordered by Debts Recovery Appellate Tribunal, Chennai, would be deposited with the Registrar of Debts Recovery Appellate Tribunal, Chennai, vide common order in CRP (NPD) Nos.285 & 286 of 2017, dated 27.01.2017, a Hon'ble Division Bench, to which one of us is a party [Hon'ble Mr.Justice S.Manikumar], ordered as hereunder

"7. Guarantor is on appeal before DRAT, Chennai. Material on record shows that DRAT, Chennai, has exercised its discretion and granted reduction in deposit and as per the decision of the Hon'ble Supreme Court in Narayan Chandra Ghosh's case, no further reduction is permissible. Considering the difficulties expressed before us and taking note of the consent of Mr.Jesus Moris Ravi, learned counsel for the petitioner, on instructions from his client viz., Mr.S.Ramesh, present in the Court, and in exercise of extraordinary jurisdiction under Article 226 & 227 of the Constitution of India, while dismissing the Civil Revision Petitions as withdrawn, we hereby grant one month time from today i.e. upto 27.02.2017, to the Civil Revision Petitioner to deposit a sum of Rs.1.10 Crores, in the name of the Registrar, DRAT, Chennai. We make it clear that in default, application I.A.No.372 of 2015, for waiver would stand dismissed, resulting in rejection of AIR (S.A.) No.346 of 2015, on the file of the DRAT, Chennai. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed."

4. According to the writ petitioner/ borrower, before the Debts Recovery Appellate Tribunal, Chennai, though a memo dated 30.01.2017 has been filed by Mr.S.Ramesh, stating that this Court in CRP (NPD) Nos.285 & 286 of 2017, has granted one month time, for compliance of the order, dated 20.12.2016 made in IA No.372 of 2015 and AIR (SA) No.346 of 2015. and that an application for obtaining a copy of the common order has been

made, the Debts Recovery Appellate Tribunal, Chennai, without considering the same, dismissed AIR (SA) No.346 of 2015 on 31.01.2017, warranting filing of the instant writ petition for a writ of certiorari.

5. Assailing the correctness of the order dated 31.01.2017, made in AIR (SA) No.346 of 2015, Ms.G.Jagadeeswari, learned counsel for the petitioner submitted that Debts Recovery Appellate Tribunal, Chennai has failed to consider the common order of this Court in CRP (NPD) Nos.285 & 286 of 2017 dated 27.01.2017, in proper perspective. The Debts Recovery Appellate Tribunal, Chennai ought to have granted time, for payment of pre-deposit upto 27.02.2017, instead of dismissing the appeal.

6. Heard Ms.G.Jagadeeswari, learned counsel for the petitioner and perused the materials available on record.

7. Though, Debts Recovery Appellate Tribunal, Chennai has passed the impugned order dated 31.01.2017 and the petitioner has taken delivery of the order made in AIR (SA) No.346 of 2015 on 14.02.2017, instant writ petition has been filed on 27.02.2017, the last date fixed by this Court for deposit of Rs.1.10 Crores, as ordered by the appellate tribunal, for entertaining the appeal.

8. Though, orders of the Debts Recovery Appellate Tribunal, in IA No.372 of 2015 in AIR (SA) No.346 of 2015 dated 30.11.2016 and the consequential order, both in IA No.372 of 2015 and AIR (SA) No.346 of 2015 dated 20.12.2016, were challenged in CRP (NPD) Nos.285 & 286 of 2017, after making submission on the challenge to the orders, Mr.P.Jesu Moris Ravi, learned counsel for the revision petitioner therein, fairly conceded that both the CRPS be dismissed as withdrawn. However, taking instructions from Mr.S.Ramesh, petitioner therein, present in Court, prayed to grant one month time from 27.01.2017, the date on which, the revision petitions were heard and accordingly, time was granted upto 27.02.2017, so as to enable the petitioner therein to deposit Rs.1.10 Crores with the Registrar, Debts Recovery Appellate Tribunal, Chennai.

9. While disposing of the revision petitions, we also made it clear that in default, I.A.No.372 of 2015, application for waiver would stand dismissed resulting in rejection of AIR (SA) No.346 of 2015 on the file of Debts Recovery Appellate Tribunal, Chennai. According to the petitioner, a memo dated 30.01.2017 has been filed before Debts Recovery Appellate Tribunal, Chennai, which reads thus:

"The Appellant respectfully submits as follows:

The Appellant respectfully submits that the Appellants herein have filed CRP NPD No.285 of 2017 and CRP NPD No.286 of 2017 before Hon'ble High Court of Judicature at Madras and the Hon'ble High Court of judicature at Madras has granted one month time extension for compliance of Order dated 20.12.2016 in I.A.No.372 of 2015 in AIR SA No.346 of 2015. We have applied for Order Copy in SR No.5081 of 2017 and SR No.5082 of 2017."

10. On 31.01.2017, When AIR (SA) No.346 of 2015, came up for further hearing, submission seemed to have been made by Mr.Jesus Moris Ravi, learned counsel for the appellant therein that conditional order dated 30.11.2016 in IA No.372 of 2015 in AIR (SA) No.346 of 2015, has not been complied with, but a writ petition has been filed challenging the conditional order before this Court. However, taking note of Section 18 of the SARFAESI Act, 2002, and observing that Debts Recovery Appellate Tribunal, Chennai cannot entertain any appeal, without pre-deposit, vide order dated 31.01.2017, Debts Recovery Appellate Tribunal, Chennai dismissed the appeal, for want of compliance of the order of pre-deposit.

11. Debts Recovery Appellate Tribunal, Chennai, has also made it clear that if the High Court directs the tribunal, the appellant would be at liberty to get the case reopened in terms of the order of the High Court, as stated supra. Though, the Hon'ble Division Bench of this Court has granted time to the writ petitioner, to make the pre-deposit of Rs.1.10 Crores, upto 27.02.2017, the petitioner has not made the deposit. But has found fault with the Debts Recovery Appellate Tribunal, Chennai in dismissing the AIR (SA) No.346 of 2015.

12. Material on record discloses that common order in CRP (NPD) Nos.285 & 286 of 2017 dated 27.01.2017, has been made ready on 31.01.2017 itself and the Registry of High Court Madras has delivered the said common order on 02.02.2017 itself. While that be so, nothing prevented the writ petitioner from filing an application before Debts Recovery Appellate Tribunal, Chennai, alongwith the copy of the common order of this Court in CRP Nos.285 & 286 of 2017 dated 27.01.2017 and seek for reopening of AIR (SA) No.346 of 2015 as observed by Debts Recovery Appellate Tribunal, Chennai.

13. Nowhere in the affidavit, the petitioner has stated about the payment, if any, made, after the issuance of Section 13(2) notice. As on 16.12.2014, when possession notice was issued under Section 13(4) of the SARFAESI Act, 2002, a sum of

Rs.4,31,73,704/- was due. E-auction notice has been issued on 15.02.2016. There is absolutely no bonafide in the action of the writ petitioner, except, to state that there is an attempt to protract. Equity cannot be extended to the writ petitioner.

14. Loan has been borrowed between 2010 and 2012 and as on August 2012, total loan availed was Rs.4.72 Crores. Some payments have been made and therefore, notices have been issued mentioning the outstanding as Rs.4,31,73,704/-. Attitude of the petitioner in protracting the payment and blaming the tribunal, instead of filing a petition before Debts Recovery Appellate Tribunal, Chennai for reopening, cannot be appreciated.

15. For the reasons stated supra, writ petition is dismissed with cost of Rs.25,000/- [Rupees Twenty Five Thousand], to be paid by the writ petitioner, to the bank within one month, from the date of receipt of a copy of this order, failing which, bank is at liberty to proceed in accordance with law. Consequent to the dismissal of writ petition, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 600 008.

+1cc to Mr.AV.Arun, Advocate, S.R.No.17276

+2ccs to Ms.G.Jagadeeswari P.Jesus Moris Ravi,
Advocate, S.R.No.17663

W.P.No.5599 of 2017
and WMP No.5962 of 2017

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