IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.20875 of 2018 and
W.M.P.No.24506 of 2018

S.Ramesh

.. Petitioner

vs.

1.The Registrar
Debt Recovery Appellate Tribunal
Chennai

2.The Registrar
Debt Recovery Tribunal - III
Chennai

3. UCO Bank, Pondicherry Main Branch
Represented by its Chief Manager
No.37, Mahe De Labourdonnais
Pondicherry - 605 001

4.S.Dhanaraj
5.Mrs.S.Amaravathi
6.Mrs.Geetha

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the 1^{st} respondent pertains to the impugned order dated 19.03.2018 made in M.A.No.106 of 2017 against I.A.No.1026 of 2016 in O.A.No.337 of 2015 on the file of Debts Recovery Appellate Tribunal, Chennai and set aside the same as arbitrary, illegal and consequently direct he 2^{nd} respondent DRT-III to dispose of the said I.A.No.1026 of 2016 in O.A.No.337 of 2015 on merits and in accordance with law.

For Petitioners : Mr.P.R.Thiruneelakandan

For Respondents : R1 & R2 - Tribunal
Mr.M.Muthukumar - for R3
R4 to R6 - Given up

O R D E R

(Order of the Court made by M.DURAISWAMY,J.)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent pertaining to the impugned order dated 19.03.2018 made in M.A.No.106 of 2017 against I.A.No.1026 of 2016 in O.A.No.337 of 2015 on the file of the Debts Recovery Appellate Tribunal, Chennai and to set aside the same and consequently direct the 2nd respondent Debts Recovery Tribunal-III, Chennai to dispose of the said Interlocutory Application on merits and in accordance with law.

2.It is the case of the petitioner that the 3rd respondent bank filed O.A.No.337 of 2015 to recover the loan outstanding amount. In the said Original Application, respondents 1, 4 to 6 were set ex parte on 12.02.2016 for not filing counter. Thereafter, the petitioner filed an application in I.A.No.1026 of 2016 on 28.03.2016 under section 22(2)(g) of the Recovery of Debts Due To Banks & Financial Institutions Act, 1993 along with the counter statement in the main Original Application to set aside the ex parte order made in O.A.No.337 of 2015.

3. The Debts Recovery Tribunal-III, Chennai, passed a conditional order by directing the petitioner and the respondents 2 to 4 to deposit a sum of 30,00,000/- (Rupees thirty lakhs only) to set aside the ex parte order dated 12.02.2016.

4. Aggrieved over the same, the petitioner and the respondents 2 to 4 have preferred an appeal in M.A.No.106 of 2007 on the file of the Debt Recovery Appellate Tribunal, Chennai. However, the Debt Recovery Appellate Tribunal also dismissed the appeal confirming the order passed by the Debts Recovery Tribunal.

5. The respondent-bank has filed O.A.No.337 of 2015 for recovery of a sum of Rs.43.58 lakhs and the Debt Recovery Appellate Tribunal has recorded that the petitioner and the respondents 2 to 4 have deposited a sum of Rs.4,00,000/- (Rupees four lakhs only) in the year 2014, i.e. prior to the filing of the Original Application to set aside the ex parte order dated 12.02.2016.

6. The Debts Recovery Tribunal directed the petitioner and the respondents 2 to 4 to deposit a sum of Rs.30,00,000/- as a condition precedent for allowing the petition. The Court cannot impose onerous condition on the parties, therefore, the imposition of a condition to deposit more than 2/3rd of the claim amount cannot be sustained. If at all, the Debts Recovery Tribunal, could have imposed costs for setting aside the ex parte order.

7. The learned counsel appearing for the petitioner submitted that the petitioner has got valid defence in the Original Application and therefore, the imposition of condition would prejudice the right of the parties.

8. We are of the considered view that the direction given by the Debts Recovery Tribunal to the petitioner and the respondents 2 to 4 to deposit Rs.30,00,000/- is onerous and is liable to be set aside. However, the petitioner can be directed to pay costs for setting aside the ex parte order dated 12.12.2016.

9. Accordingly, the impugned order made in M.A.No.106 of 2017 on the file of the Debts Recovery Appellate Tribunal, Chennai and I.A.No.1026 of 2016 in O.A.No.337 of 2015 on the file of the Debts Recovery Tribunal, Chennai are set aside on condition that the petitioner paying a sum of Rs.25,000/- (Rupees twenty five thousand only) as costs to the 3rd respondent-UCO Bank, Pondicherry Main Branch, within a period of two weeks from the date of receipt of a copy of this order and on payment of the costs, the Debts Recovery Tribunal is directed to take up the O.A.No.337 of 2016 and decide the same, on merits and in accordance with law after giving due opportunity of hearing to the parties.

With these observations, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Registrar
Debt Recovery Appellate Tribunal
Chennai

2.The Registrar
Debt Recovery Tribunal - III
Chennai

3. The Chief Manager
UCO Bank, Pondicherry Main Branch
No.37, Mahe De Labourdonnais
Pondicherry - 605 001

+1cc to Mr.M.Muthukumar, Advocate, S.R.No.62033

W.P. No.20875 of 2018 and
W.M.P.No.24506 of 2018

GSP(18/09/2018)