

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.34059 of 2017

and

WMP No.37790 of 2017

Mrs.Sunitha

... Petitioner

vs.

1. The Authorised Officer,
City Union Bank Limited,
Administrative Office,
No.24-B, Gandhi Nagar,
Kumbakonam 612 001.

2. Mr.V.Manickam

3. Mrs.A.Vasantha

4. The Registrar,
Debts Recovery Appellant Tribunal,
4th Floor, No.55, Ethiraj Salai,
Indian Bank, Egmore,
Chennai - 600 002.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for entire records from the 1st respondent Bank and quash the order passed in waiver petition by Debt Recovery Appellate Tribunal, Chennai on 30.11.2017 order made in IA No.1666/2017 in AIR (SA) No.617 of 2017.

For Petitioner : Mr.D.Duraiaraj

For Respondents : Mr.R.Sivaraman (for R1)

ORDER

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

Proceedings dated 30.11.2017 in IA No.1666 of 2017 in AIR (SA) No.617 of 2017 on the file of Debts Recovery Appellate Tribunal, Chennai, shows that on 03.09.2016, as against two different loan accounts, City Union Bank Limited has issued a demand notice under Section 13(2) of the SARFAESI Act, for recovery of Rs.82.39 Lakhs with subsequent interest at the rate of 16.00% plus penal 2.00% p.a (Non-Compounded) with monthly rests since 01.09.2016 till realization.

2. Petitioner in I.A.No.1666 of 2016, has contended that after the issuance of the second show cause notice dated 13.04.2017, petitioner has discharged one loan account and on the other loan account paid a sum of Rs.18,50,000/-. But without considering the above, fixing the basis of the amount due, as Rs.45.46 Lakhs, DRAT, Chennai, has directed the petitioner to make a pre deposit of Rs.12 Lakhs within four weeks from the date of the order and directed the Registry of DRAT, to post the matter on 28.12.2017.

3. When the said order in I.A.No.1666/17 in AIR SA No.617 of 2017 dated 30.11.2017 on the file of DRAT, Chennai, was challenged, this Court on 28.12.2017, has ordered notice through Court and privately, returnable on 02.01.2018.

4. On this day, when the matter came up for further hearing, Mr.D.Durairaj, learned counsel for the petitioner submitted that on notice being served by this Court on 28.12.2017, a memo was filed in DRAT, Chennai, about the pendency of the present writ petition. By observing that depending upon the outstanding in instant writ petition W.P.No.34059 of 2017, further proceedings would be taken, DRAT, Chennai has disposed of AIR SA No.617 of 2017.

5. Mr.R.Sivaraman, learned counsel for the respondent bank submitted that in the auction held on 08.05.2017 auction purchaser, has deposited 25% of the bid amount and due to pendency of the instant writ petition, further steps have not been taken. Per contra, Mr.D.Durairaj, learned counsel for the petitioner submitted that auction purchaser did not deposit the amount within time, as provided for in the sale notice.

6. Be that as it may, interim order made in I.A.No.1666/17 dated 30.11.2017 has merged with the final order made in AIR SA No.617 of 2017. Though, Mr.D.Durairaj, learned counsel for the petitioner prayed that the instant writ petition WP.No.35059 of 2017 be retained till the petitioner files another writ petition, challenging the final order made in AIR SA No.617/2017, we are not inclined to do so, but at the same time, grant liberty to the petitioner to challenge the final order in AIR No.617 of 2017.

7. Order/observation of DRAT, Chennai, for revival, is not tenable in the light of the decision of the Hon'ble Division Bench of this Court to which one of us (Hon'ble Mr.Justice S.Manikumar), is a party. In Mrs.Shirin Iqbal Vs. Indian Bank, Ch-1 and Others, reported in 2017 (4) TLNJ 422 (Civil), a Division Bench, held as follows:

"Petitioners have not complied with the interim / conditional orders. Needless to state that challenge to interim order does not survive, when the main appeal is rejected. If there is any challenge to the order of rejection of appeal, and ultimately, if such rejection is

set aside, for any reasons, then the orders, if any passed at the interim stage, would revive, but on the facts and circumstances of this case, in our considered opinion, the converse, is not permissible."

8. Following the abovesaid decision, request of the writ petitioner for retention is not granted. As the instant writ petition is disposed of on the appeal AIR (SA) No.617 of 2017, reaching finality for non compliance, having regard to the statutory right of an appeal and the contention of the petitioner that a sum of Rs.18,50,000/- has already been paid on 18.05.2017, after the issuance of auction sale notice dated 13.04.2017, the same requires to be considered at the time of challenge to the order in AIR SA No.617 of 2017.

9. Mr.D.Durairaj, learned counsel for the petitioner submitted that writ petition against final order would be filed within a week's time.

10. On the submission of Mr.R.Sivaraman, learned counsel for the bank that after receipt of 25% of the bid amount, which fact has been disputed, by the learned counsel for the writ petitioner, as stated supra, no further steps have been taken, Bank is directed to maintain status quo.

11. Instant writ petition is disposed of with the above observations and directions. No Costs. WMP No.37790 of 2017 is ordered accordingly.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The Registrar,
Debts Recovery Appellant Tribunal,
4th Floor, No.55, Ethiraj Salai,
Indian Bank, Egmore,
Chennai - 600 002.

+1cc to Mr.R.Sivaraman, Advocate Sr.No.13002/18

+1cc to Mr.D.Durairaj, Advocate sR.No.34059

sm:1.3.2018

W.P.No.34059 of 2017

and

WMP No.37790 of 2017