

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2/2/2018

C O R A M

The Honourable Mr.Justice S.Manikumar
a n d
The Honourable Mrs.Justice V.Bhavani Subbaroyan

Writ Petition No.2259 of 2018

Mrs.S. Anuradha

... Petitioner

Vs

1. The Registrar
The Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55 Ethiraj Salai
Chennai 600 008.
 2. Small Industries Development Bank of India
Overseas Towers
756 Anna Salai (Opp.TVS)
Chennai 600 008.
 3. Mrs. Niketa Gandhi
 4. Mr.Manish Gandhi
 5. The Registrar
Debts Recovery Tribunal - II
Chennai.
 6. The Recovery officer
Debts Recovery Tribunal - II
Chennai.
- ... Respondents

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 order passed by the first respondent in I.A.No.81 of 2017 in A.I.R.No.456 of 2016, dated 28/7/2017 and the consequential order dated 30/8/2017 and quash the same and consequentially direct the first respondent Appellate Tribunal to restore the Appeal in AIR No.456 of 2016 to file and proceed with the appeal on merits and in accordance with law.

For petitioner ... Ms.Anuradha Balaji

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O R D E R

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

O.A.No.29 of 2012, has been instituted by Small Industries Development Bank of India, Chennai, against the third and fourth

respondents, before the Debts Recovery Tribunal - I, Chennai, for recovery of dues, in which the subject property, which belongs to the third respondent, was mortgaged. Vide order, dated 31/12/2012, Debts Recovery Tribunal - I, Chennai, issued recovery certificate, in D.R.C.No.124 of 2013, in favour of the second respondent.

2. D.R.C.No.124 of 2013, dated 8/12/2013, in O.A.No.29 of 2012, has been issued by the Presiding Officer of Debts Recovery Tribunal - I, and Notice of Demand, dated 1/1/2014, was issued by the Recovery Officer.

3. Material on record discloses that, as on 22/9/2016, a sum of Rs.2,71,17,790.10 (as per cost memo, dated 22/9/2016 filed by the Certificate Creditors), was due. Therefore, Recovery Officer, Debts Recovery Tribunal - II, in D.R.C.No.93 of 2014, dated 13/10/2016, has issued E-auction sale, Proclamation Sale, under Rule 52 (2) of Second Schedule to the Income Tax Act, 1961, r/w. Sections 25 to 29 of RDDB & FI Act, 1993.

4. Claiming herself to be a tenant, third party applications, under Rule 11 of the Second Schedule to the Income Tax Act, 1961, in Miscellaneous Application Nos.162, 163 and 164/2015 have been filed, in D.R.C.No.93 of 2014, before the Recovery Officer, Debts Recovery Tribunal - III, Chennai, praying

- a. to stay the proceeding in D.R.C.No.93 of 2014;
- b. to raise the order of attachment over the schedule property and to convey the same in her name on payment of balance sale consideration
- c. In the alternate to direct the Small Industries Development Bank of India, Chennai, to refund the amount paid by her towards sale consideration in respect of the schedule property with interest at the rate of 12% p.a., till the date of repayment.

5. Vide common order, dated 11/4/2016, the Recovery Officer, Debts Recovery Tribunal - 2, Chennai, disallowed all the applications. Being aggrieved, under Section 30 of the Recovery of Debts due to Bank Financial Institutions Act, 1993, the petitioner has filed Appeal No.11 of 2016, before the Debts Recovery Tribunal - II, Chennai. Vide order, dated 29/9/2016, Debts Recovery Officer - II, Chennai, dismissed the appeal. Consequently, e-auction notice, dated 13/10/2016, has been issued, bringing the property for auction, on 24/11/2016.

6. Being aggrieved by the order of dismissal, in Appeal No.11 of 2016, dated 29/9/2016, on the file of the Debts Recovery Tribunal - II, Chennai, the petitioner has filed

A.I.R.No.456 of 2016, before the Debts Recovery Appellate Tribunal, Chennai, along with I.A.No.81 of 2017, for waiver of pre-deposit.

7. After considering the submissions of the learned counsel for the petitioner and Small Industries Development Bank of India, Chennai, on 28/7/2017, Debts Recovery Appellate Tribunal, Chennai, has passed the following orders:-

"Learned counsel for appellant submits that appellant is neither a borrower nor a guarantor. Rather she was a tenant of the borrower who had made deposits of Rs.30 lakhs made in the year 2012 with the understanding that she will get status of a owner in the house in which she is residing after repayment of the dues owed towards the owner borrower and prayed for presuming that pre-deposit has been made. Placing reliance on the order dated 2/12/2015 of High Court of Madras in W.P.No.15097 of 2015 and M.P.No.1 of 2015 at Para 15, Ld. Counsel submits that aforesaid deposits were made in the year 2012 to satisfy the borrower, not the Bank.

Per contra, Ld counsel for respondent Bank submits that there is a dispute between the appellant and the borrower also. Appellant has filed a Civil Suit against the borrower for refund of money also. In such a situation, this deposits cannot be taken into consideration and prayed that pre-deposit should be directed on the basis of DRC amount, i.e.1.84 crores.

Whatever has been averred by the parties will be decided at the time of final hearing of the matter. However, in view of the fact that appellant is enjoying the possession of the property, for the purpose of this Appeal, I consider the OA amount i.e., Rs.33 lakhs as debt amount.

In view of the fact that DRAT cannot entertain any appeal without ensuring the pre-deposit of 50% of the debt amount, which cannot be reduced to less than 25% in any case. I hereby direct the appellant to make a pre-deposit of Rs.15,00,000/- (Rupees Fifteen lakhs only) with the Registrar of this Tribunal within four weeks from today. It is made clear that in the event of default to deposit the said amount within the stipulated period, the appeal shall automatically stand dismissed

without reference to this Tribunal.

I.A.No.81 of 2017 waiver application is disposed of.

List for confirmation of pre-deposit of Rs.15 lakhs on 29/8/2017."

8. Subsequently, on 30/8/2017, Debts Recovery Appellate Tribunal, Chennai, has passed the following order:-

"Appellant has preferred the Appeal, but no stay order by High Court has been granted whatsoever. In view of the fact that DRAT cannot entertain any appeal without ensuring the pre-deposit, hence, Appeal is dismissed for want of compliance.

However, it is made clear that in compliance of the order of High Court, matter may be revived in time."

9. Though, assailing the correctness of the order of the Debts Recovery Appellate Tribunal, Chennai, in I.A.No.81 of 2017 in A.I.R.No.456 of 2016, dated 28/7/2017, Ms.S.Anuradha Balaji, learned counsel for the petitioner made submissions, we are not inclined to agree with the same. Learned counsel for the petitioner submitted that within six weeks from today, conditional order would be complied with.

10. Placing on record the above, time is extended to make pre-deposit, as ordered by the Debts Recovery Appellate Tribunal, Chennai, in I.A.No.81 of 2017 in A.I.R.No.456 of 2016, dated 28/7/2017, by six weeks, from today. No sooner, pre-deposit is made, as agreed by the learned counsel for the petitioner and on filing proof along with memo to that effect, Debts Recovery Appellate Tribunal, Chennai, is directed to restore the appeal, in A.I.R.No.456 of 2016, and if it is otherwise in order, assign regular Appeal number and proceed further.

11. With the above directions, writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

mvs.

To

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Overseas Towers
756 Anna Salai (Opp.TVS)
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3. The Recovery officer
Debts Recovery Tribunal - II
Chennai.

+1cc to Mr.S.ARUNADHA BALAJI, Advocate, S.R.No. 8628

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TR(06/02/2018)



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