

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.2697 of 2018
and
WMP No.3342 of 2018

Ravindran Thangappan ... Petitioner
vs.

1. The Authorised Officer,
State Bank of India,
RACPC No.16, Whannels Road,
Egmore, Chennai - 9.

2. The Presiding Officer,
Debts Recovery Tribunal - 1,
770A, Spencer Towers-I,
Anna Salai, Chennai - 600 002. Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records connected with the issue of the impugned order dated 11.01.2018 passed by the 2nd respondent in S.A.No.82 of 2017, quash the same and consequently direct the 1st respondent to furnish the details of the outstanding amount payable after waiving the interest as per the order of the 2nd respondent dated 05.12.2017 after granting me the benefit provided under the Samadhan Scheme as per letter dated 03.01.2018.

For Petitioner : Mr.Ravikumar Paul, Sr. Counsel
for M/s.Paul and Paul
J.Hudson Samuel & Partners

ORDER

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

Record of proceedings dated 11.01.2018, of the Debts Recovery Tribunal-I, Chennai in S.A.No.82 of 2017, is impugned in the instant writ petition and the petitioner, has prayed for

a writ of certiorarified mandamus, to quash the said proceedings dated 11.01.2018 and consequently, prayed for a direction to the Authorised Officer, State Bank of India, 1st respondent herein to furnish the details of the outstanding amount payable, after waiving the interest, as per the order of the Presiding officer, Debts Recovery Tribunal-I, Chennai, 2nd respondent dated 05.12.2017, and grant the benefit provided under Samadhan Scheme, as per the letter dated 03.01.2018.

2. Inasmuch as the manner, in which the tribunal, has proceeded with S.A.No.82 of 2017, is the only challenge, we are of the view that notice to the bank can be waived and accordingly proceed with the case.

3. Ordinarily, this court would not interfere with the proceedings of the tribunal, at the interim stage. Hon'ble Supreme Court in T.P.Vishnu Kumar Vs. Canara Bank, P.N.Road, Tiruppur and Others reported in 2013 (10) SCC 652, at paragraph Nos.10 & 11, held as follows:

"10. Powers of the High Court under Article 226 cannot be invoked in the matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to the party or where such proceedings or action is wholly arbitrary, unreasonable and unfair. When the Act itself provides for a mechanism, by an appeal under Section 20 of the Act, in our view, the High Court is not justified in invoking jurisdiction under Article 226 of the Constitution of India to examine that the rejection of the applications by the Tribunal was correct or not. The petitioner and the contesting respondents have no case that either the Bank or the Tribunal had violated any statutory provisions by rejecting their applications.

11. A writ petition was preferred against the rejection of applications and the same were entertained by the learned Single Judge and decided on merits and which in our view is impermissible while exercising its jurisdiction under Article 226 of the Constitution. If the correctness or otherwise of each and every interim order passed by the Tribunal is going to be tested in a writ Court, it will only defeat the object and purpose of establishing such Tribunal. We have already noticed that due to the intervention of the writ Court, the matter got delayed for four years defeating the very purpose and object of the Act. We therefore, find no merit in these petitions and the same are dismissed."

4. Considering the difficulties expressed by the writ petitioner, in repayment of educational loan obtained for his

daughter to pursue her higher studies in United Kingdom (UK) and the manner in which, the Debts Recovery Tribunal-I, Chennai, has proceeded with S.A.No.82 of 2017, notwithstanding the compliance of the order of the tribunal dated 05.12.2017, writ petition is entertained.

5. Facts culled out from the supporting affidavit to the writ petition are that writ petitioner has availed a sum of Rs.13,90,000/-, as educational loan on 08.10.2009, at the rate of 10% interest per annum. Repayment holiday period is 12 months and repayment has to be made by way of 60 equated monthly installments at Rs.29,533/-. Residential Flat No.G-3 (Old No.G-1) at Ground Floor, situated at No.27/3, Shanmuga Castle, Thiruvankataswamy Street, Saligramam, Chennai-600 093, has been offered as collateral security.

6. Petitioner is a pensioner. Petitioner's daughter Mr.R.Ramya, has not cleared one paper and thus could not secure any employment. Having regard to the financial difficulties, the petitioner sent a letter dated 05.05.2015 to the bank, for extension of time by another 60 months. Petitioner received a communication dated 24.01.2017 from the bank stating that as on 21.01.2017, a sum of Rs.16,37,110/- was due. Interest of Rs.1,44,295/-, was also pointed out. Responding to the above, petitioner has contacted the concerned Branch Manager and the latter informed that a sum of Rs.1,54,253/- was payable as on 31.03.2017. Thereafter, vide Cheque No.049359 dated 21.03.2017, petitioner paid a sum of Rs.1,55,000/- According to him, so far, he has paid a sum of Rs.8,98,333/- as on 02.05.2017. Assurance was also given that loan amount would be repaid.

7. According to the petitioner, notwithstanding the above, Bank has classified the account as non-performing asset and issued a demand notice dated 02.05.2017, under Section 13(2) of the SARFAESI Act, 2002, for a sum of Rs.23,00,389/-, as outstanding liability as on 01.05.2017.

8. On receipt of the notice, petitioner has sent a reply dated 21.06.2017 under Section 13(3A) of the SARFAESI Act, 2002. Claiming a sum of Rs.23,66,782/- as due, as on 14.07.2017, bank has issued a possession notice dated 15.07.2017, which was received by the petitioner on 21.07.2017.

9. Being aggrieved by the possession notice, petitioner has filed S.A.No.82 of 2017, on the file of the Debts Recovery Tribunal-I, Chennai to set aside the possession notice dated 15.07.2017 issued by the respondent bank under Section 13(4) of the SARFAESI Act, 2002.

10. Thereafter, Retail Assets Central Processing Centre, State Bank of India, vide letter dated 03.01.2018, addressed to

Ms.R.Ramya, beneficiary of the educational loan, informed her about the availability of RINN Samadhan Scheme (One Time Settlement of NPA & AUCA), ending with 31.01.2018. Letter dated 03.01.2018, addressed to Ramya, is extracted hereunder.

"Dear Sir/Madam,

PER SEGMENT

BORROWER NAME : RAMYA R

EDUCATIONAL TERM LOAN ACCOUNT NUMBER : 30907656131

LIMIT: Rs.13.90 LAKHS

RINN SAMADHAN SCHEME (ONE TIME SETTLEMENT OF NPA & AUCA)

SCHEME CLOSURES ON 31.01.2018

We take this opportunity to inform you that the Bank has announced a scheme for one time settlement (OTS) - RINN SAMADHAN to settle the dues of small borrowers. The scheme envisages significant reliefs by way of "Waiver of Notional Interest" and further relief on the outstanding ranging from 25% to 50%.

2. Other salient features of the scheme are summarized as under:

i. The terms of payment are as under:

- a. Upfront - 10% of the settled amount
- b. Within 60 days - 90% of the settled amount
- c. 60 days beyond the due date of payment, by payment of 9.00% interest on the unpaid portion for the delayed period.

ii. Early Bird incentive: A further discount of 5% of the settled amount, who pay the total amount within 30 days of sanction of OTS.

3. Your account has been found to be eligible under the scheme and you are, therefore, requested to contact the undersigned for further details and eventual settlement of your dues.

4. "No Dues Certificate" will be issued after the settled amount under OTS is received.

5. The Bank however, reserves the right to reject / cancel the OTS proposal at any stage without assigning any reason, as per our internal guidelines.

6. Irregularities in the loan account may affect further assistance from any financial institutions/banks."

11. While the matter stood thus, bank has filed counter affidavit dated 17.01.2018, in S.A.No.82 of 2017. Though bank has issued a letter dated 03.01.2018, in the counter affidavit,

enclosed in the typed set of papers, there is no reference to RINN Samadhan Scheme (One Time Settlement of NPA & AUCA), or the letter dated 03.01.2018, addressed to Ramya, beneficiary of the educational loan.

12. Earlier on 24.01.2017, bank has issued a letter to Ms.R.Ramya stating that balance amount to be paid is Rs.16,37,110/- plus Rs.1,44,295/-, being the interest, as on 21.01.2017.

13. In the statement of accounts dated 10.04.2017, the balance as on 21.03.2017 is Rs.25,55,000.37p. According to the petitioner vide cheque No.049359 dated 21.03.2017, a sum of Rs.1,55,000/- has been paid, Possession Notice is dated 15.07.2017. The amount due as on 01.05.2017 in the possession notice is Rs.23,00,389/-.

14. Having regard to the difference in the amounts, when the matter came up on 05.12.2017, before the tribunal, learned counsel for the petitioner has sought for breakup details of the debt amount to discharge the same.

15. Bank has filed a memo showing the overdue EMIs with accrued interest as Rs.8,38,126/- as on 05.12.2017. The tribunal has observed that the petitioner is entitled for the details, such as break up interest on the overdue EMIs till end of December, besides the amount due under EMIs, provided, the petitioner deposits 50% of the above amount by 04.01.2018 with the bank. Tribunal has further observed that in default, bank need not furnish the details. For compliance and enquiry, tribunal has directed the Registry to post the matter on 08.01.2018.

16. For brevity, proceedings dated 05.12.2017 of the Debts Recovery Tribunal-I, Chennai, are extracted.

"Counsel for the applicant and the respondent bank present. Respondent bank filed a memo showing the overdue EMIs with accrued interest as Rs.8,38,126/- as on 5.12.2017. Applicant prays for breakup of the said amount in order to enable discharge of the amount actually payable. Applicant is entitled for the details such as break up of interest on the overdue EMIs till end of December besides the amount due under EMIs, provided the applicant deposits 50% of the above amount by 4.1.2018 with the respondent bank. In default, the respondent need not furnish the details for compliance and enquiry, call on 08.01.2018."

17. On 11.01.2018, when S.A.No.82 of 2017, came up for the

hearing, learned counsel for the petitioner seemed to have submitted that the conditional order of deposit has been complied with. Tribunal has observed that the bank has not complied with the directions of furnishing the details such as break up interest on the overdue EMIs till end of December besides the amount due under EMIs.

18. Having observed that the bank has not complied with the directions, the tribunal has ordered that the petitioner is at liberty to work out his remedy in case, he intends to discharge the loan. Thereafter, the tribunal has directed the matter to be called on 17.01.2018.

19. Being aggrieved by the observation of the tribunal and the further direction to proceed with the hearing of S.A.No.82 of 2017, without enforcing the directions dated 05.12.2017, petitioner has approached this Court for appropriate remedy.

20. Supporting the prayer sought for Mr.Ravikumar Paul, learned senior counsel submitted that when the tribunal, has directed the bank to furnish the details such as break up interest on the overdue EMIs till end of December besides the amount due under EMIs, on condition that the writ petitioner deposits 50% of Rs.8,38,126/- amount due as on 05.12.2017 by 04.01.2018, ignoring the same, the tribunal cannot insist the petitioner to get along with S.A.No.82 of 2017.

21. Learned senior counsel further submitted that when the conditional order has been complied with, the tribunal ought to have enforced the directions dated 05.12.2017. According to him, petitioner is entitled to the benefit of the Samadhan Scheme.

22. Record of proceedings dated 11.01.2018, is reproduced hereunder.

"Counsel for the applicant and the respondent bank present. Applicant counsel submitted that conditional order of deposit has been complied with. However, the respondent bank has not complied the directions of the tribunal. The applicant is at liberty to work out his remedies in case the applicant intends to discharge the liability. At request of the counsel for the applicant, for hearing in the SA, call on 17.1.2018."

23. As rightly contended by the learned senior counsel, having directed the petitioner to deposit 50% of sum of Rs.8,38,126/- due as on 05.12.2017 and when the petitioner has complied with the said directions, it would not be appropriate on the part of Debts Recovery Tribunal-I, Chennai to ignore the directions dated 05.12.2017 and direct the petitioner to proceed

with SA.No.82 of 2017.

24. The tribunal which has passed an order on 05.12.2017, is bound to enforce the same and ought not to have directed the writ petitioner to work out his remedy without providing the details such as break up interest on the overdue EMIs till end of December, besides the amount due under EMIs.

25. Orders passed by the tribunal are not only binding inter se parties but, the same requires to be implemented. Bank has not furnished the details as directed on 05.12.2017. If furnishing of details as stated supra is subject to certain conditions imposed against the borrower, and if such condition is complied with, the tribunal ought to have directed the bank to furnish the details, stated supra. Prejudice caused to the petitioner is apparent, on the face of record.

26. Even as per the memo filed on 05.12.2017, the over due EMIs with accrued interest as on 05.12.2017 was Rs.8,38,126/-. Proceedings dated 11.01.2018, is only adjourning the case to 17.01.2018. Learned senior counsel for the petitioner further submitted that the matter has been adjourned to 08.02.2018.

27. Having regard to the above, Debts Recovery Tribunal-I, Chennai, is directed to enforce the order dated 05.12.2017 in letter and spirit. Writ petitioner cannot be forced to work out his remedy, without the breakout details, as directed to be furnished by the tribunal, vide order dated 05.12.2017. Merely because bank has not furnished the details as directed, petitioner cannot be forced either to proceed with the case, or work out his remedy with the bank, without the details, directed to be furnished. Going through the material on record, we find no reason as to why the tribunal, did not enforce the directions against the bank. Bank is directed to furnish the details as ordered.

28. With the above observation and directions, writ petition is disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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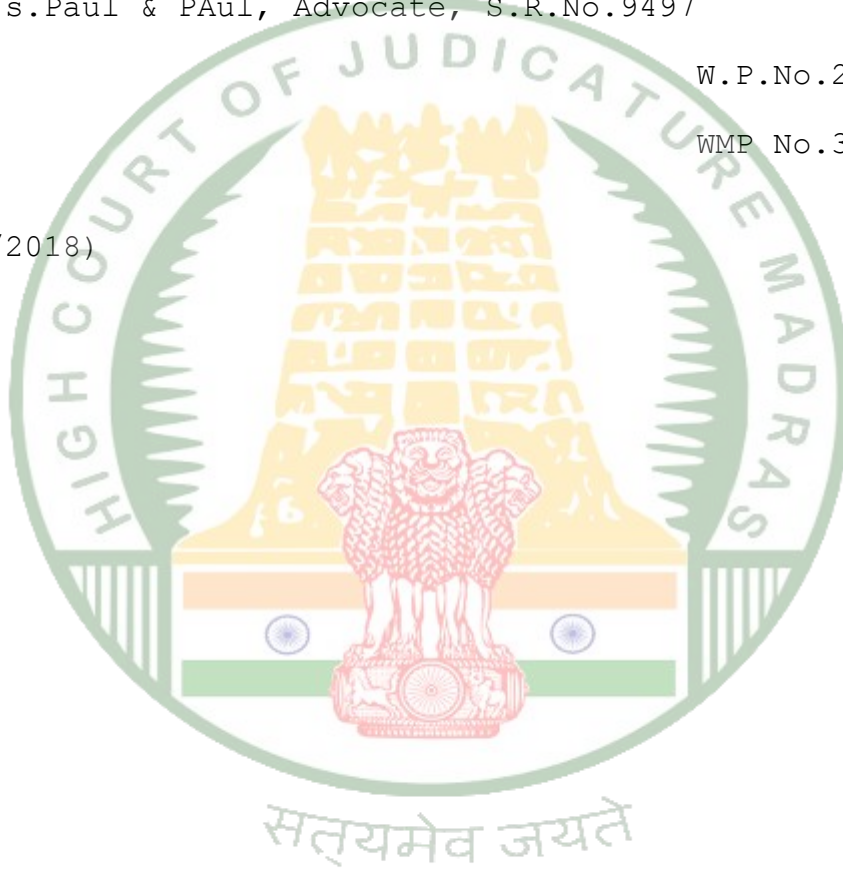
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Anna Salai, Chennai - 600 002.

+1cc to M/s.Paul & PAul, Advocate, S.R.No.9497

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WMP No.3342 of 2018

GMI (CO)
RRK(02/03/2018)



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