

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.9.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH  
AND

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.24853 of 2018

and

W.M.P.No.28893 of 2018

Khalid A.K. Buhari

..Petitioner

Vs

1 The Debt Recovery Tribunal-I  
6th Floor Spencer Tower  
770-A Anna Salai  
Chennai - 600 002

2 ICICI Bank Limited  
Rep. by Chief Manager  
Mr. V. Sundararajan  
Having Office at ICICI Bank Tower  
3rd Floor West Wing  
Plot No. 24 South Phase Block 1  
Ambattur Chennai 600 058.

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records on the file of the Honourable Debts Recovery Tribunal 1 Chennai in I.A.429 of 2018 in O.A.No. 334 of 2017 dated 01.08.2018 and quash the same as illegal.

For petitioner : Mr.P.J.Rishikesh

ORDER

(Order of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the petitioner for some time.

2. An interim order of attachment passed by the Debts Recovery Tribunal-I, Chennai, is under challenge at the instance of the writ petitioner, who stood as one of the guarantors for some credit/financial arrangement extended by the second respondent herein to the borrower viz., M/s.East Coast Construction & Industries Limited.

3. The case of the petitioner is that he stood as one of the guarantors among others for the financial arrangement, the borrower had with the second respondent herein, of course, his liability is restricted only to the extent of the value of the property mortgaged by him and he had already paid a sum of Rs.30 crores on various dates by way of RTGS and final payment was made on 27.4.2017 to the second respondent bank and thereupon, his guarantee was also released by way of deed of discharge dated 10.7.2017, whileso, the bank had proceeded once again for attachment of the same property, by filing I.A.No.429 of 2018 in O.A.No.334 of 2017 and the same was resisted by the writ petitioner.

4. It is the further case of the writ petitioner that they sought time to efficaciously resist the claim of the respondent-bank by filing counter and in fact, the petitioner had already filed another application in I.A.No.410 of 2018 seeking discharge, however, the Debts Recovery Tribunal, without affording any opportunity for filing counter and to substantiate his case for discharge, had passed the impugned order of attachment when there are other guarantors and various other properties to be proceeded with.

5. Considering the exigency portrayed by the petitioner and on perusing the order passed by the Tribunal, we dispense with issuance of notice to the respondent-bank before taking up the writ petition for hearing.

6. Upon hearing the learned counsel appearing for the writ petitioner and perusing the materials available on record, we find that the application filed by the writ petitioner seeking discharge is still pending before the Tribunal and the impugned order came to be passed without considering such a claim of the writ petitioner, and therefore, the contention that the writ petitioner has got a good case cannot be simply brushed aside.

7. Therefore, in the interest of justice, we direct that the Tribunal shall not proceed with the attachment of the property in question forthwith and it shall re-consider the issue by taking up the interim application filed by the writ petitioner also and pass orders on merits and in accordance with law, within a period of one week from the date of receipt of a copy of this order. Any order of attachment effected in the meanwhile, shall be treated as non-est in the eye of law. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssk

To:

1 The Debt Recovery Tribunal-I  
6th Floor Spencer Tower  
770-A Anna Salai  
Chennai - 600 002

+1cc to Mr.P.J.Rishikesh, Advocate, S.R.No.67275

W.P.No.24853 of 2018

rrs 04/10/2018



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