

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.24862 of 2018 and
W.M.P.No.28899 of 2018

M/s.Saratha's
rep by its Partner S.Saravanan
No.141, J.N.Street,
Puducherry - 605 001. .. Petitioner

Vs.

Union Bank of India,
rep by its Chief Manager,
ARMB, Chennai - 600 108. .. Respondent

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records relating to the order dated 21.08.2018 made in I.A.No.508 of 2018 in AIR No.197 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai and to quash the order dated 21.08.2018 made in I.A.No.508 of 2018 in AIR No.197 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.V.R.Kamalanathan
for Mr.G.R.Ravichandran
For Respondent : Mr.Srinath Sridevan

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O R D E R
(Order of the Court made by M.DURAI SWAMY, J.)

The above Writ Petition has been filed by the petitioner to issue a Writ of certiorari to call for the records relating to the order dated 21.08.2018 made in I.A.No.508 of 2018 in AIR No.197 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai and to quash the same.

2.It is the case of the petitioner that the respondent - Bank filed O.A.No.124 of 2011 on the file of

the Debts Recovery Tribunal - II, Chennai against the petitioner and others for recovery of a sum of Rs.80,57,990.14 together with interest. The said O.A. was allowed by the Tribunal on 10.05.2013 and subsequently, a Recovery Certificate in DRC No.115 of 2013 was issued on 17.06.2013. As per the DRC, the amount payable by the petitioner was Rs.1,06,17,470.28. It is also the case of the petitioner that apart from DRC No.115 of 2013, there is also another Recovery Certificate in DRC No.153 of 2013 issued against the petitioner.

3.Further, the petitioner contended that a sum of Rs.1.10 crores, paid by them towards the outstanding loan in DRC No.115 of 2013, was wrongly adjusted towards both the Recovery Certificates, whereas the petitioner has paid the amount only towards the outstanding in DRC No.115 of 2013. Out of the sum of Rs.1.10 crores, a sum of Rs.66.70 lakhs was adjusted towards the DRC No.115 of 2013 and the balance sum of Rs.43.30 lakhs was adjusted towards DRC No.153 of 2013.

4.It is not in dispute that in both the DRCs, the petitioner is the debtor. Taking note of the credits given to the two DRCs, the Debts Recovery Tribunal-II, Chennai directed the petitioner to pay 50% of the amount due under DRC No.115 of 2013 in Appeal (SR).No.14341 of 2017. Challenging the order passed in A.P.(SR).No.14341 of 2017, the petitioner filed an appeal in AIR No.197 of 2018 along with an application in I.A.No.508 of 2018 for waiver of pre-deposit.

5.The respondent - Bank contended that the petitioner had three separate accounts and the loan due from them is more than Rs.6 crores. It was also contended by the respondent - Bank that the Bank had agreed for OTS proposal of Rs.4 crores and odd on the earlier occasion. However, the same was not ultimately honored by the petitioner. Taking into consideration the claim made by the respondent - Bank in O.A.No.124 of 2011 (i.e.) a sum of Rs.80.57 lakhs, the Debt Recovery Appellate Tribunal directed the petitioner to make a pre-deposit of Rs.22 lakhs for entertaining the appeal.

6.The learned counsel appearing for the petitioner submitted that since they have already paid a sum of Rs.1.10 crores, the Debt Recovery Appellate Tribunal committed an error in directing the petitioner to make pre-deposit of Rs.22 lakhs.

6.1.The learned counsel, in support of his contention relied upon a judgment reported in 2011 (2)

CTC 465 [State Bank of India rep by its Branch Manager, Kothagiri Branchy, Nilgiris and another Vs. Jayanthi and 2 others] wherein the Division Bench of this Court held that the Bank cannot exercise lien in respect of different loan accounts for which deceased borrower has not deposited his Title Deeds.

6.2.The learned counsel also relied upon an unreported judgment of the Division Bench of this Court dated 26.10.2017 made in W.P.No.25921 of 2017 [Joinus Interiors Ad Construction Ltd., and 3 others Vs.The Lakshmi Vilas Bank Ltd., and 3 others] wherein the Division Bench of this Court held that the pre-deposit amount should be 25% of the amount claimed or as determined by the Debts Recovery Tribunal, whichever is less. Further, the Division Bench held that when more than 25% of the debt claimed or determined, whichever is less, has already been remitted to the Bank, the borrower should not have been driven by the Bank to approach this Court.

7.It is pertinent to note that a sum of Rs.80.57 lakhs was claimed by the respondent - Bank as on 20.07.2011 and the Debt Recovery Appellate Tribunal has only directed the petitioner to make a pre-deposit of Rs.22 lakhs. Though according to the respondent - Bank the outstanding as of today is much more, the Tribunal had taken into consideration the claim made by the respondent - Bank for arriving at the pre-deposit amount.

8.Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel for the petitioner, since the facts and circumstances of the present case are different, the same are not applicable.

9.That apart, the petitioner entered into a settlement with the respondent - Bank under OTS in respect of DRC No.115 of 2013 and 153 of 2013 for a sum of Rs.4 crores on 31.12.2016. Pursuant to the same, the petitioner paid a sum of Rs.1.10 crores to comply with the OTS terms. Since the settlement was arrived in respect of the two DRCs, the sum of Rs.1.10 crores paid by the petitioner was appropriated for both the DRCs. Therefore, having arrived at a settlement in respect of DRC No.115 of 2013 and 153 of 2013, the petitioner cannot now take a stand that he has paid the sum of Rs.1.10 crores only towards DRC No.115 of 2013. The said contention cannot be accepted and the same is rejected.

10.For the reasons stated above, we are not inclined to interfere with the order passed by the Debt Recovery Appellate Tribunal. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS vii)

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Sub Assistant Registrar

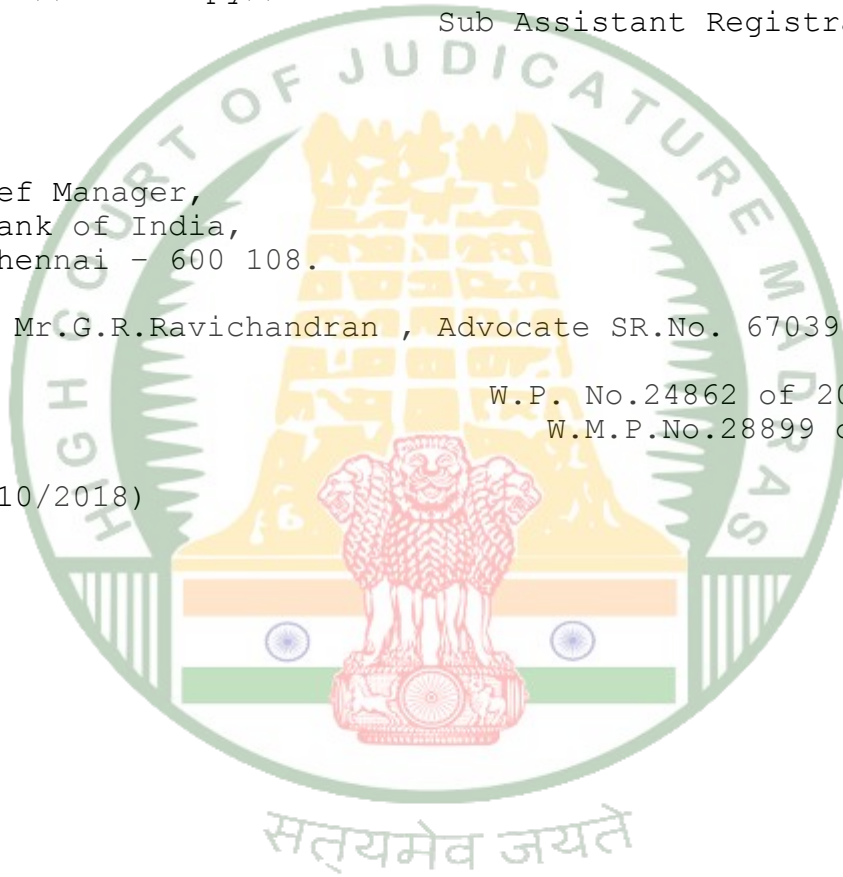
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To

The Chief Manager,
Union Bank of India,
ARMB, Chennai - 600 108.

+1cc to Mr.G.R.Ravichandran , Advocate SR.No. 67039

W.P. No.24862 of 2018 and
W.M.P.No.28899 of 2018

ASK(22/10/2018)



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