

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.16224 to 16226 of 2018

W.P.No.16224 of 2018

1. M/s.D.M.Traders,
Rep. by Mr.D.Sampath,
Mrs.S.Geetha,
Partners.

2. Mr.D.Sampath

3. Mrs.S.Geetha ... Petitioners

vs.

1. The Authorised Officer,
Tamilnadu Mercantile Bank Ltd.,
Chennai Region, No.45, Pulla Avenue,
Shenoy Nagar,
Chennai - 600 030.

2. The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified Mandamus, to call for records on the file of the 2nd respondent in AIR (SA) No.69/2018 and quash the final order dated 08.06.2018 and consequently restore the appeal in AIR (SA) No.69/2018 on the file of the 2nd respondent.

W.P.No.16225 of 2018

1. M/s.D.M.Modern Rice Mill,
Rep. by Mr.D.Sampath,
Mrs.S.Geetha,
Partners.

2. Mr.D.Sampath

3. Mrs.S.Geetha ... Petitioners

vs.

1. The Authorised Officer,
Tamilnadu Mercantile Bank Ltd.,
Chennai Region, No.45, Pulla Avenue,
Shenoy Nagar, Chennai - 600 030.

2. The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified Mandamus, to call for records on the file of the 2nd respondent in AIR (SA) No.70/2018 and quash the final order dated 08.06.2018 and consequently restore the appeal in AIR (SA) No.70/2018 on the file of the 2nd respondent.

W.P.No.16226 of 2018

1. M/s.D.M.Silks
Rep. by Proprietrix
Mrs.S.Geetha,

2. Mr.D.Sampath

... Petitioners

vs.

1. The Authorised Officer,
Tamilnadu Mercantile Bank Ltd.,
Chennai Region, No.45, Pulla Avenue,
Shenoy Nagar, Chennai - 600 030.

2. The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified Mandamus, to call for records on the file of the 2nd respondent in AIR (SA) No.67/2018 and quash the final order dated 08.06.2018 and consequently restore the appeal in AIR (SA) No.67/2018 on the file of the 2nd respondent.

For Petitioner : Mr.T.V.Badrinarayanan
in all W.Ps.

For Respondents : Mr.E.Kumar (for R1)
in all W.Ps.

COMMON ORDER

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

Being aggrieved by the separate orders made in I.A.Nos.297, 299 and 295 of 2018, all dated 26.04.2018, on the file of Debts Recovery Appellate Tribunal, Chennai, directing pre deposit of Rs.13 Lakhs, Rs.8 Lakhs and Rs.5 Lakhs in AIR (SA) Nos.69, 70 & 67 of 2018, respectively, W.P.Nos.12822, 12823 and 12824 of 2018, were filed.

2. After considering the rival submissions and also taking note of the dismissals of AIR (SA) Nos.69, 70 & 67 of 2018 dated 08.06.2018 on the file of Debts Recovery Appellate Tribunal, Chennai, vide common order in W.P.Nos.12822, 12823 and 12824 of 2018, this Court ordered, as hereunder

"3. Today, when the writ petitions came up for further hearing, learned counsel appearing for both parties submitted that for non-deposit of the amount, I.A.Nos.297, 299 and 295 of 2018, respectively, filed for waiver have been dismissed, by Debts Recovery Appellate Tribunal and consequently, A.I.R.(SA) Nos.69, 70 and 67 of 2018 have also been dismissed.

4. Though placing reliance on the subsequent orders, dated 8/6/2018, Mr.T.V.Badrinarayanan, learned counsel for the petitioners submitted that the Appellate forum has observed that consequent to any decision/direction from this Court, matter would be suo motu taken up or by any application, as the case may be, for compliance of such direction, to be issued by the High Court, this Court has already disapproved the said decision of the Debts Recovery Appellate Tribunal, Chennai.

5. It is well settled that an interim order passed, merges with the disposal of the main case. Accordingly, Interim order passed in I.A.Nos.297, 299 and 295 of 2018 merges with the Final Order made in A.I.R.(SA) Nos.69, 70 and 67 of 2018, respectively. On the principle of law that interim order merges with final orders, we deem it fit to consider few decisions.

(i) In South Eastern Coalfields Ltd v. State of MP and Others reported in (2003) 8 SCC 648, the Hon'ble Supreme Court held as follows:

"The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or

order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage.

(ii) In Prem Chandra Agarwal and Another v. Uttar Pradesh Financial Corporation and Others reported in (2009) 11 SCC 479, the Hon'ble Supreme Court held that once a final order is passed, all the earlier interim orders merge into the final order, the interim orders cease to exist.

(iii) In State of West Bengal and Others Vs Banibrata Ghosh and Others reported in (2009) 3 SCC 250, the Hon'ble Apex Court held that the Interim Order does not decide the fate of the parties to the litigation finally, it is always subject to and merges with the final order passed in the proceedings.

6. In view of the decisions stated supra, nothing survives for adjudication in the instant writ petitions filed against interim orders. Hence, instant writ petitions are dismissed.

7. Learned counsel for the petitioners volunteered, to deposit Rs.7.5 lakhs, Rs.5 lakhs and Rs.3 lakhs, respectively, with the Registrar, Debts Recovery Appellate Tribunal, as an additional pre-deposit amount, for entertaining the appeals and that the said offer is duly acknowledged by Mr.E.Kumar, learned counsel for the Bank.

8. Submission of the learned counsel for the petitioners is placed on record."

3. Thus, while disposing of W.P.Nos.12822, 12823 and 12824 of 2018, we directed the writ petitioners / borrowers to make pre-deposit of Rs.7.50 Lakhs, as a precondition for entertaining AIR (SA) No.69 of 2018, Rs.5 Lakhs as a precondition for entertaining AIR (SA) No.70 of 2018 and Rs.3 Lakhs as a precondition for entertaining AIR (SA) No.67 of 2018.

4. Though on 08.06.2018, submission has been made on behalf of the petitioners before the appellate tribunal that WP.Nos.12822, 12823 and 12824 have been filed before this Court and directed to be listed on 21.06.2018, by observing that Debts Recovery Appellate Tribunal, Chennai, cannot entertain any appeal filed by any aggrieved person unless and until the applicant complies with pre deposit and further observing that the pre deposit ordered on 26.04.2018, has not been complied with, vide separate orders dated 08.06.2018 in AIR (SA) Nos.69, 70 & 67 of 2018, Debts Recovery Appellate Tribunal, Chennai, dismissed the above appeals, for want of compliance of pre

deposit. Thus, final orders in AIR (SA) Nos.69, 70 & 67 of 2018, all dated 08.06.2018, are challenged in the instant writ petitions.

5. As stated supra, on the pre deposit, after hearing the learned counsel for the borrower and the bank in W.P.Nos.12822, 12823 and 12824 of 2018, we have already directed the borrower to make pre deposit, as stated supra. In the abovesaid orders, we granted two weeks time to make pre-deposit, commencing from 22.06.2018, till 6th of July 2018, borrowers' have time to make the pre-deposit. However, Mr.T.V.Badrinarayanan, learned counsel for the petitioners / borrowers submitted that copy of the orders made in WP Nos.12822, 12823 and 12824 of 2018, are not available. Notwithstanding furnishing of the orders in WP Nos.12822, 12823 and 12824 of 2018 Mr.T.V.Badrinarayanan, learned counsel for the petitioners submitted that before 10.07.2018, orders made in WP Nos.12822, 12823 and 12824 of 2018, would be complied with, and pre deposit would be made with the Registrar of Debts Recovery Appellate Tribunal, Chennai.

6. Placing on record the above submission and for the reasons stated supra, orders impugned in WP Nos.16224 to 16226 of 2018 are set aside. Time to make pre deposit, is extended till 10.07.2018. Pre deposit be permitted by the Registrar, Debts Recovery Appellate Tribunal, Chennai filing a memo by the writ petitioners. On such deposit, Registry of Debts Recovery Appellate Tribunal, Chennai, is directed to process the appeal papers. If otherwise in order, assign appropriate numbers and place it before Debts Recovery Appellate Tribunal, Chennai. Accordingly, writ petitions are allowed. No Costs.

7. Learned counsel for the petitioners submitted that liberty may be granted to the petitioner to challenge the sale notice dated 06.06.2018, in the manner known to law. Submission is placed on record.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Authorised Officer,
Tamilnadu Mercantile Bank Ltd.,
Chennai Region, No.45, Pulla Avenue,
Shenoy Nagar, Chennai - 600 030.

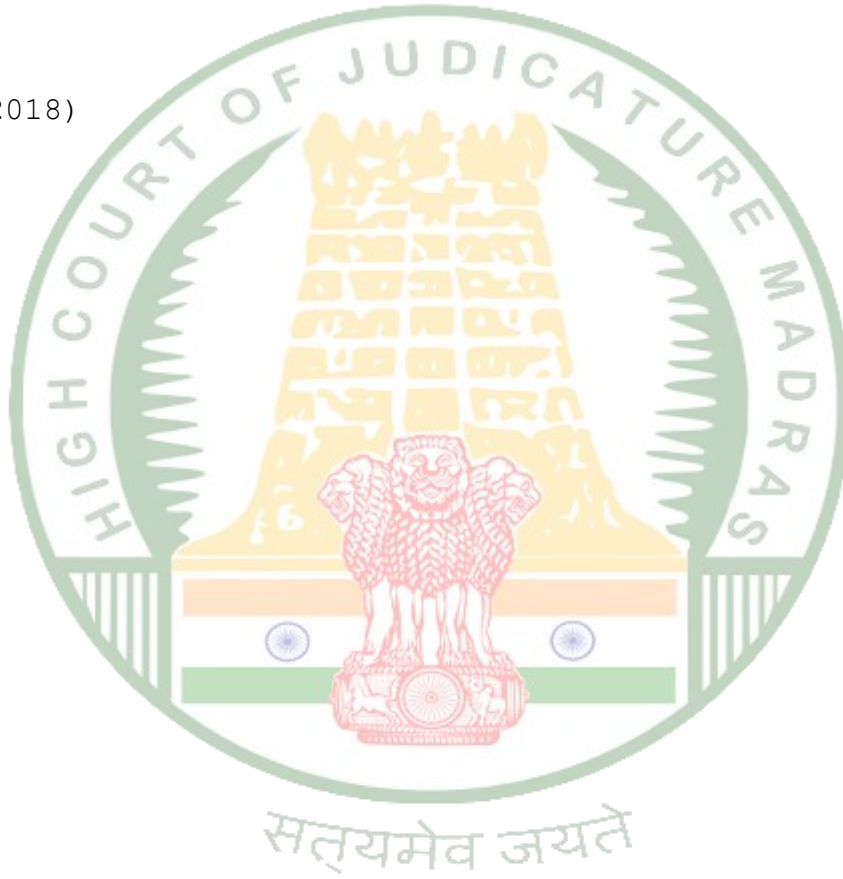
2. The Registrar,
Debts Recovery Appellate Tribunal,
Chennai

+3 Ccs to Mr.P. Rajavelu, Advocate sr 42128 to 42130.

+3 Ccs to Mr.K.N. Chinnakrishnan, Advocate sr 42150 to 42152.

W.P.Nos.16224 to 16226 of 2018

SP(03/07/2018)



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