

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.11.2018

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

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.25615 of 2018 and
W.M.P.Nos.29774 & 29776 of 2018

- 1 Pointred Telecom Ltd.
Rep by its Director, Mr. R.Vijaykumar
No. 63/14, Corporation Complex
N.S.K. Salai, Kodambakkam,
Chennai - 600 024
 - 2 R.Vijaykumar ... Petitioners
- vs.
- State Bank of India
Industrial Finance Branch
No.1 Anna Salai
Chennai 600 002. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus, calling for the records of the Orders passed in A.I.R. No. 208 of 2016, dated 20.07.2017 and 17.08.2017 on the file of the Learned Debt Recovery Appellate Tribunal, Chennai, to quash the same and direct the Debt Recovery Tribunal-I, Chennai to hear the petitioners in O.A.No. 189/2014 on merits.

For Petitioners : Mr.C.Mani Shankar, Senior Counsel
for Mr.V.Sankaranarayanan

For Respondent : Mr.M.L. Ganesh

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

The petitioners have filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the Orders passed in A.I.R. No. 208 of 2016, dated 20.07.2017 and 17.08.2017 on the file of the Debt Recovery Appellate Tribunal, Chennai, to quash the same and direct the Debt Recovery Tribunal-I, Chennai to hear the petitioners in O.A.No. 189 of 2014 on merits.

2. The respondent-bank filed O.A.No. 189 of 2014 on the file of the Debt Recovery Tribunal-I, Chennai for the recovery of a sum of Rs.19,88,81,362.55 together with interest. The writ petitioners were the defendants 1 and 2 in the said Original Application. The said Original Application was decreed ex-parte on 13.03.2015. Thereafter, the 4th defendant in O.A.No. 189 of 2014, viz., Gemini Communications Limited filed an application in M.A.No.55 of 2015 to condone the delay of 247 days in filing the application to set aside the ex-parte order dated 13.03.2015.

3. The Debts Recovery Tribunal, by order dated 18.03.2016, dismissed the M.A.No.55 of 2015.

4. Aggrieved over the same, the defendants 2 and 4 filed an appeal in A.I.R.No.208 of 2016 before the Debt Recovery Appellate Tribunal, Chennai along with an application in I.A.No.1159 of 2017 for waiver of pre-deposit.

5. The Debt Recovery Appellate Tribunal, by order dated 20.07.2017, directed the appellants-defendants 2 and 4 to make a pre-deposit of Rs.9 crores in two installments of Rs.5 crores in four weeks time and the balance Rs.4 crores in the next four weeks time. Since the defendants failed to comply with the conditional order dated 20.07.2017, the Debt Recovery Appellate Tribunal, by order dated 17.08.2017, dismissed the appeal for want of compliance of pre-deposit. Aggrieved over the orders dated 20.07.2017 and 17.08.2018, the defendants 1 and 2 have filed the above writ Petition.

6. It is pertinent to note that the 2nd petitioner, viz., R.Vijayakumar, has filed the Writ Petition as a Director of the 1st petitioner, viz., Pointred Telecom Limited. The 4th defendant, viz., Gemini Communications Limited has not challenged the impugned orders. When the 4th defendant and its Director R.Vijayakumar has filed the application for waiver, they should have filed the Writ Petition challenging the orders passed by the Debt Recovery Appellate Tribunal. The present Writ Petitioners have no locus standi to file the Writ Petition challenging the orders passed by the Debt Recovery Appellate Tribunal in an application filed by the defendants 2 and 4. When the Debt Recovery Appellate Tribunal had directed the defendants 2 and 4 to deposit a sum of Rs.9 crores, even if this Writ Petition is allowed, the Writ Petitioners cannot prosecute the appeal before the Debt Recovery Appellate Tribunal for the reason that they have not filed any appeal before the Debt Recovery Appellate Tribunal.

7. It is also pertinent to note that the impugned orders were passed on 20.07.2017 and 17.08.2018 by the Debt Recovery Appellate Tribunal. However, the petitioners have filed the Writ Petition after a lapse of one year i.e. only on 11.09.2018. The reasons for the laches in filing the Writ Petition has not been explained by the petitioners.

8. Since the petitioners have no locus standi to file the Writ Petition, we are not inclined to entertain the same. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Rj

To

The State Bank of India
Industrial Finance Branch
No.1 Anna Salai
Chennai 600 002

+1cc to Mr.M.L.Ganesh, Advocate, S.R.No.81494

+1cc to Mr.V.Sankaranarayanan, Advocate, S.R.No.81102

W.P. No.25615 of 2018 and
W.M.P.Nos.29774 & 29776 of 2018

SSD(CO)

rrs 13/12/2018

सत्यमेव जयते

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