

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27546 of 2019

Nainar K. Makdoom

..Petitioner

Versus

1. The Debt Recovery Appellate

Tribunal,
4th Floor, Indian Bank
Circle Office, No.55, Ethiraj Salai,
Chennai 600 008.

2. The Authorized Officer,

State Bank of India,
Tirunelveli Branch,
No.25 & 25A S.N. High Road,
Tirunelveli.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records pertaining to the order dated 9.8.2019 in I.A.No.651/2019 in M.A.(S.A.) No.54/2018 passed by the Debt Recovery Appellate Tribunal and quash the same and consequently direct the DRAT/Respondent Bank to refund a sum of Rs.40 lakhs deposited by the Petitioner in the Debt Recovery Appellate Tribunal, Chennai in M.A.S.A.No.54/2018 on the file of DRAT Chennai.

For petitioner : Mr.R.R.Pradeep for
Mr.A.Joseph Dorairaj

For Respondent : Ms.S.R.Sumathy for
Mr.T.Ramasamy

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

The present Petition has been filed by the Borrower Mr.Nainar K.Makidoom seeking a mandamus direction to the DRAT, Chennai to refund the pre-deposit of Rs.40,00,000/- made by the Petitioner.

2. On 17.9.2019, this Court has passed the following order:-

"Mrs.S.R.Sumathy, learned counsel accepts notice on behalf of the second respondent/State Bank of India, Tirunelveli Branch. Copy of the petition has been supplied to her. Two weeks time is allowed to the second respondent to file counter-affidavit in this matter.

2. Private notice to the first respondent/Debt Recovery Appellate Tribunal, Chennai, returnable on 01.10.2019, is allowed.

3. Prima facie, from a perusal of the counter-affidavit filed by the State Bank of India in I.A.No.651 of 2019 in M.A. (SA) No.54 of 2018, it is seen that challenging the sale notice, the petitioner has filed S.A.No.66 of 2018 before the Debts Recovery Tribunal, Madurai along with stay application and by an order dated 17.2.2018, the stay application was dismissed. Challenging the said interim order, the petitioner has filed M.A. (SA) No.54 of 2018 before the Debt Recovery Appellate Tribunal, Chennai. In the said appeal, the Debt Recovery Appellate Tribunal passed a conditional order directing the petitioner to make pre-deposit of Rs.40 lakhs and the petitioner has also made the pre-deposit. Vide an order dated 07.01.2019, the appeal M.A. (SA) No.54 of 2018 has been dismissed and the respondent Bank was directed to lift the pre-deposit.

4. Thereafter, an application for modification of the order dated 07.1.2019 has been filed by the petitioner stating that the respondent Bank is not interested in withdrawing the pre-deposit amount from the Tribunal and hence, the Tribunal ought to have refunded the money to the petitioner. But the Tribunal, by an order dated 09.08.2019, has refused to modify the earlier order dated 07.01.2019, resulting in refusal of the refund of the said pre-deposit. Hence, the Registrar of the Debt Recovery Appellate Tribunal may submit his counter-affidavit/report to the writ petition within a period of two weeks from today."

3. The learned DRAT has not filed any response to the said order.

4. The said money of Rs.40,00,000/- being pre-deposit made by the Petitioner/Borrower Bank is said to have been transferred

to the Respondent State Bank of India. Since the said money in question absolutely belongs to the Petitioner as it was deposited with the learned DRAT, Chennai as a condition to maintain the appeal under Section 18 of the Act, the Respondent-Bank, obviously, does not have any right to retain the money. Even though the S.A. filed by the Petitioner is pending before the learned DRAT, in the circumstances, we direct the Respondent-Bank to make over the amount of Rs.40,00,000/- to the Petitioner/Borrower forthwith, within one week from today.

5. The further proceedings in S.A. before the learned DRAT will remain independent and the learned DRAT may decide the same on merits and in accordance with law and the parties are bound by the final orders to be passed by the learned DRAT. However, the Respondent Bank is directed to refund the deposit amount to the Petitioner/Borrower within one week from today and file proof thereof before this court. The Writ Petition is, accordingly, disposed of. No costs. Put up the case after one week for compliance.

ssk

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Debt Recovery Appellate
Tribunal,
4th Floor, Indian Bank
Circle Office, No.55, Ethiraj Salai,
Chennai 600 008.
2. The Authorized Officer,
State Bank of India,
Tirunelveli Branch,
No.25 & 25A S.N. High Road,
Tirunelveli.

+2cc to Mr.T.Ramasamy, Advocate, SR.No.95404
+1cc to Mr.A.Joseph Dorairaj, Advocate, SR.No.95826

W.P.No.27546 of 2019

Kak(19/11/2019)