

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.12.2019

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALTHA

CRP.Nos.3743 of 2019 & 3777 of 2019

1.M/s.Nandhi Dall Mills
rep.by Shri.S.A.Kumar,
270, Narasimman Road,
Shevapet, Salem 636 002.

2.Shri.S.A.Kumar

3.Smt.K.Jayanthi

4.Shri.S.K.Arun

...Petitioners in both CRP.s

Vs

ICICI Bank Ltd.,
rep.by its authorized Signatory,
3rd Floor, ICICI Bank,
No.1, Cenotapsh Road, Teynampet,
Chennai 600 018.

.....Respondents in all C.R.P.s

COMMON PRAYER:- Civil Revision petition filed under Article 227 of the Constitution of India against the order made in I.A.No.369 & 425 of 2019 in R.A.No.140 of 2018 dated 22.04.2019 & 09.08.2019 passed by the respondent on the file of the Recovery Appellate Tribunal, Chennai.

For Petitioners in both CRP.s : Mr.P.N.Vignesh

For Respondent in both CRP.s : Mr.A.Rajkumar
for M/s.Ramalingam Associates.

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

By consent, these Civil Revision Petitions are taken up for final disposal.

2. The 1st petitioner had availed loan facilities from the 1st respondent Bank and the 4th respondent had also floated immovable properties for the due repayment of loan. Since default has been committed in repayment of the loan, the 1st respondent Bank had filed O.A.No.925 of 2016 under Section 19(1) of the Recovery of Debts due to the Banks and Financial Institutions Act 1993 (in short RDDBFI Act) for recovery of a sum of

Rs.28,94,86,839.50/- due as on 18.08.2015 with consequential relief. The writ petitioners, who are alleged as respondents in said Original Application, filed their counter claim dated 21.10.2016. The Debt Recovery Tribunal at Madurai, vide order dated 18.12.2017 in SR No.7352/2016 in O.A.No.925/2015, has found that the counter claim application in SR.No.7352/16 is not maintainable and accordingly rejected the same. Challenging the legality of the said order, the writ petitioners filed an appeal under Section 20 of RDDBFI Act before the Debts Recovery Appellate Tribunal-Chennai. It appears that the said appeal came to be dismissed for default and to restore the same, the petitioners filed I.A.No.369 of 2019 in R.A.No.140/2018 before the Debts Recovery Appellate Tribunal, Chennai. It appears that I.A.No.369 of 2019 was dismissed on 29.04.2019 and once again the petitioners filed I.A.No.425/2019 for restoration of the appeal in R.A.No.140/2018 pending on the file of the DRAT. The Tribunal, vide order dated 03.04.2019 in R.A.No.140/2018, S.R.No.7352/2016 in O.A.No.925 of 2015 on the file of DRT Madurai has dismissed the appeal for default, vide order dated 03.04.2019 for the following reasons:

"None appeared for appellants on 26.03.2019. It appears

that the appellants have lost interest in prosecution of this appeal. Hence, appeal is dismissed for want of appearance."

3. The Tribunal, vide impugned order in I.A.No.369/2019, which was filed for restoration of the main appeal, observed among other things that the borrowers are in the habit of engaging different counsel for their case and dismissed the said Original Application even without notice and aggrieved by the said order, the present Civil Revision Petitions are filed.

4. The learned counsel appearing for the petitioners would submit that the petitioners are having tenable ground in the main Original Application and however, the rejection of the same by the DRT at Madurai is *per se* unsustainable and he has also having tenable reasons/defense and hence prays for opportunity to contest the said application on merits.

5. *Per contra*, the learned standing counsel appearing for the 1st respondent would submit that right from the day of filing of the Original Petition, the petitioners did not pay any amount, despite the fact that it is a running concern and the Tribunal has rightly taken note of the attitude

exhibited by the petitioners in going on changing the counsel and got an impression that the said tactics have been adopted by the petitioners to drag on and delay the proceedings and therefore rightly dismissed the Original Application, even without notice and therefore in the event of absence of any infirmity, this Court cannot interfere with the order.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. The fact remains that the 1st respondent had filed O.A.No.925 of 2016 under RDDBFI Act and the same is pending and the application for acceptance of counter claim filed by the petitioners also came to be rejected by the Tribunal and challenging the same, the petitioners filed an appeal before the Debts Recovery Appellate Tribunal and it appears that either the petitioners or their counsel are not diligent enough to prosecute the appeal and it came to be dismissed for default and so also the application for restoration.

8. This Court in the light of the factual circumstance that the petitioners is a running concern, and also the primordial submission of the learned counsel appearing for the petitioners that they are having tenable reasons in the Original Applications as well as in the counter claim, this Court is of the view that final opportunity is to be granted to the petitioners for arguing I.A.No.369 of 2019 on merits.

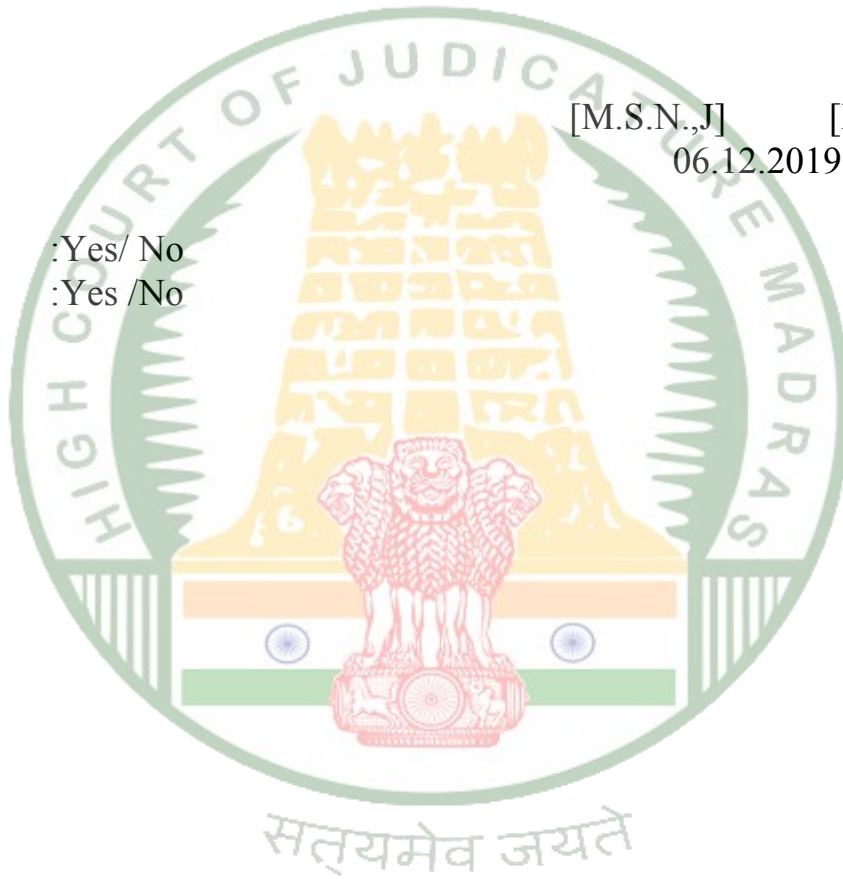
9. Though the Tribunal had observed that the Borrowers are in the habit of engaging different counsel for the petitioners, this Court is of the view that if their counsel are not effectively representing the case and it may open to them to change the counsels and of course, changing of the counsels to drag on the proceedings also depend upon facts and circumstances of each case.

10. In the result, the Writ Petition is allowed and the impugned orders made in I.A.No.369 & 425 of 2019 in R.A.No.140 of 2018 dated 22.04.2019 & 09.08.2019 respectively are set aside, subject to condition that the petitioners shall jointly or severally deposit a sum of Rs.25,00,000/-

to the credit of O.A.No.925/2015 pending on the file of the Debts Recovery Appellate Tribunal, Madurai within a period of six weeks from the date of receipt of a copy of this order failing which, the original impugned order stands restored to the file. No costs.

[M.S.N.,J] [R.H., J]
06.12.2019

Index :Yes/ No
Internet :Yes /No
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