

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

CRP.No.155 of 2020

M/s.ICICI Bank Limited,
Rep. by its Chief Manager,
No.1, Cenotaph Road,
Teynampet, Chennai - 600 018. Petitioner/Appellant Bank

Vs.

1.Mr.A.Praveen Kumar

2.Mrs.P.Reena Respondents/Defendants

Civil Revision petition filed under Article 227 of the Constitution of India praying to set aside the order dated 13.09.2019 passed in OA.No.127 of 2016, on the file of the Hon'ble Debts Recovery Tribunal - III, Chennai and consequentially direct the Hon'ble DRT to decide the OA.No.127 of 2016 in accordance with law and on its merits.

For Petitioner.. Mr.Om Prakash, Senior Counsel
For Mr.P.Elayarajkumar
For M/s.Ramalingam and Associates

For R1 & R2 .. Mr.D.Bharatha Chakravarthy

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This civil revision petition has been filed challenging the order passed by the Debts Recovery Tribunal-III, Chennai, in O.A.No.127 of 2016 dated 13.09.2019, by which, the petitioner was merely permitted to file appropriate application bringing forth necessary amendment within a period of 10 days.

2.The petitioner has filed an application in O.A.No.127 of 2016 against the respondents on the file of Debts Recovery Tribunal-III, Chennai, being the borrowers, pursuant to the non payment of the amount received along with the interest.

3.The respondents have filed an application to accept the written statement, though filed belatedly. The arguments have been heard in the main application filed in O.A.No.127 of 2016. As the Tribunal has raised a doubt on maintainability on the premise that the first respondent has not been arrayed as Proprietor, the petitioner was asked to clarify the said position. The petitioner has made reliance upon various decisions of the Apex Court, in support of his contention to the effect that the proprietary concern is only business named in which proprietor carries the business. Therefore, the litigation initiated including a suit against the proprietary concern is nothing but one initiated by or against the proprietor.

4.However, the Debt Recovery Tribunal-III, Chennai, has passed an order not on merit but merely directing the petitioner to file appropriate application for causing necessary amendment as required under law. Challenging the same, invoking Article 227 of the Constitution of India, the present civil revision petition has been filed.

5.The learned Senior Counsel appearing for the petitioner submitted that a proprietary firm is not a legal entity as a registered firm. Admittedly, in the case on hand, the claim has been made against the Proprietor. Therefore, the order requires interference.

6.The learned counsel appearing for the respondents would submit that certain amounts have been paid by the respondents pending proceedings. The respondents' statement has not been taken on file nor the application filed in this regard has been disposed of.

7.On a perusal of the order under challenge, we find that neither the application filed has been dismissed nor allowed. Consequently, the Debt Recovery Tribunal has not exercised its power vested by deciding the application on merit. Though arguments have been made on that score, it merely returns the papers directing the petitioner to file appropriate application, which is not even required. The legal position is rather well settled. There is no difference between the proprietary concern and the proprietor. It is nobody's case that the first respondent is not a proprietor of the proprietary concern. The decision relied upon by the petitioner before the Debt Recovery Tribunal are cases in point though actually the discussion was in respect to the suit and the maintainability thereto. Therefore, the distinction sought to be made is not sustainable in the eye of law. Thus, this is a clear case of not exercising the jurisdiction vested with the

Debt Recovery Tribunal.

8. In such view of the matter, the order impugned is set aside and the Civil Revision Petition stands allowed. The Debt Recovery Tribunal-III, Chennai, is directed to dispose of O.A.No.127 of 2016 on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. The written statement filed, though belatedly by the respondents, is directed to be taken on file. The arguments are to be heard afresh. The petitioner is also given further period of two weeks from the date of receipt of a copy of this order to file any rejoinder to the written statement filed by the respondents, if so required. No costs.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

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To

The Debts Recovery Tribunal III,
Chennai.

+2cc to M/s.Ramalingam and Associates, Advocate SR.No.24848

CRP.No.155 of 2020

PVS (CO)
GMY (23/09/2020)

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