

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.3435 of 2020
and W.M.P.Nos.4018 and 4020 of 2020

N.Arjunan

.. Petitioner

Vs.

1.The District Collector cum District Magistrate,
Puducherry.

2.The Tahsildar cum Executive Magistrate,
Government of Puducherry,
Taluk Office, Oulgaret, Puducherry.

3.The Chief Manager and Authorised Officer,
Allahabad Bank, Venkatanagar Branch,
No.93, Hariharan Building,
Kamarajar Salai,
Puducherry - 605 011.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorari to call for the records of the DRT III, Chennai in respect of order dated 05.12.2019 passed in S.A.No.150 of 2019 and quash the same as illegal.

For Petitioner .. Mr.J.Suresh

For Respondents.. Mr.C.T.Ramesh,
Addl. Govt. Pleader (Pondy) for R1 and R2
Mr.M.L.Ganesh for R3

ORDER

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

This writ petition has been filed by the petitioner, who is a borrower, challenging the order passed by the Debts Recovery Tribunal by which the application filed by him has been dismissed on the ground of no appearance and also on merit. Apart from the same, he has not complied with the interim order passed.

2. In the application filed by the petitioner, conditional order was granted directing him to pay 20% of the amount due. However, the petitioner has paid only a sum of Rs.18 lakhs and thus there was a default of Rs.4 lakhs. Not only that, when the matter was taken up for hearing, there was no representation on behalf of the petitioner. Accordingly, the Debts Recovery Tribunal dismissed the appeal inter alia holding that the conduct of the petitioner cannot be appreciated and he has not even complied with the conditional order. Accordingly, it was found that there are no merits in the appeal. Though an appellate remedy is available, the present writ petition has been filed on the premise that the Presiding Officer is not available at the time of filing this writ petition.

3. Learned counsel appearing for the petitioner submitted that the petitioner would show his bonafide by paying some more amount. The Tribunal ought not to have dismissed the appeal without affording an opportunity. The petitioner was absent only for one hearing. In any case, notice should have been issued to him, when he was represented through a counsel. There is no need for an order on merit when the petitioner did not even appear. Therefore, the order requires interference.

4. Learned counsel appearing for the third respondent submitted that the appeal ought to have been filed within the period. Had it been filed within time, the Appellate Tribunal could have taken up the matter as only subsequently at the time of filing the writ petition, it was vacated. Even on merits, the petitioner is not entitled for any relief. Therefore, the writ petition will have to be dismissed.

5. We find some force in the submission made by the learned counsel for the petitioner. After all, the petitioner wants to contest the matter on merits for one more time. When the counsel appearing for the party does not appear, the Court of first instance is expected to dismiss the petition for non prosecution. Once it does so, it is not required to go further and decide the matter on merit. Law also requires that in such case notice will have to be issued to the party. Though such an order can be challenged by way of appeal, inasmuch as we are

not inclined to go into the merits of the case and what the petitioner seeks is only an opportunity to contest the matter, we set aside the impugned passed by the Tribunal on condition that the petitioner pays a further sum of Rs.15 lakhs within a period of six weeks from the date of receipt of a copy of this order. On such compliance, the Debts Recovery Tribunal III, Chennai is directed to take up S.A.No.150 of 2019.

6.We also direct the Debts Recovery Tribunal III, Chennai to dispose of the appeal within a period of eight weeks from the date on which the appeal gets restored. We further make it clear that non- compliance of payment by the petitioner would result in the order of the Tribunal getting revived.

7.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

1.The District Collector cum District Magistrate,
Puducherry.

2.The Tahsildar cum Executive Magistrate,
Government of Puducherry,
Taluk Office, Oulgaret, Puducherry.

3.The Debts Recovery Tribunal III,
Chennai.

+1cc to M.L.Ganesh, Advocate, Sr.No.23161
+1cc to the Government Pleader for Puducherry, High
Court, Madras, Sr.No.23455

W.P.No.3435 of 2020

MR(CO)
GS(03/06/2020)