

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP.No.4004 of 2019

and

CMP.No.26324 of 2019

T.Ramesh,
No.6G, River Heights,
No.315, Valluvarkottam High Road,
Nungambakkam, Chennai - 600 034.

...Petitioner

vs.

Federal Bank,
Registered Office at Alwaye,
Karala State,
Having one of its asset
recovery branch
at No.57, Royapettah High Road,
Chennai - 600 014.

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned order dated 24.04.2019 in IA.No.260 of 2019 in AIR.No.306 of 2016 on the file of the Debt Recovery Appellate Tribunal and remand the matter to the Debt Recovery Appellate Tribunal for considering the appeal on merits.

For Petitioner : M/s.Nithayesh and Vaibhav

For Respondent : Mr.S.Sathyanarayanan

ORDER

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

By consent, this Civil Revision Petition is taken up for final disposal and is disposed of by this order. Mr.S.Sathyanarayanan, learned counsel appears for the respondent / Bank.

2. The respondent / Bank filed OA No.264 of 2014 on the file of the Debt Recovery Tribunal - II (DRT - II) at Chennai under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the "RDDBFI Act") against M/s.Mithas Labs Clinical Trials Research Foundations Private Limited, 6G, River Heights, 315, Valluvar Kottam High Road, Nungambakkam, Chennai - 600 034, the petitioner and his wife for recovery of a sum of Rs.6,36,09,244/- (Rupees Six Crores Thirty Six Lakhs Nine Thousand and Two Hundred and Forty Four only) together with interest thereon at 20.25% per annum with monthly rests (term loan and cash credit) and further sum of Rs.17,59,755/- (Rupees Seventeen Lakhs Fifty Nine Thousand and Seven Hundred and Fifty Five only) together with interest thereon at 16% per annum with monthly rests.

3. OA.No.264 of 2014, came to be decreed exparte. The petitioner, to review the exparte order passed in the said Original Application, filed M.A.No.173 of 2015 and it was also disposed of on 14.03.2016 by observing that all payments

made by the defendants during the pendente-lite period has to be adjusted towards the loan account on the appropriate date and further direction was to issue Debt Recovery Certificate only for the balance amount.

4. The second respondent aggrieved by the order passed in the main Original Application as well as dismissal of the Review Application, filed AIR.No.306 of 2016 on the file of the Debts Recovery Appellate Tribunal and it came to be dismissed for default on 08.10.2018 and there is a delay in filing the restoration application and hence filed IA No.260 of 2019 for condonation of delay of 119 days in restoring the said appeal. The petitioner herein also filed IA.No.261 of 2019 for restoration of appeal which came to be dismissed for default on 08.10.2018.

5. A perusal of the order sheet available at Page No.32 of the typed set of papers would disclose that IA.No.260 of 2019 was listed for arguments on 24.04.2019. The Tribunal took up the application for hearing, and vide impugned order dated 24.04.2019 has dismissed the said applications having taken note of the fact that the case was dismissed for default for want of appearance on earlier occasion and seven Interlocutory Applications are pending for adjudication and further taken note of the fact that the main Original Application came to be decreed exparte in the year 2015 and the petitioner under compulsion made a deposit of Rs.7 lakhs in compliance of some interim orders and ultimately, the exercise was also found to be futile and aimless and for such a negligence defaulter, no relief can be extended and citing the said reasons, dismissed

IA.No.260 of 2019 and as a consequence, dismissed all other six Applications.

6. The learned counsel for the petitioner has drawn the attention of this Court to the order passed in the Review Application and would submit that there appears to be lack of judicial application while disposing the Review Application which was filed to review the exparte order passed in the main application and further submitted that the delay of 119 days in filing the restoration application is very minimum and tenable reasons have also been given and without appreciating the facts and circumstances, the Tribunal choose to dismiss all other Interlocutory Applications on account of the dismissal of I.A.No.260 of 2019 and further points out that despite some applications are pending for condonation of delay, viz., I.A.No.248 of 2018 is filed for condonation of delay of 92 days in filing AIR.No.306 of 2016 and IA.No.247 of 2018 is filed for condonation of delay of 554 days in representation of AIR.No.306 of 2016, it should have been given disposal independently and hence prays for appropriate orders.

7. Per contra, the learned Standing Counsel for the respondent / Bank submitted that no doubt the petitioner has settled the term loan cash credit limit of Rs.6 crores and odd, as far as housing loan is concerned, despite very many opportunities given, he had failed to repay the dues and on account of this default, interest also started to accumulate and therefore, it is not open to the petitioner to make complaint as to the amount claimed by the respondent / Bank. Further, in the absence of any tenable and sufficient reasons, the delay of 119 days cannot be

condoned and the Tribunal has rightly approached in proper prospective and prays for dismissal of these applications.

8. The Court has considered the rival submissions and also perused the materials placed before it.

9. It is relevant to extract paragraph 3 of the affidavit filed in support of IA.No.260 of 2019.

"I submit that on 24.05.2018, the matter got reposted to 08.06.2018, on 08.06.2018 the respondent Bank entered appearance through its counsel. The respondent counsel sought time for filing their counter in the appeal and the connected IAs. The matter was adjourned to 28.06.2018. After 28.06.2018, the matter got reposted on several occasions and finally was posted on 05.10.2018. On that day, the matter got adjourned and was posted to 08.10.2018 for want of appearance of the counsel for the appellant. The junior counsel for the appellant has not seen the cause list and consequently the appeal has been dismissed for default on 08.10.2018. I submit that the non appearance of the counsel for the appellant on 08.10.2018 is neither wilful nor wanton."

It appears from the said affidavit that the party cannot be put to blame on account of the fact that the junior counsel on record appearing for the appellant did not noted the case in the cause list. The appeal itself came to be dismissed for default on 08.10.2018 and the delay also appears to be very minimum. During the

pendency of this Civil Revision Petition, the petitioner has given a Demand Draft bearing No.017208 dated 06.12.2019 drawn in favour of the respondent / Bank. It was also received by the learned counsel for the respondent / Bank without prejudice to the rights and contentions and therefore, the interest of the Bank is also safeguarded and the bonafide conduct of the petitioner is also evident from the fact of the submission of the said Demand Draft. It is open to the respondent / Bank to appropriate the said amount towards the dues without prejudice to the rights and contentions of the either parties.

10. In the result, the Civil Revision Petition is allowed and the impugned order dated 24.04.2019 in IA.No.260 of 2019 in AIR.No.306 of 2016 is set aside. The learned counsel appearing for the respondent / Bank has no objection in restoring the IA.No.261 of 2019, for that would be a consequential order on account of allowing of this application. No costs. Consequently, the connected Miscellaneous Petition is also closed.

11. Debts Recovery Appellate Tribunal, Chennai is requested to dispose of the IA.Nos.245 of 2018, 246 of 2018, 247 of 2018, 248 of 2018 and 249 of 2018 on its own merits and accordance with law, as expeditiously as possible.

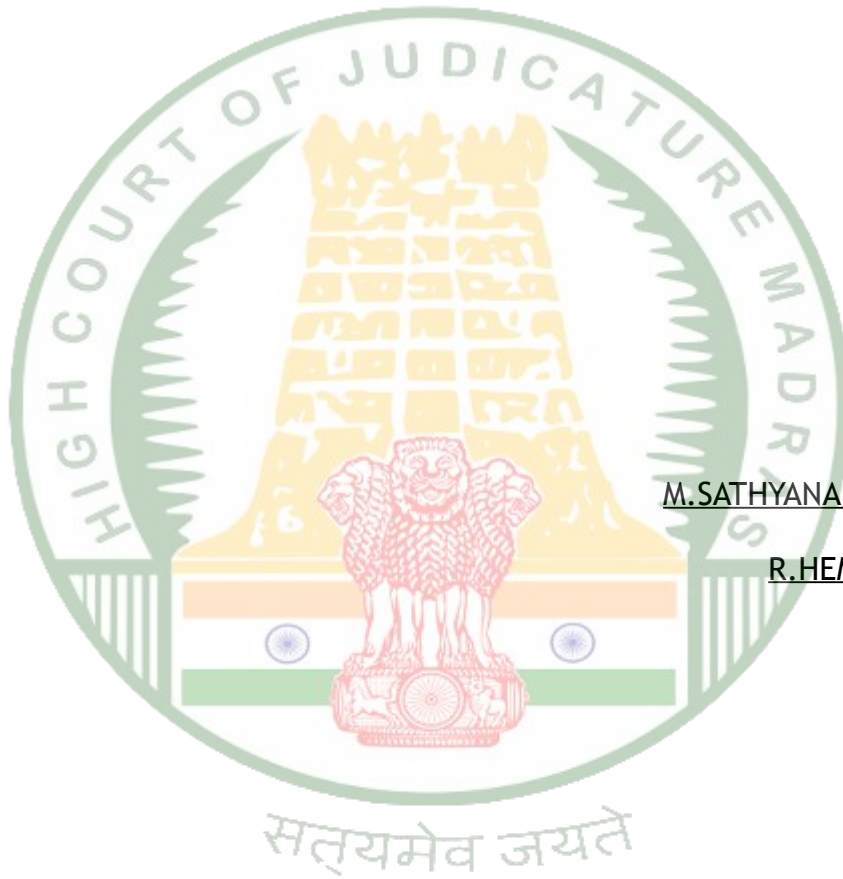
[M.S.N., J.] [R.H., J.]

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Index : Yes/No

Speaking / Non-speaking order

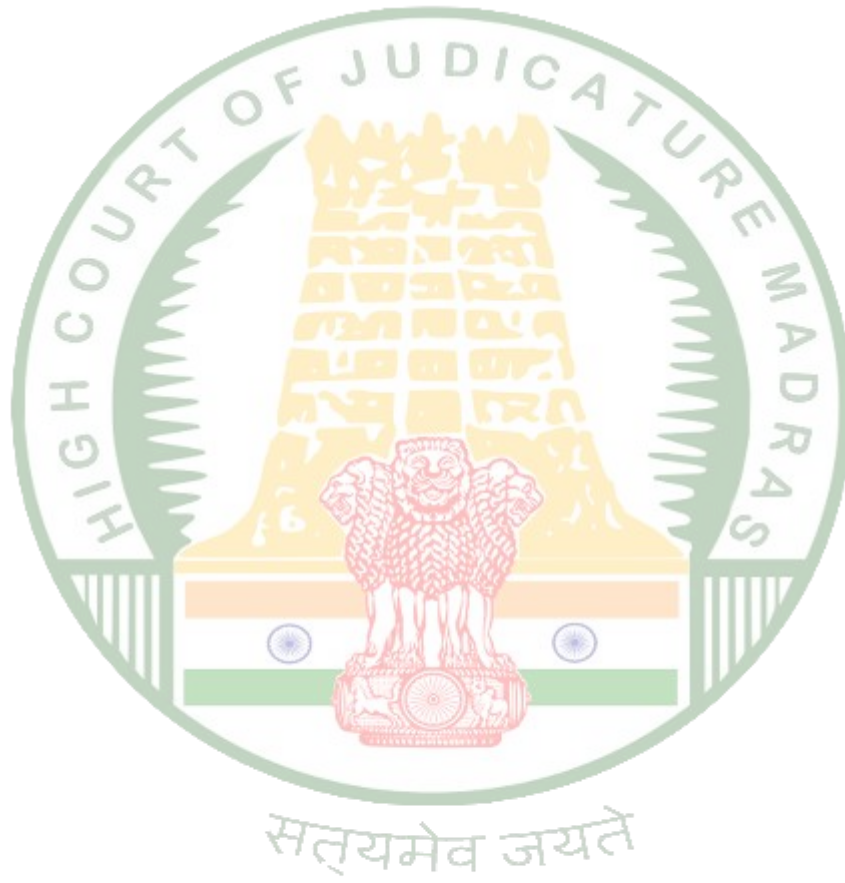


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