



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.1.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

C.R.P.No.2930 of 2021

&

CMP.No.21040 of 2021

1.M/s.Kaizer Trade Ventures,
2.R.Chellappan
3.Mrs.C.Meenakshi

...Petitioners

vs

1.City Union Bank Ltd., branch
office at Tiruvenchery rep.by
its Branch Manager
Mr.U.Ravichandran

2.C.Saravanan
3.K.Gurusamy

...Respondents

Prayer: Petition filed under Article 227 of The Constitution of India against the notice dated 10.8.2021 in O.A.No.309 of 2017 by the Second Respondent on the file of the Debts Recovery Tribunal-III, Chennai.

For Petitioners : Mr.G.Vikraman

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

We have heard the learned counsel for the petitioners.

2. By this revision petition, challenge is made to the notice dated 10.8.2021 issued by the Debts Recovery Tribunal-III (for short, the DRT) in O.A.No.309 of 2017.

3. Learned counsel for the petitioners submits that after the final order was passed by order dated 04.1.2021 in the said original application and after issuance of the recovery certificate in DRC.No. 154 of 2021 on 05.3.2021, the DRT issued



the impugned notice directing the petitioners and two others to appear before it for appropriate orders. The notice aforesaid has been challenged on the ground that against the final order in the said original application, the petitioners and another preferred an appeal before the Debt Recovery Appellate Tribunal, Chennai after paying court fees and when the appeal is pending, the DRT recalled its earlier order dated 04.1.2021. According to the learned counsel, the impugned notice has been issued after several months without authority and therefore, it is put to challenge and is sought to be set aside.

4. When the matter is examined, it came to light that what has been challenged is not an order, but a notice to the petitioners and others, to appear before it, in a case where final order was passed on 04.1.2021.

5. The learned counsel for the petitioners filed a memo by enclosing an additional document namely the order dated 09.8.2021 passed by the DRT in the said original application. The said order dated 09.8.2021 is quoted as hereunder :

"Taken up through E-DRT. It was brought to the notice of this Tribunal that the final order passed in OA.No.309/2017 dated 04.1.2021 did not have details about the counter claim raised by the defendants and which is also numbered as CC 03/2017 by the learned counsel appearing for the applicant bank. On examination and enquiry of the records, this Tribunal observed that the dealing staff has erroneously missed out the counter claim papers, which mistake could not be identified till the passing of final order. Hence, final order passed on 04.1.2021 and consequent DRC.No.154/ 2021 issued on 05.3.2021 are hereby set aside and recalled. Call on 31.8.2021 for clarifications, if any from the parties.

Registry is directed to issue notice to both parties by E-mail."

6. The said order dated 09.8.2021 shows that on 04.1.2021, the final order was passed in the said original application and it did not have details about the counter claim made by the defendants therein, that on examination and enquiry of the records, the DRT found that the dealing staff erroneously missed out the counter claim papers and this mistake could not be identified till passing the final order and that the final order dated 04.1.2021 and the consequential recovery certificate



issued in DRC.No.154 of 2021 on 05.3.2021 were recalled.

7. It is not in dispute that the counter claim was preferred by the petitioners and it was not considered. Thus, an appeal was preferred before the DRAT against the final order dated 04.1.2021. It may be that the appeal filed before the DRAT was with reference to other issues also. But, realizing the mistake, the DRT recalled the final order dated 04.1.2021. Thus, the matter would be heard afresh and decided after considering the counter claim preferred by the petitioners. The petitioners cannot dispute that one of the grounds raised in the appeal before the DRAT is non consideration of the counter claim and prayer to direct the DRT to consider the counter claim also.

8. It is seen that the order dated 09.8.2021, pursuant to which, the impugned notice has been issued, is a substantive order and has not been challenged. In any case, we do not find the order dated 09.8.2021 to be adverse. It is no doubt true that the order dated 09.8.2021 has been passed after a lapse of seven months, but for the reasons recorded therein. The DRT could not consider the counter claim due to the mistake of the dealing staff, who failed to put up the counter claim in the concerned file.

9. In the light of the above, we do not find any error in the impugned notice dated 10.8.2021, which was issued pursuant to the order dated 09.8.2021. The challenge to the said notice dated 10.8.2021 cannot be allowed when it is favourable to the petitioners for consideration of their own counter claim. We also do not find any reason to interfere with the order dated 09.8.2021.

10. Accordingly, the above civil revision petition is dismissed. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



To:

The Registrar,
DRT-III,
Chennai.

+1cc to Mr.B.Ravi Raja, Advocate, SR.No.2429

[18/04/2022]

C.R.P.No.2930 of 2021
&
CMP.No.21040 of 2021

KSM(CO)
SP(25/01/2022)