



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM :

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

AND

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

W.P.NO.28044 OF 2021

S.Shyamala

... Petitioner

.Vs.

1. The Presiding Officer,
Debts Recovery Tribunal III Chennai,
7th Floor, Additional Office Block,
Shastri Bhawan, Haddows Road,
Nungambakkam, Chennai - 600 034.

2. The Authorised Officer,
Union Bank of India,
Kancheepuram Branch,
No.86 A-B, Gandhi Road,
Kancheepuram District.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus directing the first respondent to pass an order based on the practice crystallised into a "rule of law" to impose initial condition of only 20% of the amount claimed in the Section 13(2) Demand Notice of Rs.27.59 lakh and take into the account the payment of Rs.9.369 lakh paid subsequent to its issuance.

For the Petitioner : Mr.B.Gurumurthy

ORDER

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

The writ petition has been filed to challenge the order of the first respondent for imposing the condition to deposit 20% of the amount claimed in the demand notice issued under Section 13(2), namely Rs.27.59 lakh without taking into account the payment of Rs.9.36 lakh made by the petitioner.



2. Learned counsel for the petitioner submits that the Debts Recovery Tribunal, while passing the interim order on 19.08.2021, imposed a condition to deposit 20% of the possession notice amount, ignoring the fact that the petitioner has already deposited 35% of the amount and therefore, the condition to deposit 20% of the possession notice amount is illegal. Accordingly, he seeks a direction to the first respondent to pass a fresh order.

3. A reference to Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been made to pursue the challenge in regard to the imposition of condition of deposit of 20% by the DRT. The prayer is accordingly to grant the relief prayed by the petitioner.

4. We have considered the submissions made by learned counsel for the petitioner and find that the interim order of DRT dated 19.08.2021 has not been challenged by the petitioner by way of an appeal on the ground that the DRAT is presently not functional in the absence of Chairperson. For that reason, the petitioner cannot invoke the jurisdiction of this Court without filing an appeal before the DRAT. The writ petition could have been maintained only when the appeal is not taken up by the DRAT in view of the absence of Chairperson.

5. Moreover, the petitioner has not challenged the order dated 19.08.2021 and therefore, the prayer made in the writ petition cannot be granted.

6. Further, the petitioner fails to show any provision which mandates the DRT not to pass a conditional order for payment of the amount beyond 20% in the possession notice and to take note of the amount already deposited. Section 18, referred to by learned counsel for the petitioner, is not applicable to DRT, but only to DRAT.

7. Thus, we do not find any merit in the writ petition. Accordingly, the writ petition is dismissed. Consequently, WMP No.29620 of 2021 is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kpl



To

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W.P.NO.28044 OF 2021

KSM(CO)
PBS/10/01/2022