



WEB COPY



WP No.8608 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

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

WP No.8608 of 2023

and WMP Nos.8776, 8783 and 11472 of 2023

P.K.Kerala Varma

.. Petitioner

versus

State Bank of India,
Bank Road,
Kozhikode-673 001.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the order dated 09.03.2023 passed in I.A.No.101 of 2023 in AIR No.101 of 2023 by the Debt Recovery Appellate Tribunal, Chennai and quash the same.

For the Petitioner : Mr.Anil Relwani

For the Respondent : Mr.M.L.Ganesh
Stdg. Counsel

* * * * *



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ORDER

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We have heard Mr.Anil Relwani, learned counsel for the petitioner and Mr.M.L.Ganesh, learned counsel for the respondent bank.

2. The learned counsel for the petitioner submits that the petitioner had filed an application before the Recovery Officer calling for the details of the amount deposited in the account of the principal borrower. The application was partly allowed. The same was challenged by the bank before the Presiding Officer, Debts Recovery Tribunal (DRT). The Presiding Officer, DRT set aside the said order on the ground that the Recovery Officer cannot sit over the recovery certificate already issued and remitted the matter to the Recovery Officer. The Recovery Officer, thereafter, rejected the application of the present petitioner. The petitioner filed an appeal before the Presiding Officer, Debts Recovery Tribunal. The said appeal is dismissed. Aggrieved thereby, the petitioner filed an appeal before the Debt Recovery Appellate Tribunal (DRAT). The DRAT directed the petitioner to deposit a sum of Rs.28,86,597/-. According to the



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learned counsel for the petitioner, when the appeal filed before the DRAT is not against any order adjudicating the claim, the DRAT cannot direct pre-deposit. Reliance is placed on the judgment of a Division Bench of this Court dated 11.04.2019 passed in C.R.P. (NPD) No.1492 of 2017 (**Sree Jeya Soundharam Textile Mills Pvt. Ltd. vs. Canara Bank and Others**) with other matters.

3. According to the learned counsel for the bank, the amount outstanding against the principal borrower is more than Rs.82.95 crore as in the year 2013, whereas the amount outstanding against the petitioner is Rs.1.20 crore and odd. However, the petitioner is directed to deposit only Rs.20 lakhs by the DRAT.

4. The contention of the petitioner certainly could have been considered more particularly in view of the judgment of the Division Bench of this Court dated 11.04.2019 referred to above. However, it also needs to be considered that independent proceedings were filed against the present petitioner for recovery. The same was decreed to the tune of Rs.20 lakhs with interest at the rate of 15.5% p.a. The said decree was of the year 2001. Now, the amount outstanding as per the decree against the present petitioner is Rs.1.20 crore and



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odd. The petitioner had filed an appeal against the adjudicated amount before the DRAT. The DRAT directed the present petitioner to deposit an amount of Rs.20 lakhs. The petitioner did not deposit the same; on the contrary, challenged the same before this Court by filing W.P.No.16041 of 2002. The Division Bench of this Court under order dated 20.06.2007 dismissed the same. The petitioner did not comply with the order of depositing of Rs.20 lakhs, which order had become final, inter alia, the appeal came to be dismissed for non-deposit of the amount.

5. The proceedings of the petitioner do not appear to be bonafide. The same is only to wriggle out of the liability and to prolong and protract the proceedings. As stated by the bank, the amount due from the principal borrower is more than Rs.82 crores in the year 2013. However, as far as the petitioner is concerned, as independent proceedings were filed and the liability of the petitioner is now restricted to Rs.20 lakhs with interest at 15.5% p.a. from the year 2001, the petitioner certainly ought to have complied the earlier order passed by the DRAT and confirmed by this Court. Today also, the DRAT has not even directed the petitioner to deposit 25% of the amount outstanding as on date.



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6. As the conduct of the petitioner does not appear to be bona fide, we are not inclined to entertain the writ petition. No farthing has been deposited by the petitioner though the order of pre-deposit in the appeal filed by the petitioner earlier was passed on or about March, 2002. Even after 20 years, the petitioner is now directed to deposit only Rs.28 lakhs and odd. In view of the factual matrix, we are not inclined to entertain the writ petition.

The writ petition as such is disposed of. There will be no order as to costs. Connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(P.D.A., J.)

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Index : yes/no
Neutral Citation : Yes/No
sra

To:

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