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W.P.No.9122 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.9122 of 2014

V.Radhakrishnan

... Petitioner

Vs.

1.Indian Bank Ltd.,

Represented by its Authorised Officer,

No.530, Thiruvottiyur High Road,

Washermenpet, Chennai – 21,

Represented by its Assistant General Manager

2.The Hon'ble Debt Recovery Appellate Tribunal,

Indian Bank Building, 4th Floor,

Ethiraj Salai, Egmore, Chennai – 8.

3.Asset Reconstruction Co. (India) Ltd.,

Represented by Mrs.Manjula Balaji, Chief Manager (Legal),

1G, 1st Floor, Century Plaza,

No.560-562, Anna Salai,

Teynampet, Chennai – 108.

... Respondents

*[R3 impleaded as respondent vide order dated 13.06.2024
made in WMP No.30541 of 2019 in WP No.9122 of 2014]*



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 2nd respondent order dated 04.02.2014 in I.A.No.1229 of 2012 in AIR 990 of 2012 pending on the file of the DRAT, Chennai and quash the same.

For Petitioner	:	Mr.R.Subburaj
For R1	:	Mr.R.I.Ramesh for Mr.P.V.Muralidhar
R2	:	Tribunal
For R3	:	Mrs.Jayanthi Venkatesh

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

The above writ petition is filed challenging the order passed by the Debt Recovery Appellate Tribunal at Chennai in AIR 990 of 2012, dated 04.02.2014.

2.The petitioner is the guarantor. The petitioner has not impleaded any other person except the Bank and the Appellate Tribunal as parties to the proceedings. From the affidavit filed in support of this writ petition, it is



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seen that the petitioner came to know that he had created an equitable mortgage of a property owned by the petitioner in Saligramam. The petitioner disputed the mortgage in favour of the 1st respondent. The 1st respondent Bank has filed an application before the Debts Recovery Tribunal and it is stated that the application is numbered as T.A.No.139 of 2001. After notice to the parties, the application in T.A.No.139 of 2001 was disposed of by order dated 05.10.2012 for recovery of a sum of more than Rs.9 Crores. When the petitioner filed an appeal before the Appellate Tribunal as against the order in T.A.No.139 of 2001, he filed an Interlocutory Application in I.A.No.1229 of 2012 for waiver of pre-deposit of 75%. However, when the matter was heard by the Debt Recovery Appellate Tribunal, there was no representation for the petitioner and the petitioner was called absent. Hence, an order was passed dismissing the application to waive the pre-deposit condition. As against the order, the above writ petition is filed.



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3.This Court, in this writ petition, is required to go into the issue whether the mortgage is true or not. The present application is filed challenging the order of Debt Recovery Appellate Tribunal refusing to dispense with the condition of pre-deposit. The Appellate Tribunal examined the *bona fides* of the petitioner on the basis of records and held that the petitioner, who was the guarantor for repayment, has failed to stand by the guarantee and that therefore, the Tribunal is required to collect pre-deposit as a condition. Referring to Section 21 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the Appellate Tribunal has passed the following order :

“It is seen that the amount due in his case is Rs.9,12,51,504/- and no amount has been paid by the petitioner after the filing of this appeal. Therefore from the fact that the petitioner has guaranteed the repayment and has failed to stand by the guarantee, from the fact that this Tribunal is bound by Sec.21 of the RDDBFI Act, from the fact that the petitioner cannot be allowed to disown the guarantee without being directed to repay the dues, from the fact that the petitioner is a defaulter, from the fact that the petitioner has contributed to the creation of a NPA, from the fact that the petitioner by non repayment has denied public money to other



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citizens of the country, from the fact that the interest of the bank supercedes the interest of the petitioner; from the fact that a DRT of competent jurisdiction has determined the liability, from the fact that public money has to be recovered in the interest of the country, from the fact that the appeal cannot be entertained without the pre-deposit under Sec.21 being made and from the fact that it would be appropriate if the petitioner is directed to deposit 50% of the amount due as on the date of filing the following order is passed.

“The petitioner is directed to deposit a sum of Rs.4,56,25,752/- into this tribunal on or before 27.2.2014. In the event the said deposit is not made into this tribunal on or before 27.2.2024 this IA shall stand automatically dismissed.””

4.It is not in dispute that the petitioner has not deposited the amount as directed by the Appellate Tribunal. This Court is unable to appreciate the conduct of the petitioner. After filing the above writ petition in 2014, the petitioner has not even argued at the time of admission for getting an interim order. From the Day One, the petitioner has consciously taken adjournment from the very inception. After taking two adjournments, the petitioner's counsel appeared and argued for admission and by an order dated



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07.04.2014, a Division Bench of this Court admitted this writ petition.

Thereafter, the matter has been adjourned on innumerable occasions at the request of the petitioner.

5.It is now reported that the 1st respondent has executed a Deed of Assignment in favour of the 3rd respondent who has now been impleaded as a party to the *lis*. The petitioner, despite dragging the proceedings for another 10 years, has not deposited any amount due to the 1st respondent Bank and the 1st respondent bank is compelled to assign and transfer all the rights in favour of the 3rd respondent. Since this writ petition is pending for more than 10 years, this Court is unable to find any reason to keep the matter pending. Since the attitude and conduct of the petitioner shows that there is no *bona fide* in this litigation, this Court finds that the impugned order is perfectly valid.

6.The only contention of the learned counsel appearing for the



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petitioner is that the petitioner stood only as a guarantor and that he had not signed the mortgage. He has disputed the guarantee as well the mortgage alleged to have been executed by the petitioner in respect of the property owned by him. The petitioner who came to know about the alleged mortgage and guarantee has kept quiet all these years. If a person comes forward with a case that his signature is forged by getting a Deed of Guarantee as well the Mortgage, he is expected to file a criminal complaint against the person who has done this mischief. In the absence of any such proceedings, the petitioner who did not dispute any notice when the matter was pending before the Debt Recovery Tribunal, has challenged the order passed by the Tribunal before the Appellate Tribunal. Having regard to the defence that is taken before the Appellate Tribunal, this Court is inclined to dispose of this writ petition with the following directions :

- i. The impugned order directing the petitioner to deposit a sum of Rs.4,56,25,752/- is modified by extending the time by three months from today. However, the petitioner is directed to deposit a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) to the credit of AIR 990 of 2012 before the Appellate Tribunal within a period of six weeks from



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today.

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ii. In case the petitioner deposits the said amount as directed by this Court, it is open to the Appellate Tribunal to entertain the appeal and dispose of the same on merits within a period of six weeks from the date of receipt of the deposit. It is also open to the Appellate Tribunal to modify the condition on its own if it is appropriate after hearing all the parties.

7. With the above directions, this writ petition is disposed of. No costs.

(S.S.S.R., J.) (N.S., J.)
13.06.2024

mkn

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

1. The Government of Tamil Nadu,



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Housing and Urban Development Department,
Secretariat, Fort St. George, Chennai – 600 009.

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- 2.The Commissioner,
Greater Corporation of Chennai
Rippon Building, Chennai – 600 003.
- 3.The Executive Engineer,
Zone XI Greater Chennai Corporation,
Zonal Office, No.33, Arcot Road,
Bhuvaneswari Nagar, Valasarawakkam,
Chennai – 600 087.
- 4.The Assistant Executive Engineer,
Zone XI, Unit-34, Greater Chennai Corporation,
Zonal Office, No.33, Arcot Road,
Bhuvaneswari Nagar, Valasarawakkam,
Chennai – 600 087.
- 5.The Assistant Engineer,
Division 150, Greater Chennai Corporation,
Ponni Nagar, Mullai Street,
Karambakkam,
Chennai – 600 116.

S.S. SUNDAR, J.
and
N. SENTHILKUMAR, J.



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