IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.17952 of 2015
and
M.P.No.1 of 2015

1.M/s.Suntex Private Ltd.,
446/2B, Avinashilingampalayam,
Palangarai (PO),
Avinashi-641 654.
2.V.Dehcinamoorthy
3.A.Abrahamlingam .. Petitioners

Vs.

1.Punjab National Bank,
1035,Cross Cut Road,
Coimbatore,
rep by its Senior Manager

2.The Recovery Officer,
Debts Recovery Tribunal at Coimbatore,
Cauvery Complex,
1670, Trichy Road,
Coimbatore.

3.The Registrar,
Debts Recovery Appellate Tribunal,
No.55,Ethiraj Salai,
Chennai-600 008. .. Respondents

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records on the file of the third respondent in connection with the impugned order passed in R.A.No.81 of 2009 dated 14.3.2011 and quash the same.

For petitioners : Mr.K.A.Ramakrishnan

For Respondents : Mr.V.Girishkumar for R-1

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant petition is directed against the order dated 14th March, 2011 passed by the Debts Recovery Appellate Tribunal (for short "DRAT"), Chennai made in R.A.No.81 of 2009, whereunder the appeal filed by the first respondent Bank was allowed with a direction to issue recovery certificate afresh with interest at the rate of 19% with quarterly rests from the date of the OA till the date of realization.

2 Indisputably, the petitioners are the borrowers. The petitioners defaulted in making payment and as such, an application, being O.A.No.231 of 2004 was filed by the first respondent Bank before the Debt Recovery Tribunal (for short "DRT"), Coimbatore. The DRT, vide order dated 12th June 2009, decreed the application as under :

> "(a)that the defendants 1 to 3 jointly and severally do pay the above said sum of Rs.17,14,715.00 (Rupees Seventeen lakhs Fourteen thousand Seven hundred fifteen only) with interest @ 19% from 16.07.2004, the date of OA, till 12.06.2009 and thereafter simple interest @ 12% per annum till realization and also its proportionate costs to the applicant bank;
>
> (b)that the defendants 1 to 3 do make their payment towards the Debts Recovery Certificate liability to the applicant bank and in default, the applicant bank is at liberty to sell the 'A1' and 'C' schedules mentioned properties, and to adjust the sale proceeds towards the amount due under Debts Recovery Certificate; and
>
> (c)if the sale proceeds is insufficient after defraying the expenses of such sale for the payment of all such amounts, defendants 2 and 3 are personally liable to pay the amount of such deficiency with simple interest @ 12% per annum until realization;
>
> 'A1' and 'C' schedules to the OA shall be appended to this order. The applicant bank is to file memo of costs within ten days from the date of this order. Communicate copy of this order to both parties as provided in Rule 16 of the Debts Recovery Tribunal (Procedure) Rules, 1993 as amended in 2003."

3 Feeling aggrieved the first respondent Bank has preferred the instant appeal before the DRAT. The DRAT, considering all aspects

of the matter, allowed the appeal with the aforestated direction.

4 The prime contention of the learned counsel for the petitioners is that the DRAT had imposed interest at the rate of 19% with quarterly rests arbitrarily and illegally without there being any justification. The learned counsel appearing for the petitioners would further contend that the hypothecation agreement provides for interest at the rate of 12% over the bank rate with a minimum of 19% per annum, without there being any quarterly rest thereon. Thus, the impugned order of the DRAT is punitive and deserves to be set aside.

5 On the other hand, the learned counsel appearing for the first respondent Bank submits that the DRAT was justified in imposing such interest rate at quarterly rests, keeping in view the pendency of the matter and also continuous default on the part of the petitioners to repay the outstanding amount.

6 We have heard the learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

7 There is no dispute that there is no contemplation of interest with quarterly rests in the hypothecation agreement between the parties. There is no dispute that there has been default in making payment. However, the default cannot be compensated without any reason when there is a clear provision of making interest at the rate of 12% over the bank rate with a minimum of 19% per annum. Thus, the impugned order the of DRAT to the extent of payment with quarterly rests is excessive and deserves to be set aside.

8 We accordingly allow the writ petition in part, modifying the impugned order to the extent that the recovery certificate shall be issued afresh as directed by the DRAT with 19% interest without quarterly rests or otherwise, from the date of the OA till the date of realization. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The Senior Manager,
Punjab National Bank,
1035,Cross Cut Road,
Coimbatore,

2.The Recovery Officer,
Debts Recovery Tribunal at Coimbatore,
Cauvery Complex,
1670, Trichy Road,
Coimbatore.

3.The Registrar,
Debts Recovery Appellate Tribunal,
No.55,Ethiraj Salai,
Chennai-600 008.

+1cc to M/s.K.A. Ramakrishnan, Advocate Sr.49394
+1cc to M/s.V.Girishkumar, Advocate Sr.50009

cnr[co]
srg 1.10.2015