IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/12/2016

C O R A M

The Honourable Mr.Justice S.Manikumar

and

The Honourable Mr.Justice M.Govindaraj

Writ Petition No.7854 of 2014
MP 1 of 2014

1. K. Janaki
2. C.P.Radhakrishnan ... Petitioners

Vs

1. The Debts Recovery Appellate Tribunal
rep. By its Registrar
4th Floor, Indian Bank Circle Office
55 Ethiraj Salai
Chennai.

2. The Debts Recovery Tribunal
rep. By its Registrar
Coimbatore.

3. M/s. Punjab and Sindh Bank
International Banking Division
32 M.G.Pudur, 1st Street
Tiruppur. ... Respondents

For petitioners ... Mr.I.C.Vasudevan

For respondents ... Tribunal
for R.R.1 and 2.

Mr.R.Selvakumar
for R.3.

O R D E R

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

Challenge in this writ petition is to an order made by the Debts Recovery Appellate Tribunal in R.A.No.131 of 2010 (T.A.No.1927 of 2002, on the file of the Debts Recovery

Tribunal, Coimbatore), dated 27/12/2013, by which the Appellate Tribunal, set aside the order made by the Debts Recovery Tribunal, Coimbatore.

2. Material on record discloses that the first petitioner engaged in manufacturing and exports of cotton knitted garments, has availed loan from M/s. Punjab and Sindh Bank, International Banking Division, Tiruppur. Part of the loan amount has been paid. After following the procedure set out in the Recovery of Debts Due to Financial and Institutions Act, 1993, M/s. Punjab & Sindh Bank/third respondent has filed O.A.No.311 of 2000 before the Debts Recovery Tribunal - I, Chennai, which was subsequently transferred to Debts Recovery Tribunal, Coimbatore and renumbered as T.A.No.1927 of 2002.

3. On contest and taking note of the submissions of the writ petitioners that a sum of Rs.15 lakhs had been paid and material on record, the Debts Recovery Tribunal, Coimbatore, vide order, dated 22/10/2007, allowed T.A.No.1927 of 2002 by granting the following directions:-

> "In the result, it is hereby doth ordered and decreed as follows:-
>
> a. that the defendants 1 and 2 jointly and severally do pay the above said sum of Rs.3,71,015.00 (Rupees Three lakhs Seventy One thousand and Fifteen only) together with simple interest thereon @ 9% per annum from 19/4/2006 and 28/5/2007, the date of recovery of sum of Rs.12.00 lakhs and Rs.3,00,000.00 respectively, till realisation and also its proportionate costs to the applicant bank,
>
> b. that the defendants 1 and 2 jointly and severally do pay interest on the sum of Rs.18,71,015.00 @ 9% per annum from 20/3/2000, the date of TA till 18/4/2006 and 27/5/2007.
>
> c. that the defendants 1 and 2 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 schedule "A" mentioned properties, and to adjust the sale proceeds towards the amount due under Debts Recovery Certificate; and
>
> d. if the sale proceeds is insufficient after defraying the expenses of such sale for the payment of all such amounts, defendants 1 and 2 are personally liable to pay the amount of such deficiency with simple interest @ 9% per annum until realisation;
>
> "A schedule to the TA 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.

Registry is directed to prepare Debts Recovery Certificate in terms of final order."

4. Contending interalia that when the admitted interest, at the time of availing loan was 18.75% p.a., with quarterly rests, to the Bank and that the Debts Recovery Tribunal, Coimbatore has reduced the rate of interest to 9% p.a., until realisation of the balance amount, without any reasons, M/s. Punjab & Sindh Bank, International Banking Division, Tirupur, has filed R.A.No.131 of 2010 before the Debts Recovery Appellate Tribunal, Chennai.

5. After hearing the learned counsel for the parties, Debts Recovery Appellate Tribunal, Chennai, allowed the appeal in R.A.No.131 of 2010, vide order, dated 27/12/2013 as hereunder:-

"In the result, the appeal is allowed.

The Ld. Presiding Officer, DRT, Coimbatore is directed to recall the recovery certificate already issued and issue a fresh recovery certificate in terms of the above order.

I.A.1221 of 2013 (stay)

Orders have been passed in R.A. Hence this IA is closed."

6. Being aggrieved by the same, instant writ petition has been filed by the borrowers, on the grounds inter alia that when the Debts Recovery Tribunal, Coimbatore, has exercised its discretion in reducing the rate of interest to 9% on the balance amount, until realisation, the Appellate Tribunal, ought not to have interfered with the discretion. Except the above, no other contention has been made.

7. On the contra, contention has been made in the counter affidavit filed by the Senior Manager (Zonal Office), Chennai 2, that decision in Central Bank of India Vs. Ravindra and State Bank of India Vs. Sarathy Textiles, reported in AIR 2001 SC 3095, has no application to the case on hand and that the respondent Bank is entitled to the contractual rate of interest.

8. By inviting the attention of this Court to an unreported judgment of this Court made in W.P.No.9267 of 2009, dated 30/11/2009 in the matter of 1. P. Hemanth Kumar and two others Vs. 1. The Debts Recovery Appellate Tribunal at Chennai, represented by its Registrar, 4th Floor, Indian Bank Circle Office, 55 Ethiraj Salai, Chennai 600 008 and two others, the third respondent herein has submitted that concession given was under Section 34 of the CPC.

9. It is also the contention of the third respondent Bank that the Debts Recovery Appellate Tribunal, did not enhance the rate of interest, but only awarded the contractual rate of interest, as agreed to by the borrowers/writ petitioners herein. According to him, when there is an agreement, the terms and conditions of the same are binding on the borrowers. For the above said reasons, Punjab & Sindh Bank, Tiruppur/third respondent has prayed for dismissal of the writ petition.

10. Indisputably, the contractual rate of interest, at the time when the loan was availed is 18.75% p.a., with compounded quarterly rests to the Bank. It is well settled that the terms and conditions of an agreement entered into by the parties, are binding on them and Court/Tribunal, cannot alter or delete or substitute.

11. A perusal of the order of the Debts Recovery Tribunal, Coimbatore in T.A.No.1927 of 2002, dated 22/10/2007, does not indicate that the Tribunal has assigned any reasons for reducing the rate of interest. Reasons are the heart beat of any decision and more so, when discretion is exercised by Courts/Tribunals. On this aspect, we deem it to extract few decisions.

(i) In Alexander Machinery (Dudley) Ltd. v. Crabtree reported in 1974 ICR 120 (NIRC), it was observed:

> "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at."

(ii) In Gurdial Singh Fijji v. State of Punjab reported in (1979) 2 SCC 368, the Supreme held as follows:

> " 'Reasons' are the links between the materials on which certain conclusions are based and the actual conclusions."

(iii) In Mc Dermott International Inc. v. Burn Standard Co. Ltd. and Ors. Reported in (2006) SLT 345 = 2006 AIR SCW 3276, the Supreme Court, at Paragraph 57, held that reason is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action.

(iv) In M/s.Steel Authority of India Ltd., v. STO, Rourkela-I Circle & Ors. reported in 2008 (5) Supreme 281, the Hon'ble Supreme Court held that the appellate order must be a speaking order and well reasoned, otherwise, it is lifeless.

(v) In East Coast Railway v. Mahadev Appa Rao reported in 2010 AIR SCW 4210, the Hon'ble Supreme Court held that,

"Reasons must be stated in order or official note contemporaneously maintained."

12. Though Mr.I.C.Vasudevan, learned counsel for the borrowers/writ petitioners contended that the Tribunal, while exercising the discretionary power, has reduced the rate of interest, and therefore, no interference is called for, we are not inclined to accept the said contentions.

13. In the light of the above discussion and decisions, we are of the considered view that borrowers/writ petitioners have not made out a strong case, for interfering with the order of the Debts Recovery Appellate Tribunal in T.A.No.1927 of 2002, dated 22/10/2007.

14. In the result, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs/ars

To
1. The Registrar
Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55 Ethiraj Salai
Chennai.

2. The Registrar
Debts Recovery Tribunal
Coimbatore.

+1cc to Mr.Vasudevan, Advocate, S.R.No.74770
+1cc to Mr.Selva Kumar, Advocate, S.R.No.74954

NRJA(CO)
RS(19/01/2017)

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