IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.12.2016
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.42568 of 2016
and
WMP Nos.36501 & 36502 of 2016

M/s.Ramco Super Leather Ltd.,
Rep. by its Managing Director,
Mr.S.Ramasamy .. Petitioner

versus

1. Industrial Investment Bank of India Ltd.,
7th Floor, Spencer Plaza,
Anna Salai, Chennai - 600 002.

2. M/s.RSL Industries Ltd.,
Rep. by its Director,
No.28, Alagappa Road,
Chennai - 600 084.

3. M/s. RSL Textiles (India) Ltd.,
Rep. by its Director,
No.28, Alagappa Road,
Chennai - 600 084.

4. M/s. RSL Holding Pvt. Ltd.,
Rep. by its Director,
No.28, Alagappa Road,
Chennai - 600 084.

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

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order proceedings dated 9.11.2016 passed by the Debts Recovery Appellate Tribunal, Chennai in A.I.R.No.174 of 2016 and quash the same and consequently direct the 5th respondent to dispose the Appeal in AIR No.174 of 2016 on merits without any pre deposit on merits.

For Petitioner : Mr.Jayash B. Dolia

ORDER

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

Challenge in the writ petition is to an order dated 09.11.2016 passed in A.I.R.No.174 of 2016 by which the Debts Recovery Appellate Tribunal, Chennai, directed the writ petitioner to deposit 50% of the claim amount i.e., Rs.6,51,50,000/-, in the name of the Registrar of Debts Recovery Appellate Tribunal, Chennai for entertaining the statutory appeal.

2. Material on record discloses that Industrial Investment Bank of India Limited, Chennai has filed O.A.No.357 of 2003 before the Debts Recovery Tribunal-1, Chennai, against defendants 1 to 4 therein for recovery of Rs.13,03,49,995/- jointly and severally together with further interest @ 14% per annum with half yearly rests from 15.11.2003 till the date of repayment and also for sale of the schedule properties.

3. M/s.Ramco Super Leathers Limited, Chennai, the writ petitioner herein is the 2nd defendant in O.A.No.357 of 2001. The defendants remained exparte. Considering the pleadings and material on record, DRT-I, Chennai, passed an order dated 08.07.2008, declaring as follows:

> a) The applicant bank is entitled for a Recovery Certificate as against thew defendants jointly and severally for a total sum of Rs.13,03,49,995/- [rupees thirteen crores three lakhs forty nine thousand nine hundred and ninety five only], jointly and severally, together with further interest @ 14% p.a with half yearly rests from 15.11.2003 alongwith costs, which includes the advocate fees as per rules.
>
> b) It is further ordered that in case of default of payment by the defendants, the applicant bank is at liberty to sell the application schedule properties and to adjust the sale proceeds thereon towards the amount due.
>
> c) It is further declared that in case of default of payment by the Defendants, liberty granted to invoke the modes provided under Section 25 or 28 of RDDB & FI Act."

Copy of the order made in O.A.No.357 of 2003 dated 08.07.2008, has been directed to be communicated to the parties concerned.

4. Perusal of the abovesaid order shows that Industrial Investment Bank of India Limited, Chennai, vide letter dated 11.04.2003 has called upon M/s.Ramco Super Leathers Limited, Chennai, the writ petitioner/2nd defendant therein to pay the entire outstanding amount as on 10.04.2003. Responding to the letter dated 11.04.2003, M/s.Ramco Super Leathers Limited, Chennai, the writ petitioner/2nd defendant therein, vide letter dated 10.05.2003, had requested time till 15.06.2003 and to start remittance to clear the amounts due under the NCDs. In the said letter the writ petitioner / 2nd defendant therein has also confirmed that the Debentures had been classified as 'Secured Loan', in their accounts. Writ petitioner/2nd defendant therein had promised to clear the outstanding interest vide letter dated 28.05.2003 and requested the bank not to sell the pledged shares. As no amounts were paid by the defendants therein, Original Application has been filed.

5. Material on record discloses that to set aside the final order made in O.A.No.357 of 2003, all the four defendants have joined together and have filed M.A.No.110 of 2008. Said M.A., has been disposed of on 06.01.2012 as hereunder.

> "M.A.110/2008 taken up today. There is no representation for the petitioner inspite of directions given. Representing counsel for respondent present. On 26.12.2006, this Tribunal had set the defendants exparte. Subsequently, permission was granted to the defendants to file their RS. Final order was passed on 8.9.2008. Defendants were set exparte. The present MA is filed to set aside the exparte order. However the petitioner is not taking proper interest for disposal of the MA as the petitioner is coming forward for any enquiry. On going through the averments made in the petition, counter filed by the respondent this Tribunal is satisfied that the very purpose of filing MA.110/2008 is only to drag the DRC proceedings, wherein the respondent is entitled to recover more than Rs.13 Crores plus interest and as such MA.110/2008 is not allowed. Respondents are directed to proceed further with DRC proceedings."

6. Thereafter, M.A.No.55 of 2012 has been filed to condone the delay of 200 days in filing the restoration petition and the defendants have also prayed to set aside the order dated 06.01.2012 made in M.A.No.110 of 2008 and consequently, to restore the same. The said application viz., M.A.No.55 of 2012, filed to condone the delay of 200 days has been renumbered as M.A.No.90 of 2015. Subsequently, on 09.06.2015, M.A.No.90 of 2015 filed to condone the delay of 200 days, has been dismissed as hereunder.

> "3. Heard both side arguments. The respondent strongly objected to this petition. On perusal of the

proceedings, the present petitioners / defendants were set exparte on 23.04.2006 and the exparte final order was passed on 08.07.2008. Thereafter, the present petitioners filed this petition to set aside the exparte order dt.23.04.2006. That petition was allowed on the ground that the present respondent has endorsed no objection. Even though exparte order was set aside, the present petitioner has not filed reply statement. Therefore, this Tribunal again passed an exparte order on 02.07.2008 and exparte final order was pass on 08.07.2008. Thereafter, the petitioner filed M.A.No.110/2008 to set aside the exparte order dt. 08.07.2008. This was posted for enquiryon too many hearings from 2009 to 2011. As the petitioners were not ready for arguments, the petition was dismissed for default for the reasons of non-appearance of petitioners. Now this petition is filed for condone delay of 200 days to restore MA No.110/2008. The attitude of the petitioners clearly shows that they want to drag on the proceedings and delay the recovery proceedings. If the petitioners are really interested in contesting the case, they would have filed the reply statement at the first instance when the exparte order was set aside. But they have not done so. Further, no proper reason was given by the petitioners for 200 days delay. Hence, this petition has no merit.

4. In the result, M.A.No.90/15 is dismissed. No costs."

7. Thereafter, the 2nd defendant alone has filed an appeal in A.IR No.174 of 2016, before the Debts Recovery Appellate Tribunal, Chennai to set aside the order dated 09.06.2015 made in M.A.No.90 of 2015 in M.A.No.110 of 2008 in O.A.No.32 of 2015 passed by the Presiding Officer, DRT-II, Chennai.

8. After considering the material on record, the Debts Recovery Appellate Tribunal, Chennai, vide order dated 09.11.2016, directed the writ petitioner to deposit 50% of claim amount i.e. Rs.6,51,50,000/-, in the name of the Registrar of the Tribunal, as a condition precedent for entertaining the appeal. Order dated 09.11.2016, reads as hereunder.

" Heard on office objection.

Placing reliance on the order passed by the Hon'ble High Court of Madras in W.P.No.2468/2014 and M.P.No.1/2014 in the case of "Zubaida Begaum Vs. The Manager, Indian Bank", Ld. Counsel for the Appellant submits that in the present Appeal filed under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act 1993 (RDDB&FI Act, for short), no amount has been determined so far and the present Appeal is filed against the order passed by the DRT dismissing the Interlocutory Application filed by the Appellant for condonation of delay in filing the restoration application, against the Appellant herein. Therefore, no stage of waiver has come so far.

This Appeal is based on OA.357/2003 filed by the Respondent Bank for recovery of a sum of Rs.13,03,49,995/- [at page 13 of the Appeal book]. The DRT has already passed Final Order in the OA on 08.07.2008 [at page 26 of the appeal book] by way of exparte order and the amount was determined.

I am not inclined to stretch the provisions of the Act after 13 years of initiation of the recovery proceedings, so that, only technicality will prevail over.

Based on different facts and in terms of the provisions of Section 21 of the RDDB&FI Act, I will be able to entertain this Appeal only when 50% of the OA claim amount i.e. Rs.6,51,50,000/- [in round figure] is deposited in the name of the Registrar of this Tribunal.

If the Appellant has any case for waiver of it, nothing shall prevent it from filing an Application before me for the purpose.

List on 24.11.2016, for compliance."

Being aggrieved by the same, instant writ petition has been filed.

9. Though, Mr.Jayash B.Dolia, learned counsel submitted that the writ petitioner is neither a borrower nor a guarantor and that there was no necessity for a conditional order to be passed in entertaining the appeal and further submitted that the writ petitioner is not liable to pay the outstanding amount, as the order of amalgamation had already been set aside by a Hon'ble Division Bench of this Court, the said contentions cannot be countenanced for the reason that as early as on 10.05.2003, writ petitioner/2nd defendant itself had given a letter to the bank, agreeing to clear the amounts due under the NCDs. The writ petitioner has also promised to clear the outstanding interest vide letter dated 28.05.2003. That apart, even in the supporting affidavit to the instant writ petition, the petitioner company has contended that it is seriously attempting to settle the dues of the respondent bank under one time settlement and in all probabilities it would be settled.

10. Further, according to the petitioner, the amount likely to be settled would be less than the amount directed to be

deposited by the Debts Recovery Appellate Tribunal, Chennai. Thus, it could be seen that on the one hand, the writ petitioner denies liability to pay the outstanding amount, on the grounds inter alia that the order of amalgamation has been set aside, and on the contra, petitioner has also submitted that they are seriously attempting to settle the dues of the respondent bank under One Time Settlement.

11. As rightly pointed out, Recovery proceedings, have been initiated in O.A.No.357 of 2003, for recovery of Rs.13,03,49,995/- and since then for nearly 13 years, no amount has been paid. Going through the material on record, we are of the view that the petitioner cannot be allowed to blow hot and cold. Outstanding amount has already been determined in O.A.No.357 of 2003 dated 08.07.2008. Therefore, the Debts Recovery Appellate Tribunal, Chennai cannot be said to have faulted in directing the writ petitioner/2nd defendant to make deposit of 50% of the claim amount i.e., Rs.6,51,50,000/- in the name of the Registrar of the Tribunal, as condition precedent for entertaining the appeal.

12. In the light of the above discussion, we do not find any infirmity, to interfere in the impugned order made in A.I.R.No.174 of 2016 dated 09.11.2016. Writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ars

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

+1 cc to Mr.Aiyar & Dolia Advocate sr 72322

W.P.No.42568 of 2016
and
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pvs(co)
aa05/01/2017