IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/10/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Writ Petition No.9453 of 2017

T.P.Vishnukumar ... Petitioner

Vs

1. M/s. Canara Bank
   rep. By its Authorised Officer/
   Senior Manager
   P.N.Road
   Tirupur Branch.

2. M/s. Ellwin Garments
   rep. By its Partner
   Mrs.Radhamani
   Tirupur 641 601.

3. Mrs.Radhamani

4. Mrs.Rathinam

5. Mr.K.M.Krishnasamy

6. Mr.O.P.Subbian ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records of the Debt Recovery Appellate Tribunal with respect to the orders passed in M.A.No.17/2015 on 21/2/2017 and quash the same as prejudicial.

For Petitioner ... Ms.K.Jayaganga
For respondents ... Mr.Raghunathan for R.1

O R D E R

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

M/s. Ellwin Garments, Tirupur Branch, has availed loan from M/s. Canara Bank, Tirupur Branch. Loan was not repaid. Bank preferred O.A.No.152 of 2002, on the file of the Debt Recovery Tribunal, Coimbatore, and the petitioner was defendant No.7 therein, Power of Attorney of the borrower. Pending O.A.No.152 of 2002, petitioner has filed I.A.Nos.873 to 875 of 2007, seeking for a direction to the Bank, to produce the extract of accounts, as well as certain documents, relating to banking transactions. The said applications were dismissed. Being aggrieved, the petitioner has filed W.P.Nos.14428 to 14430 of 2008 before the writ Court.

2. Though the prayer sought for in the above said writ petitions were opposed by the Bank that none of the documents sought for, by the petitioner were germane to the issue to be decided and that the petitioner had attempted to protract the proceedings and a further contention was made that when there was an effective and alternative remedy, by way of an appeal, under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the Debt Recovery Appellate Tribunal, Chennai, writ petitions should not be entertained, writ Court, allowed the writ petitions and held that the petitioner had made out a case to cause for production of documents sought for in I.A.Nos.873 to 875 of 2007, except promissory notes reported to be untraceable.

3. Material on record discloses that assailing the correctness of the order of the writ Court, Bank has preferred W.A.Nos.559 to 561 of 2009 and that the same were allowed by a Hon'ble Division Bench, with an observation that the petitioner therein had not availed the alternate remedy, under Section 20 of the Act.

4. Being aggrieved, the petitioner has preferred appeals to the Hon'ble Supreme Court in S.L.P.(C) Nos.1258-60-2016.

5. After adverting to the rival submissions, considering the statutory provisions and taking note of the conduct of the petitioner, while dismissing the appeals, the Hon'ble Supreme Court, in T.P.Vishnu Kumar Vs. Canara Bank, P.N.Road, Tiruppur and Others {(2013) 10 Supreme Court Cases 652}, at paragraph Nos.4 and 5, held as follows:-

> "4. We have heard the learned counsel for the petitioner. This is a classic case which shows how the parties can protract proceedings in fiscal matters. Parties as well as the system have contributed to the delay. At every stage of the proceedings there was delay. Facts disclosed that Canara Bank had filed the application in the year 2002 vide O.A.No.152 of 2002 for total amount of Rs.1,59,51,477.93 with

interest and the OA stands at the stage at which it was filed, not an inch forward.

5. IA Nos.873 to 875 of 2007 were filed by the petitioner as well as respondents 2 to 6 before the Tribunal after a period of five years of filing the original applications. The applications were dismissed by the Tribunal on 18/2/2008. The writ petitions filed in the year 2008 were allowed by the learned Single Judge on 7/11/2008. The writ appeals were filed before the Division Bench by Canara Bank in the year 2009, which could be disposed of only after a period of 3 years. The Bank's appeals were allowed, since the contesting respondents did not avail of the alternative remedy available under the Act.

6. Material on record discloses that after the dismissal of S.L.Ps, on 11/2/2013, i.e., after 18 months, petitioner has filed I.A.No.1290 of 2014, before the Debt Recovery Tribunal, Coimbatore, on 9/10/2014, praying to set off, a sum of Rs.61 lakhs, as against the claim of the Bank, in the year 1999, when the amount under the promissory note and the Bills of Exchange were payable to the petitioners.

7. Bank has filed a detailed counter affidavit, contending inter alia that after twelve years, of the filing of original application, I.A.No.1290 of 2014, has been filed praying to set off and that the averments regarding the alleged promissory notes, are liable to be rejected. Bank has also contended that the said application is barred by limitation. In the counter affidavit, reference has also been made to the observation of the Hon'ble Supreme Court, as regards delaying tactics.

8. After considering the rival submissions and material on record, vide order, dated 17th December 2014, the Debt Recovery Tribunal, Coimbatore, has dismissed I.A.No.1290 of 2014 in O.A.No.152 of 2002.

9. Being aggrieved, petitioner has filed Miscellaneous Application No.17 of 2015 against the order made in I.A.No.1290 of 2014 in O.A.No.152 of 2002, before the Debt Recovery Appellate Tribunal, Chennai. Before the Appellate Tribunal, petitioner has reiterated the very same contentions. But the Bank, in the counter affidavit, at paragraph Nos.18 and 19 has contended as follows:-

"18. The case of the appellant that the Bank has lost the promissory note is their own imagination. If they were serious about enforcing the said promissory notes, they should have collected the promissory notes then and there soon after the exports have entered into an abortive and the claim under the so called promissory notes have been allowed to get time barred of their own volition having themselves decided not to enter into expensive litigation abroad. The said promissory notes were never entrusted to the bank nor have they ever instructed the bank to take any action to recover against the said promissory notes.

19. Having decided themselves not to litigate the foreign country considering the expenses involved, they are bringing it in the picture only to further gain time. It was never their intention to proceed under the said promissory notes as they have already declared to the Reserve Bank of India that the exports have met with an abortive and no foreign exchange has been received at their end pursuant to the said exports."

10. Considering the rival contentions and taking note of the decision of the Hon'ble Apex Court in SLP (Civil) Nos.1258 to 1260 of 2013, at paragraph 4 of the order, in M.A.No.17 of 2015 in I.A.No.1290 of 2014 in O.A.No.152 of 2002, the Debt Recovery Appellate Tribunal, Chennai, has ordered, as hereunder:-

"Considering the averments of the rival parties and on perusal of record, it is reveals that, the Ld. Presiding Officer has dealt with the matter in detail in right perceptions. Story of pro-notes has been discarded by Hon'ble High Court and Hon'ble Apex Court also. In so far as the matter relating to the RDDB & FI Act, it is made clear that, the provisions of CPC are not strictly applicable in this matter. These recovery matters are required to be decided within the time prescribed by it, say within 6 months from the date of filing of the appeal. Whatever loss has been incurred to the appellant due to negligence and mishandling by the first respondent Bank can be brought on record on the basis of documentary evidence also."

11. Assailing the correctness of the interim order, in M.A.No.17 of 2015, and reiterating the very same contentions, made before the Tribunal, instant writ petition has been filed,

on the grounds inter alia that Debt Recovery Appellate Tribunal, Chennai, has taken a prejudicied view, and that the Debt Recovery Appellate Tribunal, has totally lost sight of the factum of misplacement of documents.

12. By inviting the attention of this Court to the judgment of the Hon'ble Supreme Court, to paragraph Nos.4 and 5 of the orders extracted supra, in T.P.Vishnu Kumar Vs. Canara Bank, P.N.Road, Tiruppur and Others {(2013) 10 Supreme Court Cases 652}, learned counsel for the Bank submitted that though on the facts and circumstances of the case and taking note of the conduct of the petitioner, the Hon'ble Supreme Court, has already observed that it was a classic case, as to how the writ petitioner had protracted the proceedings, before the Debt Recovery Appellate Tribunal, that too, after 20 months of the disposal of SLPs, the petitioner has once again resorted to the very same delaying tactics, by filing an application claiming set off.

13. Inviting the attention of this Court to sub-Section 6 of Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, Mr.Raghuraman, learned counsel for the Bank further submitted that where the defendant claims to set off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off along with original documents and other evidence relied on in support of claim and other in support of claim of set-off in relation to any ascertained sum of money, against the applicant.

14. Drawing the attention of this Court that O.A was filed in the year 2002 and after 12 years, instant I.A.No.1290 of 2014 was filed claiming set off, learned counsel for the Bank submitted that application is hopelessly barred by limitation. However, taking this Court through paragraph No.4 of the order dated 21/2/2017, made in M.A.No.17 of 2015, by the Debt Recovery Appellate Tribunal, Chennai, learned counsel for the Bank submitted that though application filed to set off has been dismissed, still the Debt Recovery Appellate Tribunal, Coimbatore, has directed to consider any documentary evidence brought on record and to pass appropriate orders. Learned counsel for the Bank submitted that there is absolutely no merit in the instant writ petition, warranting interference from the order impugned.

15. Heard the learned counsel for the parties and perused the materials available on record.

16. Attempt of the writ petitioner for a direction to produce certain documents, by filing Interim application Nos.873 to 875 of 2007, has reached finality, on 11/2/2013, when the Hon'ble Supreme Court, dismissed the SLPs and also observed that the petitioner had protracted the proceeding. Taking note of the fact that a writ petition has been entertained at the interim stage, the Hon'ble Supreme Court in T.P.Vishnukumar's case, at paragraph Nos.10 and 11, observed as hereunder:-

> "10. Powers of the High Court under Article 226 cannot be invoked in the matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to the party or where such proceedings or action is wholly arbitrary, unreasonable and unfair. When the Act itself provides for a mechanism, by an appeal under Section 20 of the Act, in our view, the High Court is not justified in invoking jurisdiction under Article 226 of the Constitution of India to examine that the rejection of the applications by the Tribunal was correct or not. The petitioner and the contesting respondents have no case that either the Bank or the Tribunal had violated any statutory provisions by rejecting their applications.
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> 11. A writ petition was preferred against the rejection of applications and the same were entertained by the learned Single Judge and decided on merits and which in our view is impermissible while exercising its jurisdiction under Article 226 of the Constitution. If the correctness or otherwise of each and every interim order passed by the Tribunal is going to be tested in a writ Court, it will only defeat the object and purpose of establishing such Tribunal. We have already noticed that due to the intervention of the writ Court, the matter got delayed for four years defeating the very purpose and object of the Act. We therefore, find no merit in these petitions and the same are dismissed."

17. As rightly contended by the learned counsel for the Bank, though the Hon'ble Apex Court dismissed the SLPs, on

11/2/2013, after 20 months, I.A.No.1290 of 2014 has been filed for a prayer to set off. As per sub-Section 6 of Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, such an application ought to have been filed at the first hearing of the application, in the year 2002 itself, but not afterwards, unless permitted by the Tribunal.

18. As rightly pointed out by the learned counsel for the Bank, such application was also not accompanied by original documents or other evidence relied on, in support of the claim. Nevertheless, Debts Recovery Appellate Tribunal, Chennai, in its order, dated 21/2/2017, in M.A.No.17 of 2015, impugned before us has observed that if any documentary evidence is brought on record, the same to be considered by the Tribunal, to take a balanced view.

19. In so far as the claim on the basis of the pronotes, even the writ Court, while allowing W.P.Nos.14428 to 14430 of 2008 has observed that the petitioner has made out a case for production of document sought for in I.A.Nos.873 to 875 of 2007, except the promissory notes which were reported to be untraceable. Though the writ petitions were allowed on other grounds, the finding has rendered against the petitioner, has not been challenged and thus, it has reached finality also.

20. Having regard to the totality of the case, it is not open to the writ petitioner once again, to make a claim, on the basis of promissory notes. The application filed to set off, is barred by limitation. Observation of the Hon'ble Supreme Court, at paragraph No.11 of the judgment cited supra, squarely applies to the case on hand, where the petitioner is one and the same.

21. Though the Hon'ble Supreme Court has dismissed the SLP, relegating the petitioner, to prefer an appeal, before the Debt Recovery Appellate Tribunal, instead of filing an appeal, petitioner has started a second round of litigation by filing I.A.No.1290 of 2012 claiming set off.

22. While deprecating the conduct of the petitioner in filing I.As, one after another, and taking note of the observations of the Hon'ble Supreme Court, where the petitioner is a party, while dismissing the instant writ petition, we deem it fit to impose costs of Rs.5,000/- (Rupees Five thousand only) to be paid to Little Flower Convent, No.4, Cathedral Post,

G.N.Road, Nungambakkam,Chennai 600 006, within a period of ten days, from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Authorised Officer/
Senior Manager
M/s. Canara Bank
P.N.Road
Tirupur Branch.

2. The Officer In-charge,
Little Flower Convent,
NO.4, Cathedral Post,
G.N.Road,
Nungambakkam,
Chennai 600 006.

+ 1 cc to M/s.Ananda Gomathy, Advocate,SR.73312

+ 1 cc to M/s.T.S.Gopalan and Co, Advocate,SR.73330

W.P.No.9453 of 2017

NR 23/10/2017