IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM :

The Hon'ble Mr.Justice HULUVADI G. RAMESH
AND
The Hon'ble DR.JUSTICE S.VIMALA

W.P. No.10631 of 2017
and W.M.P.No11568 of 2017

1.D.Lognathan
2.L.Kumaraguru .. Petitioners

-vs-

State Bank of Mysore
Public Utility Building, P.B.No.5109,
M.G.Road, Bangalore-560 001,
Rep. By its Manager, Sri.R.Ananth. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records in I.A.No. 83 of 2017 in A.I.R.No.194 of 2016, on the file of Debts Recovery Appellate Tribunal, Chennai, and quash the order dated 21.03.2017.

For Petitioner : Mr.B.R.Shankaralingam

For Respondents : Mr.M.Devaraj
for Mr.K.Mohandass

O R D E R

(Order of the Court was made by Huluvadi G.Ramesh, J.)

Heard the learned counsel for the petitioner and the learned counsel for the respondent / bank.

2. It appears that for availing Packing Credit Limit facility, one Rathnam approached the respondent / Bank for an amount of Rs.17,50,000/- wayback in the year 1996 and it was

also sanctioned, for which the petitioners are stated to have stood as guarantors. As there was default in repayment, the respondent / Bank initiated recovery proceedings against the principal borrower and the guarantors, by filing O.A.No.666 of 1997 before the Debts Recovery Tribunal, Bangalore, which was ultimately allowed vide judgment dated 18.03.2016, ordering recovery of a sum of Rs.25.52 lakhs. Against the same, the petitioners have filed an appeal before the Debts Recovery Appellate Tribunal, Chennai, being A.I.R.No.194 of 2016, along with a stay application on the ground that they are not the guarantors for the loan. Another interlocutory application has been filed in I.A.No.83 of 2017 seeking waiver of pre-deposit. The said application was dismissed directing the petitioners to make pre-deposit of Rs.12.50 lakhs, which is mandatory. Hence, the petitioners have come up with the present petition seeking to quash the said order.

3. According to the petitioners, the principal borrower had died and the order of the Debts Recovery Tribunal is against a dead person, which is void and non-est in law. Further, it is their main contention that they never stood as guarantors for the loan amount and that by way of an affidavit before the Debts Recovery Tribunal, according to the petitioners, the principal borrower himself had filed affidavits stating that they are not the guarantors for the loan availed by him. The petitioners also submit that pursuant to the death of the principal borrower, his son, by name, Janardhan, filed a Memo stating that he wanted to settle the alleged loan with the Bank. It is also the case of the petitioners that in pursuance to the order of this Court, the petitioners have deposited a sum of Rs.5 lakhs in a no-lien account with the respondent-bank and that they have also paid some amount towards the loan account and the same can be adjusted towards the pre-deposit.

4. On the other hand, the learned counsel for the respondent/bank submitted that huge amount was deluded by the principal borrower and the petitioners as guarantors and the proceedings are successfully being dragged on by them and a major amount of loan is yet to be recovered from them, i.e. a sum of Rs.19 crores and hence, no indulgence has to be shown under the guise of waiver of pre-deposit.

5. It appears that earlier an ex parte order against the petitioners was stated to have been passed by the Debts Recovery Tribunal, which, ultimately, culminated in the order passed by this Court directing the petitioners to deposit a sum of Rs.5 lakhs and the same was also complied with by the petitioners by depositing the same in a no-lien account with the respondent / bank. The main grievance of the petitioners is that they never

stood as guarantors and the Debts Recovery Tribunal has not considered the affidavits filed by the principal borrower seeking discharge of the petitioners, as also the memo filed by the son of the principal borrower intending to settle the loan with the Bank.

6.Be that as it may, the petitioners are before this Court against the order of the Debts Recovery Appellate Tribunal declining to waive the pre-deposit for entertaining the appeal. The fact remains that the principal borrower had died and the recovery of amount is also huge. The question as to whether the petitioners stood as guarantors for the loan amount availed by the principal borrower or not is required to be adjudicated upon before the Debts Recovery Appellate Tribunal. It is also to be noted that the legal heirs of the deceased principal borrower is to be brought on record before the Appellate Tribunal.

7.For the aforesaid limited purpose, while setting aside the order of the Debts Recovery Appellate Tribunal directing the petitioners to pay a sum of Rs.12.50 lakhs, we direct the petitioners to deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) before the Debts Recovery Appellate Tribunal, Chennai, within a period of six (6) weeks from the date of receipt of a copy of this order and on such deposit being made, the Debts Recovery Appellate Tribunal shall take up the appeal and pass a suitable order on merits and in accordance with law.

8.The Writ petition is, accordingly, disposed of. No costs. Consequently, W.M.P.No.11568 of 2017 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sra

To

The Registrar,
The Debts Recovery Appellate Tribunal,
Chennai.

+1cc to Mr.M.Devaraj, Advocate, S.R.No.41482
+1cc to Mr.B.R.Shankaralingam, Advocate, S.R.No.41463

W.P.No.10631 of 2017

RSY(CO)
CS/23/06/17