

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/11/2017

C O R A M

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

Civil Revision Petition (NPD) No.4110 of 2017

1. M/s. South Indian Mint and Aromatic
Products Limited (SIMAP)
No.14 Vanidasan Street
Backside to Ashoka Nursing Home
Kamaraj Nagar
Puducherry 605 011.

Also at

12A/1 Meenakshikovil Street
Madurai 625 001.

2. Sri.N.K.R.Shanmugam

3. Smt.Kamala

...

Petitioners

Vs

IDBI Bank Limited
No.37, P.M.Towers
Greams Road
Thousand Lights
Chennai 600 006.

...

Respondent

Petition filed under Article 227 of the Constitution of India, to
set aside the order, dated 25/10/2010, passed by the Debts Recovery
Appellate Tribunal, Chennai, in A.I.R.No.624 of 2017.

For petitioners

...

Mr.P.Jesus Moris Ravi

ORDER

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

M/s. South Indian Mint and Aromatic Products Limited (SIMAP),
Puducherry/first petitioner, has availed a term loan of
Rs.6,11,23,300.83, on 21/7/2016, from IDBI Bank Limited, Chennai.
Writ petitioners 2 and 3 have stood as guarantors. IDBI, Chennai, has
filed O.A.No.208 of 2016, under Section 19 of the Recovery of Debts
Due to Banks and Financial Institutions Act, 1996, r/w. Rule 4 of Debts
Recovery Tribunal (Procedure) Rules, 1993, on the file of the Debts
Recovery Tribunal - I, Chennai, for the following reliefs:-

"(i). Directing the defendants 1 to 3
jointly and severally to pay to the applicant
Bank, a sum of Rs.6,10,68,081.73/- (Rupees
Six crore ten lakhs sixty eight thousand eighty
one and paise seventy three only), being the
outstanding due in the Term Loan Account,
together with interest at the rate of 15.5.9%
p.a., with monthly rests (inclusive of penal
interest @ 2.00% per annum) from the date of
filing of this Original Application, till the date
of realisation in full,

(ii). Directing the defendants 1o to 3 jointly and severally to pay to the applicant Bank, a sum of Rs.55,219/- (Rupees Fifty five thousand two hundred nineteen only), together with interest at the rate of 18.50% p.a., with monthly rests in respect of expenses incurred by the applicant bank with relation to the account of the first defendant from the date of filing of this Original Application, till the date of realisation in full.

(iii). Directing all the defendants jointly and severally to pay the above said total sum of Rs.6,11,23,300.73/- (Rupees six crores eleven lakhs twenty three thousand three hundred and paise seventy three only) with respective rate of interest on or before a date to be specified by this Hon'ble Tribunal, together with costs, expenses and all other charges incurred/to be incurred by the applicant Bank from the date of filing, till the date of recovery in full and on failure to pay the aforesaid amounts on or before a date to be specified by this Hon'ble Tribunal, to permit the applicant Bank to proceed personally against the defendants 2 and 3 to realise the deficit amount, if any;

(iv). to issue a recovery certificate against all the defendants as prayed for and to

realise the dues from the defendants with further interest and costs of recovery.

(v). To order execution of the said certificate under Section 25 of the Recovery of Debts due to the Bank and Financial Institution Act, 1993.

(vi). To issue directions for inquiry, investigations, examination, attachment and realisation of the assets and properties of the defendants 1 to 3 wherever situate;

(vii). To direct the defendants to declare on affidavit the other particulars of their immovable/movable properties and file the same before the Hon'ble Tribunal.

(viii). To order costs jointly and severally to be paid to the applicant by the Defendants."

2. Material on record discloses that defendants have filed I.A.No.660 of 2017, seeking permission to file counter claim, on 27/7/2017, in SR.No.4727 of 2017. Petitioners have also filed two more applications, viz., I.A.Nos.619 and 620 of 2017 for leave to file additional reply statement and additional counter proof affidavit, respectively.

3. By filing counter affidavit, Bank has raised a preliminary objection, as to the maintainability, of the above applications, stating that when trial and arguments in the matter were already concluded and when the matter stood posted for orders, on 31/7/2017, writ petitioners have come forward to file applications, for reopening of the matter and to set aside the order, closing opportunity to file the counter proof affidavit. Bank has further contended that counter claim filed at that stage, is not maintainable, in the light of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1996.

4. Adverting to the said pleadings, Debts Recovery Tribunal - I, Chennai, has framed the following point for consideration:-

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"Whether the petition for leave to file
counter claim by the petitioners
therein/defendants, is maintainable?"

5. Answering the above, Debts Recovery Tribunal - I, Chennai, vide order, dated 6th September, 2017, dismissed I.A.No.660 of 2017 in O.A.No.208 of 2016, as hereunder:-

"5. It is no doubt true that by the time of filing this petition, the trial in the matter was concluded and the matter stood posted for orders to 31/7/2017 and at that stage, the petitioners filed petitions for reopen and the matter was reopened for the limited purpose of receiving counter proof affidavit and after receiving the same the matter against stood posted for hearing the main submissions and that stage too the petitioners came with two more applications, one for leave to file additional reply statement (IA 619/2017) and the other for leave to receive additional counter proof affidavit (IA 620/2017) and when both the said applications were pending, the present application is filed. In the above undisputed backdrop of events, it is to be seen whether the petition is maintainable.

6. Before I advert to the point, I feel it appropriate to refer to certain irrelevant provisions concerning filing of counter claim in the RDDB & FI Act.

"Section 19 (8); A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of

the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not."

7. A perusal of the said Rule (8) of Section 19 of the RDDB &FI Act clearly mandates that the counter claim against the claim of the applicant bank shall be filed before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such claim is in the nature of claim for damages or not. Thus it is clear that sine quo non, for entertaining the counter claim, the same should be presented before the defendant had delivered his defence or before the time limited for delivering his defence has expired. In the instant case, admittedly, the defendant had filed its reply statement and also counter proof affidavit besides filed petitions to receive additional reply statement and also

additional counter proof affidavit long prior to the filing of the present petition, therefore, the counter claim at this stage of the proceedings is not maintainable. That apart, the matter was once posted for orders and thereafter, reopened and again the matter stood posted for hearing final arguments.

8. Therefore, in the above undisputed facts and circumstances, the petitioners are not entitled for leave to file counter claim. Therefore, the petition is misconceived and devoid of any merit and substance. Therefore, the petition is liable to be rejected as not maintainable. Accordingly, the same is rejected as not maintainable. The point is answered accordingly.

9. In the result, the petition is dismissed as not maintainable. No costs."

6. Being aggrieved, writ petitioners have filed A.I.R No.624 of 2017, before the Debts Recovery Appellate Tribunal, Chennai. Adverting to the grounds of appeal, on 25/10/2017, the Debts Recovery Appellate Tribunal, Chennai, dismissed the same as

A.I.R.No.624 of 2017	M/s. South Indian Mint and Aromatic Products Ltd &Ors Vs. IDBI Bank Ltd	Ld. Counsel Mr.P.Jesus Moris Ravi for appellants present. Ld. Counsel Mr.Amuthan Mandela for respondent Bank present. Heard. Record perused. Appellants have challenged the order dated 6/9/2017 of DRT-I, Chennai, passed in I.A.No.660 of 2017 in O.A.No.208 of 2016 and declined the relief for filing counter claim. On perusal of order sheet dated 21/7/2017, it appears that opportunity of filing counter proof affidavit was declined by DRT and matter was fixed for final arguments. It appears that after signing this order sheet, perhaps in Registry of DRT, appellants had submitted counter proof affidavit in Registry. Hence, on 27/7/2017 and thereafter, on 31/7/2017, arguments were heard for re-opening the matter and recalling the order. Record reveals that at the stage of final hearing of the matter, a counter claim also has been filed by the appellants. In such a situation, vide impugned order relief was declined. In my considered opinion, OA
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		can be adjudicated by PO of DRT on the basis of documents already available on record including subsequent IAs and counters filed by rival parties. There appears no need to interfere with the impugned order, because in given facts and circumstances of the case, it was rightly passed by the PO of DRT appreciating the facts and law in correct manner. However, it is made clear that PO of DRT will adjudicate the OA after considering all documents and IAs available on record. Needless to write that appellant borrowers will have an opportunity to file written arguments containing all points raised in counter claim also. Accordingly, impugned order is hereby affirmed. Appeal stands dismissed at preliminary stage of hearing on maintainability itself. Resultantly, all pending IAs stand closed. PO of DRT is directed to adjudicate the OA on merits as indicated above as early as possible.

7. Though by inviting the attention of this Court, to sub-Section 8 of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1996, Mr.P.Jesus Moris Ravi, learned counsel for the petitioners submitted that the Appellate Tribunal has erred in not

exercising the jurisdiction conferred on the Appellate Tribunal that either before or after filing of an application but before the defendants has delivered his defence or before the time limited for delivering his defence has expired, which according to him, has not expired and therefore, when the error committed by the Debts Recovery Tribunal - I, Chennai, in dismissing the permission petition was pointed out, the Debts Recovery Appellate Tribunal, Chennai, ought to have interfered with and corrected the mistake, we are not inclined to accept the said contention for the reason stated in the latter paragraphs of this judgment.

8. Sub-Section 6 of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1996, is extracted hereunder:-

“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 of set-off in relation to any ascertained sum of money, against the applicant.”

9. Reading of Sub-Section 6 of Section 19 indicates that a counter claim or set off has to be made, at the first hearing of the application, but not afterwards, unless permitted by the Tribunal.

10. Sub-Section 8 of Section 19 speaks about both filing of a counter claim or set off against the applicant. Sub-Section 8 of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1996, reads thus:-

“A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.”

11. Though Mr.P.Jesus Moris Ravi, learned counsel for the petitioners submitted that Debts Recovery Appellate Tribunal, Chennai has failed to consider that time for delivering the defence has not expired, and that therefore, application in I.A.No.660 of 2017 filed seeking leave to file counter claim, ought to have been entertained, we are not inclined to accept the said contention, for the reason that what is envisaged in sub-Section 8 of Section 19 of the Act, is that any right or claim in respect of the cause of action, accruing to the defendants against the applicants, either before or after the filing of the application, but before the defendants had delivered his defence or before the time limited for delivering his defence has expired, should be the subject matter of set off, or counter claim, as the case may be and sub-Section 8 of Section 19 of the Act, does not state that it can be done at any time, say for instance, in the instant case, just three days before the matter was posted for orders. The time limit for delivering defence, filing of counter claim or set off is prescribed, in sub-Section 5 (i) of Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1996.

12. Sub-Section 5 (i) of Section 19 of the said Act, deals with set off under sub-Section (6) or a counter claim under sub-Section (8), if any, and such written statement has to be filed by the defendant, with original documents or true copies thereof with the leave of the Tribunal.

13. As per the proviso to Section 19 (5) of the Act, where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer, may in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence.

14. Thus, from the reading of Section 19 (5) of the Act, the Tribunal, can in exceptional cases alone can extend the time for filing written statement/set off/counter claim, not exceeding fifteen days to file the written statement, along with set off/counter claim. Further, if the Tribunal, desired to exercise its jurisdiction in terms of proviso to Section 19 (5) of the Act, exceptional and special circumstances, have to be recorded in writing. In the case on hand,

<http://www.judis.nic.in> OA has been filed on 19/7/2016. No sooner, service of summons is

completed, written statement ought to have been filed within 30 days. Fact remains that the writ petitioners have filed the written statement only on 9/1/2017 and subsequently filed counter proof affidavit on 21/7/2017. Arguments have been advanced and matter stood posted for orders, on 31/7/2017. Just three days before the matter stood posted for orders, writ petitioners have filed I.A.No.660 of 2017, 619 and 620 of 2017.

15. Yet another factor to be taken note of is that prior to 4/11/2016, sub-Section 5 of Section 19 of the Act, stood as hereunder:-

“Provided where the defendant fails to file the written statement within the said period of 30 days, the Presiding Officer may, in exceptional cases and in special circumstances, to be recorded in writing, allowed not more than two extensions to the defendants to file the written statement. Sub-Section 5 of Section 19 of the Act has been substituted by Act 44 of 2016, with effect from 4/11/2016. The amended sub-Section 5 extracted supra, has enabled the defendants to file their claim to set of under sub-Section 6 or a counter claim

under sub-Section 8 if any along with the written statement, within 30 days from the date of service of summons for any exceptional cases, we extended not exceeding 15 days, to file the written statement of his defence.

16. In the case on hand, both the Debt Recovery Tribunal - I, Chennai as well as the appellate forum, have considered the facts, statutory provisions, and passed a well considered order, dismissing I.A.No.660 of 2017, seeking leave to file a counter claim at the belated stage, i.e., just three days, before the matter stood for orders. When the statute prescribes an outer time limit for filing written statement/set of/claim, as the case may be, the same has to be given effect in letter and spirit. It is not open to the defendants to seek, leave to file a counter claim, at any stage, by extending the period, provided therefor, in sub-Section 5 of Section 19 of the Act.

17. Having regard to the attempt of the writ petitioners in filing the application before the matter stood posted for orders on 31/7/2017 and as to whether the writ petitioners can seek orders, at every interim stage, this Court deems it fit to consider the decision of the Hon'ble Supreme Court in V.P.Vishnu Kumar's case.

18. Hon'ble Supreme Court in *T.P.Vishnu Kumar Vs. Canara Bank, P.N.Road, Tiruppur and Others* reported in 2013 (10) SCC 652, at paragraph Nos.10 & 11, held as follows:

"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.

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."

19. In the light of the discussion and decision, this C.R.P is **dismissed**. No costs. Consequently, the connected Miscellaneous Petition is closed.

(S.M.K., J.) (R.S.K.J)
13th November 2017

mvs.

Index : Yes

Internet : Yes

To

The Debts Recovery Appellate Tribunal, Chennai,

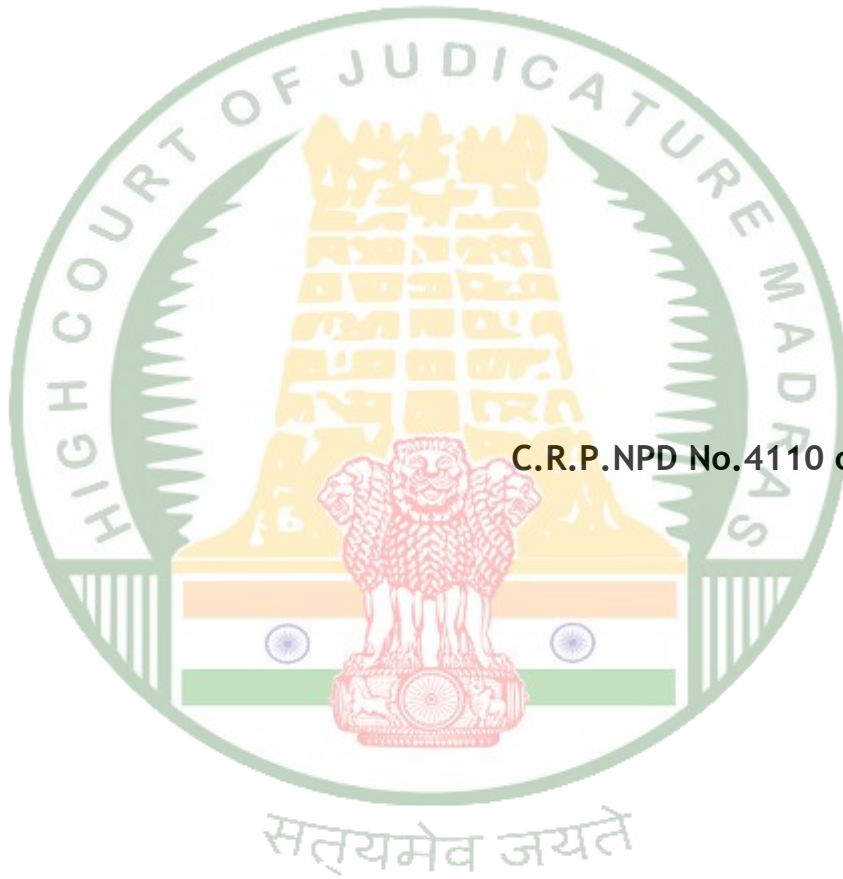
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S.MANIKUMAR,J

&

R.SURESH KUMAR,J

mvs.



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