IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.08.2017
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.23449 of 2017
and
WMP No.24626 of 2017

Mr.Thirumalai Krishnan,
Director of Hyagreeva Lines Private Limited,
55 and 56, BBC Villa complex,
5th Floor, No.65/33, Prakasam Salai,
Broadway, Chennai - 600 108. ... Petitioner

vs.

1. M/s.Deutshe Bank AG,
4-4A, Western Tower, Sunny Side,
Ground Floor, Shafi Mohammed Road,
Thousands Lights, Chennai - 600 006.

2. M/s.Hyagreeva Lines Private Limited,
rep. by its Director,
Thirumalai Krishnan

3. Sethuraman R Iyer,
Director of Hyagreeva Lines Private Limited,
55 and 56, BBC Villa complex,
5th Floor, No.65/33, Prakasam Salai,
Broadway, Chennai - 600 108.
and Residing at
No.2, Timbhak Chhaya HSG, SOC,
MIDC Road, Thakurli, Dombivili,
Thane - 421 201 ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, to call for the records made in the impugned order in A.I.R.No.563 of 2016, pending on the file of the Debt Recovery Appellate Tribunal at Chennai order dated 02.08.2017, quash the same.

For Petitioner : Mr.K.M.S.Balaji

ORDER

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

One of the Directors of Hyagreeva Lines Private Limited, has filed the instant writ petition, challenging the proceedings in AIR No.563 of 2016 dated 02.08.2017 on the file of the Debts Recovery Appellate Tribunal, Chennai, by which, while considering I.A.No.1216 of 2017, filed for waiver the tribunal, has ordered, as hereunder.

> "Appellant has challenged the order dated 31.10.2016, passed by DRT-1, Chennai in OA.No.85/2015, by which OA was allowed for recovery of a sum of Rs.34.45 Lakhs.
> Ld. Counsel for Appellant submits that Appellant has paid some amount to show their bonafide and prayad for maximum waiver.
>
> Ld.counsel for Respondent counsel submits that DRAT cannot proceed further in the Appeal filed by any aggrieved person unless and until the Appellant complies with the formalities on pre-deposit up to 50% of debt amount, and for the purpose of this Appeal, I consider the debt amount to be Rs.34.45 lakhs and I hereby direct the Appellant to make pre-deposit of Rs.15 Lakhs with the Registrar of this Tribunal,out of which Rs.8 Lakhs to be paid by the Appellant within four weeks from today as 1st part of payment and 2nd part of payment of Rs.7 Lakhs will be paid by another four weeks thereafter.
>
> In the event of failure of any part of the amount, the Appeal stands dismissed automatically without any reference by this Tribunal. IA is disposed of and closed.
>
> List for confirmation of pre deposit of 1st part of payment of Appellant by 30.08.2017."

2. Supporting the prayer sought for, Mr.K.M.S.Balaji, learned counsel for the petitioner contended that some breathing time be given for payment of loan amount to the 1st respondent.

3. Perusal of the material on record shows that the 1st respondent has instituted O.A.No.85 of 2015, on the file of the Debts Recovery Tribunal-I, Chennai, for recovery of a total sum of Rs.34,45,663.63p, as on 19.05.2015, along with further

interest at 18% per annum, with effect from the date of the said application till realization in full, and costs. Petitioner has contested the said application. The tribunal has framed, the following points for consideration.

> "(1) whether the applicant bank has established its claim, if so for what amount?
>
> (2) whether the applicant bank is entitled for pendente and future interest, if so at what rate?"

4. After considering the material on record and documents, the Debts Recovery Tribunal, Chennai, vide order dated 31.08.2016 in O.A.No.85 of 2016, allowed the application as hereunder.

> "8. In the result, the applicant is allowed as under:
>
> a) The applicant bank is entitled for a recovery certificate against the defendants for a sum of Rs.34,45,663.63p (Rupees Thirty Fourt Lakhs Forty Five Thousand Six Hundred Sixty Three and Paisa Sixty Three only) with simple interest @ 14% from 20.5.2015 till realization in full alongwith costs of this application.
>
> b) It is further ordered that in case of default of payment by the defendants, the Applicant bank is at liberty to sell the schedule mentioned properties and appropriate the sale proceeds towards the decreetal dues.
>
> c) If the sale proceeds are not found sufficient to cover the amount due and payable to the Applicant Bank, the Defendants are personally liable for all such amounts due.
> d) It is further ordered that any amount remitted or realized if any during the course of the proceedings, shall be given due credit to the loan account of the Defendant.
>
> 9. The applicant bank is directed to file costs memo within two weeks of the receipt of the order.
>
> 10. Issue recovery certificate in favour of the applicant bank in terms of this final order."

5. Being aggrieved, M/s.Hyagreeva Lines Private Limited represented by Thirumalai Krishnan and Mr.Thirumalai Krishnan, joined together and filed AIR No.563 of 2016, before the Debts

Recovery Appellate Tribunal. There was a delay of 201 days in representation. Hence, I.A.No.1214 of 2017 filed to condone the above has been ordered. Further, there was a delay of 17 days in filing the appeal and the same has been condoned vide order in I.A.No.1215 of 2017. In I.A.No.1216 of 2017, filed for waiver, the Debts Recovery Appellate Tribunal, Chennai, has ordered as above.

6. In Narayan Chandra Ghosh vs. Uco Bank & Ors. reported in AIR 2011 SC 1913, the question posed before the Hon'ble Apex Court was, whether the requirement of the pre-deposit under Section 18(1) is mandatory or not? Going through Section 18 of the SARFAESI Act, 2002 and the provisos therein, the Hon'ble Apex court, at paragraph No.8 of the said judgment, held as follows:

> "8. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty percent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five percent of the debt, referred to in the second proviso. Thus, there is an absolute bar to entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty percent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity. It is well-settled that when a statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no

court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement."

7. Material on record discloses that in O.A.No.85 of 2015, dated 31.10.2016 Debts Recovery Tribunal, Chennai - 1 has determined the amount as Rs.34,45,663.63p. Though, the petitioner has raised grounds in the writ petition, assailing the correctness of the order passed in O.A.No.85 of 2015, dated 31.10.2016 on the file of Debts Recovery Tribunal, Chennai - 1, this Court is not inclined to advert to the same.

8. As per the decision of the Hon'ble Supreme Court, in Narayan Chandra Ghosh vs. Uco Bank & Ors. reported in AIR 2011 SC 1913, pre-deposit is statutory. There is no error in the order of the Debts Recovery Appellate Tribunal, Chennai, warranting interference. Sufficient time has been granted for deposit. Contention of the petitioner, that time be given for payment to the respondent, cannot be entertained. Hence,the writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar
Department Recovery Appellate Tribunal, Chennai

+1 cc to M/s.K.M.S.Balaji Advocate sr 63294

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