

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

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

W.P.No.24798 of 2017  
and WMP No.26187 of 2017

Mr.Raghunandan ... Petitioner

vs.

1. M/s.Indian Bank,  
ARMB, 4th Floor, Wellington Estate,  
No.55, Ethiraj Salai, Chennai - 600 080.

2. M/s.Indian Food Fermentation Ltd.,  
Managing Director Mr.R.Narayanan.

3. Mr.R.Narayanan

4. Mr.S.Ramkumar

5. ICICI Bank Cenotaph Road,  
Teynampet, Chennai - 600 018. .... Respondents

WRIT Petition filed under Article 226 of the Constitution of India,  
praying for the issuance of a writ of Certiorarified Mandamus, calling  
for the records culminated in the order dated 21.08.2017 in  
I.A.615/2015 on the file of Debts Recovery Appellate Tribunal and  
quash the order.

For Petitioner : Ms.Kavitha  
For Respondents : Mr.J.John Kingslin (for R1)  
Mr.G.Balasubramanian (for R5)

**ORDER**

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

On 15.09.2017, we passed the following orders:

"By impugned proceedings dated 21.08.2017, the Debts Recovery Appellate Tribunal, has directed the appellant to make pre-deposit of Rs.40 Lakhs with the Registry of the appellate tribunal, out of which Rs.20 Lakhs to be paid within four weeks from 21.08.2017, as 1st part of payment and 2nd part of payment of Rs.20 Lakhs to be paid by another four weeks, thereafter.

2. Assailing the correctness of the same, Mr.Krishna Srinivasan, learned counsel for the petitioner/guarantor submitted that earlier when the property of the borrower was sold, at the instance of ICICI Bank Limited, a sum of Rs.20 Lakhs, was set apart, for payment to Indian Bank, who had second charge of the secured assets and that, vide order in O.A.No.208 of 2003, dated 25.06.2007, DRT-I, Chennai has permitted ICICI bank, Limited, Chennai to deposit the said amount of Rs.20 Lakhs with the Recovery Officer of DRT-I, Chennai in the account O.A.No.143 of 2003, instituted by Indian Bank, Chennai, against M/s.Indian Food Fermentation Limited and five others, in which the writ petitioner has been arrayed as 3rd defendant.

3. Inviting the attention of this Court to the exparte order in O.A.No.143 of 2003 dated 04.04.2008 on the file of DRT-I, Chennai, Mr.Krishna Srinivasan, learned counsel for the petitioner/borrower submitted that when the notice to 3rd defendant/ writ petitioner has been returned as 'unserved', the tribunal ought not to have passed an exparte order against the 3rd defendant. At best, an order can be

made against, those, who have been served and remained exparte.

4. Mr.Krishna Srinivasan, learned counsel for the petitioner further submitted that when the abovesaid order was challenged, in the appeal, DRAT has imposed a onerous condition.

5. Learned counsel for the petitioner further submitted that by the time the exparte order came to the knowledge of the petitioner, there was huge delay of 1146 days in filing an application to set aside the order made in O.A.No.143 of 2003 dated 04.04.2008 on the file of DRT-I, Chennai. Unfortunately, when M.A.No.24 of 2012 filed to condone the delay came up for hearing, the counsel could not appear and hence, M.A., was dismissed. Further on the next day a restoration petition viz., M.A.No.46 of 2014 was filed, which also came to be dismissed without considering the reasons for the absence.

6. When appeal was filed, against the order in MA.No.46 of 2014, (AIR No.429 of 2015), by imposing onerous condition of deposit of Rs.40 Lakhs, IA has been disposed of.

7. Heard Mr.Krishna Srinivasan, learned counsel for the petitioner.

8. Going through the order made in O.A.No.143 of 2003 dated 04.04.2008, we are not able to discern any discussion or finding as to whether 3rd defendant therein/writ petitioner has been served. Thus, there is an arguable point to be considered in the application filed to condone the delay, though inordinate.

9. Time and again the Hon'ble Supreme Court held that technical objections should not be pitted against substantial justice. Abovesaid observations, are subject to scrutiny of facts and circumstances, justifying the delay,

which the tribunal may have to address if ultimately, the application to condone the delay is taken up.

10. At this juncture, it is the contention of the writ petitioner that a sum of Rs.20 Lakhs has already been deposited to the credit of the loan Account with ICICI Bank in O.A.No.143 of 2003. Said submission is borne out of records.

11. In the light of the above, we are inclined to issue notice to the respondents through Court and privately, returnable by 09.10.2017.

12. Post on 09.10.2017.

13. Interim stay of impugned proceedings, till then, on condition that the petitioner deposits a sum of Rs.20 Lakhs with the Registrar of Debts Recovery Appellate Tribunal, Chennai, within a period of three weeks from today."

2. On this day, when the matter came up for further hearing, based on the memo dated 27.09.2017 of the writ petitioner, submission has been made that the petitioner has deposited a sum of Rs.20 Lakhs with the Registrar, DRAT, Chennai.

3. On the basis of the counter affidavit, filed by the Chief Manager, ARM Branch, Chennai, Mr. John Kingslin, learned counsel for Indian Bank, Chennai, submitted that the writ petitioner stood as a guarantor for the loan facility extended M/s. Indian Food Fermentation Limited, the 2nd respondent, in the year 1994 to an extent of Rs.85 Lakhs. There was default. Hence, M/s. Indian Bank,

Chennai, 1st respondent bank filed O.A.No.143 of 2003 against the writ petitioner and respondents 2 and 3, for recovery of Rs.1,60,24,431.69p, with further interest and costs.

4. In O.A.No.143 of 2003, writ petitioner has been arrayed as 3rd defendant. Before Debts Recovery Tribunal-I, Chennai, defendants 2 to 4 were set exparte. Final order in O.A.No.143 of 2003 was passed on 04.04.2008 against defendants 2 to 4 for recovery of sum of Rs.1,60,24,431.69p, together with further interest @ quarterly rests from the date of application i.e. 26.05.2003, till realization along with cost, including the Advocate Fees as per rules.

5. Pursuant to the exparte final order dated 04.04.2008, the tribunal issued Debts Recovery Certificate against writ petitioner and respondents 2 to 4 in DRC No.114 of 2008. Recovery Officer issued a statutory demand notice under Rule-2 of the Second schedule of Income Tax Act, to the writ petitioner and other defendants and demanded the outstanding dues to the bank. Before the Debts Recovery Tribunal-I, Chennai, I.A.No.591 of 2003, has been filed to restrain alienation of property belonging to the petitioner. The tribunal allowed the said application on 21.10.2013.

6. Bank has further contended that an order of attachment was also passed by the recovery officer. M.A.No.24 of 2012 is filed by the writ petitioner to condone the delay of 1465 days to set aside the exparte order. According to the bank the actual delay is 2920 days, but wrongly calculated as 1465 days. Said M.A.No.24 of 2012 was dismissed on 24.07.2014 for non prosecution. Thereafter, on 25.07.2014, M.A.No.46 of 2014 was filed for restoration of M.A.No.24 of 2012. After hearing both parties, Debts Recovery Tribunal-I, Chennai, dismissed M.A.No.46 of 2014 on 20.05.2015.

7. Being aggrieved, the writ petitioner filed AIR No.429 of 2015, with an application No.I.A.No.615 of 2015 for waiver of pre deposit. Having regard to the amount claimed in O.A.No.143 of 2003 i.e, Rs.1.60 Crores and in exercise of discretion conferred on the appellate tribunal, under the proviso to Section 21 of Recovery of Debts and Bankruptcy Act, 1993, vide proceedings dated 21.08.2017, directed the writ petitioner to make pre deposit of Rs.40 Lakhs with the Registrar of DRAT, in two instalments.

8. Bank has further contended that sum of Rs.20 Lakhs in deposit, was not paid by the borrower/guarantor. But the said

amount is the balance towards the sale consideration of the auction effected by ICICI Bank, another secured creditor. He further submitted that as per Section 21 of Recovery of Debts and Bankruptcy Act, 1993, the borrower has to deposit with the appellate Tribunal fifty per-cent of the amount of debt so due from him as determined by the Tribunal under section 19 and any deposit made by another secured creditor in the loan account would not amount to pre deposit as provided in Section 21 of Recovery of Debts and Bankruptcy Act, 1993.

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

10. In **Narayan Chandra Ghosh vs. Uco Bank & Ors.** reported in AIR 2011 SC 1913, at paragraph No.8 of the judgment, Hon'ble Supreme Court categorically held that pre deposit is mandatory and on the facts and circumstances of the said case, further observed that the appellate tribunal had erred in entertaining the appeal without directing the appellant therein to comply with the said mandatory requirement. We deem it fit to extract paragraph No.8 of the judgment in **Narayan Chandra Ghosh's** case [cited supra].

*"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."*

11. O.A.No.143 of 2003, has been instituted for recovery of Rs.1,60,24,431.69p from respondents 2 to 4. Though, Ms.Kavitha, learned counsel for the writ petitioner submitted that there is a prima facie error in the order of DRT-I, Chennai, dated 04.04.2008, which requires to be interfered with, by the appellate forum and further contended that the writ petitioner is willing to get along with the appeal as expeditiously as possible, without any further pre-deposit, we are not inclined to accept the said contention for the reason that loan has been availed in 1994 and thereafter, no amount has been paid by either the borrower or the guarantor. Even the sum of Rs.20 Lakhs deposited by ICICI Bank, Chennai is on account of Original Application No.208 of 2003, in which, on 25.06.2007, DRT-I, Chennai, has passed the following orders.

*"The applicant bank further stated that the applicant bank has first charge over the secured assets. However, a sum of Rs.20 Lakhs has been set aside for payment to Indian Bank, who as second charge over the secured assets. The said Indian Bank has also filed a*

*separate OA bearing No.143/2003 and the applicant bank may be permitted to deposit the above amount with the Recovery Officer to the credit of the OA No.143/2003."*

12. Even after a lapse of 33 years from the date of loan, Rs.20 Lakhs alone has been deposited by ICICI Bank, with the recovery officer to the credit of O.A.No.143 of 2003, instituted by M/s.Indian Bank, Chennai, 1st respondent herein. Thereafter, a sum of Rs.20 Lakhs as directed by this Court on 15.09.2017, has been deposited with the Registrar, Debts Recovery Appellate Tribunal, Chennai, pursuant to the orders of this Court. Though the learned counsel for the petitioner prayed for waiver of the remaining amount of Rs.20 Lakhs, as per the directions of DRAT, taking note of the conduct of the petitioner, we are not inclined to accept the contention. Amount claimed is Rs.1,60,24,431.69p. As per DRC No.114 of 2008, dated 14.07.2008, amount due and payable is Rs.3,79,33,147.36p. Tribunal has ordered pre-deposit only on the amount claimed. Whereas proviso to Section 21 of Recovery of Debts and Bankruptcy Act, 1993, states that no appeal will be entertained unless the borrower has deposited with the appellate tribunal 50% of the amount of debt so due from him, as determined by the tribunal under Section 19 of the Act. As per the proviso to Section 21 of

may for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in Section 21 of the Recovery of Debts and Bankruptcy Act, 1993.

13. On the contention that a sum of Rs.20 Lakhs has already been deposited by ICICI Bank, order of DRAT, Chennai directing pre deposit at 25% cannot be said to be manifestly illegal warranting interference. Hence, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

14. After the dismissal of the writ petition, Ms.Kavitha, learned counsel for the petitioner submitted that the balance of pre-deposit of Rs.20 Lakhs as ordered in I.A.No.615 of 2015 in AIR No.429 of 2015, would be deposited with the Registrar, Debts Recovery Appellate Tribunal, Chennai, within four weeks from today. Submission is placed on record.

Index: Yes/No.  
Internet: Yes  
Speaking/Non speaking  
ars

(S.M.K., J.) (R.S.K., J.)  
09.11.2017

S.MANIKUMAR, J.  
AND  
R.SURESH KUMAR, J.

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To

1. M/s.Indian Bank,  
ARMB, 4th Floor, Wellington Estate,  
No.55, Ethiraj Salai, Chennai - 600 080.

2. ICICI Bank Cenotaph Road,  
Teynampet, Chennai - 600 018.



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