IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/10/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Writ Petition No.25730 of 2017

Dr.L.Chandramma ... Petitioner

Vs

1. Canara Bank
   rep. by its Senior/Branch Manager
   Cantonment Branch
   No.88 Mahathma Gandhi Road
   Bangalore 560 001.

2. The Debt Recovery Appellate Tribunal
   4th Floor
   Indian Bank
   Circle Office
   55 Ethiraj Salai
   Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records of the second respondent in A.I.R.No.204 of 2015 dated 18/8/2017 o the file of the Debt Recovery Appellate Tribunal, Chennai and consequently direct the second respondent to take on file the appeal in AIR No.204 of 2015.

For Petitioner ... Mr.B.Nedunchezhiyan

For respondents ... No appearance

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O R D E R

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

Challenge in this writ petition, is to the proceedings, dated 18/8/2017, by which Debt Recovery Appellate Tribunal, Chennai, dismissed the appeal, for want of compliance or pre-deposit ordered, on 21/7/2017.

2. Proceedings, dated 21/7/2017 is reproduced hereunder:-

"Ld. counsel Mr.M.Vijayakumar for appellant present.

Ld. Counsel Mr.V.M.Karthik for respondent Bank present.

Heard on I.A.324 of 2015 application for condonation of 316 days delay in filing of the appeal.

Considering the averments in I.A., delay is condoned and I.A.324 of 2015 is allowed.

Heard on I.A.806 of 2017 application for waiver of pre-deposit.

Appellant has challenged the order dated 11/4/2014 of DRT, Bangalore, by which M.A.18 of 2011 has been dismissed, which was filed in O.A.No.102 of 2008 filed by the respondent Bank for recovery of Rs.11.18 lakhs.

In view of the fact that DRAT cannot entertain any appeal without ensuring the pre-deposit of 50% of the debt amount. I hereby direct the appellant to make a pre-deposit of Rs.5,00,000/- (Rupees Five lakhs only) with the Registrar of this Tribunal within four weeks from today. It is made clear that in case of default to make the pre-deposit within the stipulated period, the appeal shall automatically stand dismissed without reference to this Tribunal.

Accordingly, I.A.806/2017 is disposed of.

List for confirmation for pre-deposit of Rs.5 lakhs on 18/8/2017."

3. Proceedings, dated 18/8/2017, is reproduced hereunder:-

"Ld. Counsel Mr.B.Nedunchezhiyan for appellant present.

Ld. Counsel Mr.K.Rajesh for respondent Bank present.

Ld. Counsel for appellant prays for time for compliance of pre-deposit.

In view of the fact that since 2008, respondent Bank is looking for recovery of more than Rs.11 lakhs, hence no good ground is made out for extension of time.

Appeal is dismissed for want of compliance of pre-deposit."

4. Though the petitioner has raised several grounds, assailing the correctness of the order, dated 18/8/2017, passed in AIR No.204 of 2015, by the Debt Recovery Appellate Tribunal, Chennai, material on record discloses that M/s. Sunshine Woven Sacks (P) Ltd., first defendant Company, Bangalore, has availed loan from Canara Bank, Cantonment Branch, Bangalore. Petitioner herein was one of the Directors of the said Company, along with others. Amount has not been repaid. Hence Bank has instituted O.A.No.102 of 2008, on the file of Debt Recovery Tribunal, Bangalore, against Sunshine Woven Sacks (P) Ltd., and 9 others. Company is the first defendant. Defendants 2 to 10 are the Directors. The defendants have remained ex parte. After considering the oral and documentary evidence, vide order, dated 24th February, 2009, Debt Recovery Tribunal, Karnataka, allowed the O.A., directing the defendants 1 to 3, 6, 7, 9 and 10, jointly and severally, to pay a sum of Rs.11,18,529/- along with costs and interest @ 18.75% p.a., with quarterly rests, from the date of application to till the date of realisation. Whereas O.A against defendants 4, 5 and 8 has been dismissed. Further, the applicant Bank has been granted liberty to recover the same from the defendants, excepting defendants 4, 5 and 8, personally and also from their properties. To that effect Recovery Certificate has been issued in favour of the applicant Bank.

5. As against the said order, seventh defendant has filed M.A.No.18 of 2011 in O.A.No.102 of 2008, on the file of Debt Recovery Tribunal, Bangalore, to recall and to set aside the ex parte final order, dated 24/2/2009. Respondent Bank opposed the said prayer.

6. After considering the rival submissions, vide order, dated 11th April 2014, Debt Recovery Tribunal, Karnataka, Bangalore, dismissed M.A.No.18 of 2011.

7. Against the order made in M.A.No.18 of 2011 in O.A.No.102 of 2008, seventh defendant has filed I.A.No.806 of 2017 before the Debt Recovery Appellate Tribunal, Chennai, for waiver of pre-deposit.

8. As per Section 18 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002, any person aggrieved, by any order made by the Debts Recovery Tribunal (under Section 17, may prefer an appeal along with such fee, as may be prescribed) to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal. Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower. Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent, of the amount of the debt due from him,

as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less.

9. Amount claimed, as per Section 13 (2) of the SARFAESI Act was Rs.11,18,529/-, with interest. Debt Recovery Tribunal has determined the amount. Taking note of the amount for which O.A.No.102 of 2008 has been filed, and of the first proviso to Section 18 of the Act, 2002, Debt Recovery Appellate Tribunal, Chennai, has directed the writ petitioner to make pre-deposit of Rs.5 lakhs with the Registrar of the Tribunal, within four weeks, from the date of passing of the order, dated 21/7/2017. Debt Recovery Appellate Tribunal, Chennai, has directed the Registry, to post the matter on 18/8/2017, for compliance. On 18/8/2017, when deposit has not been made, appeal has been dismissed. Perusal of the order, dated 18th August 2017 shows that the petitioner appears to have sought for extension of time, which has not been granted. Now the said original proceeding itself is challenged.

10. On the facts and circumstances of the case, there are no manifest illegality in the proceedings, dated 21/7/2017 and 18/8/2017, respectively and they are in confirmity with Section 18 of the SARFAESI Act.

11. In view of the above, the instant writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Senior/Branch Manager
Canara Bank
Cantonment Branch
No.88 Mahathma Gandhi Road
Bangalore 560 001.

2. The Debt Recovery Appellate Tribunal
4th Floor
Indian Bank
Circle Office
55 Ethiraj Salai
Chennai.

+1 cc to M/s.B.Nedunchezhian Advocate sr 25730

W.P.No.25730 of 2017

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