

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26/10/2017

C O R A M

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE Mr.JUSTICE R.SURESHKUMAR

W.P.No.25921 OF 2017
and
W.M.P.No.27465 of 2017

1. Joinus Interiors ad Construction Ltd.,
1-D, 1st Floor, Eldarado,
1 12, Mahatma Gandhi Raod,
Nungambakkam, Chennai - 600 034.
 2. S.Vijayanand
 3. Lalitha Sathyamurthi
 4. Vasthi
 5. T.Sathyamurthy
- ... Petitioners

Vs.

- 1.The Lakshmi Vilas Bank Ltd.,
Nungambakkam Branch,
175, Valluvarkottam High Road,
Nungambakkam, Chennai - 600 034.
 2. D.Rani
 3. The Recovery Officer,
Debt Recovery Tribunal-I,
Anna Salai, Chennai - 600 002.
 4. The Chairperson
Debt Recovery Appellate Tribunal
Commander in chief Road,
Chennai - 600 005.
- ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the 4th respondent in I.A.No.794/2017 in AIR 211/2017 and its order dated 7/9/2017 and quash the same in so far as it imposed a condition of the payment of Rs.3 Lakhs.

For Petitioners ... Mr.G.Vetrivelrajan
For Respondents ... Mr.R.Rajesh Vivekanandan
for R.1.

- - - - -
O R D E R

[Order of the Court was made by S.MANIKUMAR, J.]

Order, dated 7/9/2017, made in I.A.No.794 of 2017 in A.I.R.No.211 of 2017, on the file of the Debt Recovery Appellate Tribunal, Chennai, is challenged in the instant writ petition, wherein by observing that O.A., amount of Rs.13.97 lakhs would have increased in many folds, the Debt Recovery Appellate Tribunal, Chennai, has fixed the amount as Rs.13.97 lakhs and considering the deposits made by the writ petitioners in 2014 and 2016, directed them to make a pre-deposit of Rs.3 lakhs, with the Registrar of the Debt Recovery Appellate Tribunal, Chennai, for entertaining appeal.

2. Assailing the correctness of a above said order and inviting the attention of this Court, to the earlier order made in W.P.No.16500 of 2017, dated 1/8/2017, Mr.G.Vetrivelrajan, learned counsel for the writ petitioners submitted that Debt Recovery Appellate Tribunal, Chennai, has failed to consider the order made by this Court, in W.P.No.16500 of 2017, in proper perspective and directed the writ petitioners, to make a pre-deposit of Rs.3 lakhs, as a condition precedent, for entertaining the appeal (A.I.R.No.211 of 2017).

3. Considering the materials available on record, on 4/10/2017, we passed the following order:-

Earlier, against an order made in O.A.No.128 of 2001, on the file of the Debt Recovery Tribunal - I, Chennai, petitioners have filed an appeal before the Debts Recovery Appellate Tribunal, Chennai, in A.I.R.No.574 of 2015, with a waiver application in I.A.No.624 of 2015.

2. Vide order, dated 2/6/2017, the Debt Recovery Appellate Tribunal, Chennai, has imposed a condition, directing payment of Rs.6 lakhs, as pre-deposit, for entertaining the appeal, which came to be challenged in W.P.No.16500 of 2017.

3. Taking note of the fact that after the Tribunal had passed an ex parte order, dated 26/11/2002, and issued a Recovery Certificate, for Rs.13,97,343.40, and the

subsequent payment of Rs.18 lakhs, made on 15/4/2004, 12/2/2006 and 24/5/2007, respectively, this Court, set aside the order, dated 2/6/2017, made in I.A.No.624 of 2015 in A.I.R.No.574 of 2015 and directed the Debt Recovery Appellate Tribunal, to process A.I.R.No.574 of 2015 in O.A.No.128 of 2001 and number the appeal, if it is otherwise in order.

4. Recovery Certificate issued by the Recovery Officer has been challenged before the Debt Recovery Tribunal. On its failure, A.I.R.No.211 of 2017, has been filed before the Debt Recovery Appellate Tribunal, Chennai, with I.A.No.794 of 2017, for waiver of pre-deposit.

5. Though a plea has been made before the Debt Recovery Appellate Tribunal, Chennai, that a sum of Rs.18 lakhs, stated supra, has already been deposited and attention of the Appellate Tribunal has been brought to the earlier decision of this Court, in W.P.No.16500 of 2017, dated 1/8/2017, that Debt Recovery Appellate Tribunal, Chennai, has directed the petitioners, to make a pre-deposit of Rs.3 lakhs, with the Registrar of the Tribunal, stating that O.A amount of Rs. 13.97 lakhs, would have been increased in many folds. Prima facie, reasoning of the Debt Recovery Appellate Tribunal is contrary to the decision of this Court.

6. While granting interim stay of the operation of the impugned order, dated 6/3/2017, made in Appeal No.6 of 2013, passed by the learned Presiding Officer, DRT - I, Chennai and the order passed by the fourth respondent, in I.A.No.794 of 2017 in A.I.R.No.211 of 2017 and its order dated 7/9/2017, we order notice of motion, returnable through Court and privately, returnable by 25/10/2017.

7. Post on 25/10/2017."

4. Reverting, Mr.R.Rajesh Vivekanandan, learned counsel for the first respondent Bank, reiterated that the debt amount would have been increased in many folds and prayed to sustain the order.

5. Heard the learned counsel for the writ petitioners and

the first respondent Bank and perused the materials available on record.

6. Paragraphs 11 to 15 of the order made by this Court, in W.P.No.16500 of 2017, dated 1/8/2017, set out the details of the action taken by the Bank, for recovery of a sum of Rs.13,97,343.40/-, recovery certificate issued, payment of a sum of Rs.18 lakhs made, appeal filed against the order made in O.A.No.128 of 2001 and consequently, setting aside the order of the Tribunal, in I.A.No.624 of 2015 in A.I.R.No.574 of 2015, directing the writ petitioners, to deposit a sum of Rs.6 lakhs. For brevity, paragraphs 11 to 15 of the order made in W.P.No.16500 of 2017, dated 1/8/2017, are reproduced hereunder:-

"11. Challenging the order made in O.A.No.128 of 2001 dated 25.06.2015 on the file of the Debts Recovery Tribunal-I, Chennai, AIR No.571 of 2015 has been filed before the Debts Recovery Appellate Tribunal, Chennai. I.A.No.624 of 2015, has been filed for waiver. In the said application, while narrating the above facts appellants therein have contended that pursuant to an ex-parte order date 26.11.202, on the certificate for Rs.13,97,343.40p was issued and that the writ petitioners had already paid a sum of Rs.18 lakhs on various dates i.e. a sum of Rs.2 lakhs was paid on 15.04.2014, Rs.1 lakh on 12.02.2006 and Rs.15 lakhs on 24.05.2007, respectively.

12. Before the Debts Recovery Appellate Tribunal, Chennai, writ petitioners have further contended that when the abovesaid sum had already been paid, there is no need to make a pre-deposit of 50% of the amount determined by the tribunal. Hence, they have prayed for waiver of the mandatory deposit, as provided therefor, under Section 21 of the Recovery of Debts Due to Bank and Financial institutions Act, 1996. Writ petitioners have also contended that if waiver is not considered, they would be put to irreparable loss.

13. Though Bank has not filed any counter affidavit disputing the payments made, and the prayer for waiver, the Debts Recovery Appellate Tribunal, Chennai, assuming that debt amount to be Rs.13,97,343.40p Lakhs, the amount claimed in O.A.No.128 of 2001 and by observing that DRAT cannot entertain any appeal without ensuring the pre-deposit, directed the writ petitioners/

appellants therein to deposit a sum of Rs.6 lakhs with the Registry of DRAT, within four weeks from the date of passing of the order.

14. On this day, Mr.Rajesh Vivekananthan, appearing for the bank has not disputed the payment of Rs.18 lakhs made by the writ petitioners on various dates. DRAT, Chennai has failed to consider that the writ petitioners have already remitted a sum of Rs.18 lakhs and that absolutely there is no necessity to once again deposit 50% of the amount determined by the tribunal, When the entire decree amount of even more than that has been remitted by the writ petitioners, imposing a condition to the writ petitioners to deposit a further sum of 50% of the amount determined in OA No.128 of 2001, is erroneous.

15. Bank is expected to bring it to the notice of the DRAT, Chennai of the remittance. Bank has failed to discharge its duties, resulting in DRAT, Chennai, passing the impugned order dated 02.06.2017 in I.A.No.624 of 2015 in AIR No.574 of 2015. Such an order could have been avoided had the bank, brought to the notice of DRAT of the remittance. The impugned order deserves to be set aside and accordingly, set aside. Writ Petition is allowed. DRAT is directed to process ATR No.574 of 2015 in O.A.No.128 of 2001 from the file of DRAT-I, Chennai and number the appeal, if it is otherwise in order."

7. During the course of hearing, Mr.G.Vetrivelrajan, learned counsel for the writ petitioner submitted that pursuant to the directions issued in W.P.No.16500 of 2017, dated 1/8/2017, Registrar of the Debt Recovery Appellate Tribunal, has processed A.I.R.No.574 of 2015, filed against O.A.No.128 of 2011.

8 Material on record discloses that after the issuance of recovery certificate of Rs.13.97 lakhs, the Recovery Officer, issued a Sale Notice, which was challenged, by way of an Appeal No.6 of 2013, on the file of the Debts Recovery Tribunal-I, Chennai, under Section 30 of Recovery of Debts due to Banks and Financial Institutions Act, 1993.

9. After considering the rival contentions, vide, order, dated 6th March 2017, the Debt Recovery Appellate Tribunal - I, Chennai, dismissed Appeal No.6 of 2013. Being aggrieved, petitioners have filed A.I.R.No.211 of 2017, before Debts Recovery Appellate Tribunal, Chennai-1. In the said appeal, the petitioners have filed I.A.No.794 of 2017, praying for waiver of pre-deposit. Though, before the Debts Recovery Appellate Tribunal-I, Chennai, contentions have been made that the petitioners have already paid a sum of Rs.18 lakhs, in the year 2007 and also made further payments in 2014 and 2016 and relied on the order of this Court in W.P.No.16500 of 2013, dated 1/8/2017, still the Debt Recovery Appellate Tribunal, Chennai, by observing that a sum of Rs.13.97 lakhs, O.A. amount would have been increased in many folds, has once again passed a similar order to the one, which was set aside by this Court, in writ petition No.16500 of 2013, dated 1/8/2017 and

directed the petitioners to make a pre-deposit of Rs.3 lakhs with the Registrar of the Tribunal.

10. As rightly contended by the learned counsel for the writ petitioners, with due respect, the order impugned, has been passed, without considering the facts detailed in the earlier order made by this Court in W.P.No.16500 of 2013. It is also to be noted that when the Debt Recovery Appellate Tribunal, Chennai, has taken note of the fact that O.A. being the same, amount determined and deposits have been made by the writ petitioners, Tribunal, ought not to have driven the petitioners, to once again approach this Court, when more than 25% of the debt claimed or determined, which ever is less, had already been remitted to the Bank. When statute contemplates pre-deposit of 25% of the debt claimed or determined, whichever is less, directions of the Debt Recovery Appellate Tribunal, Chennai, to make pre-deposit on the premise that the OA amount would have increased in many folds is erroneous. Legislature in its wisdom, has clearly said the pre-deposit amount should be 25% of the amount claimed as determined, whichever is less. For the reasons stated supra, order of the Debt Recovery Appellate Tribunal, Chennai in Appeal No.6 of 2013 is liable to be set aside.

11. With the above observations and directions, the writ petition is allowed and the order made in Appeal No.6 of 2013 is set aside. Debt Recovery Appellate Tribunal is directed to process the appeal, in A.I.R.No.211 of 2017, filed against the order made in Appeal No.6 of 2013, dated 6/3/2017, on the file of the Debt Recovery Appellate Tribunal - I, Chennai, assign regular appeal number, decide the same on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Lakshmi Vilas Bank Ltd.,
Nungambakkam Branch,
175, Valluvarkottam High Road,
Nungambakkam, Chennai - 600 034.
2. The Recovery Officer,
Debt Recovery Tribunal-I,
Anna Salai, Chennai - 600 002.
3. The Chairperson
Debt Recovery Appellate Tribunal
Commander in chief Road,
Chennai - 600 005.

+1cc to Mr.G.VETRIVELRAJAN Advocate, S.R.No. 76414

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