

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR  
AND  
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.16500 of 2017  
and WMP No.17847 of 2017

1. Joinus Interiors and Construction Limited,  
1-D, 1st Floor, Eldarado,  
112, Mahatma Gandhi Road,  
Nungambakkam, Chennai - 600 034.

2. Mrs. Vijaya Anand

3. Mrs.Lalitha Sathyamoorthy

4. Mrs.Vasthi

5. Mr.T.Sathyamurthy

... Petitioners

vs.

1. The Lakshmi Villas Bank Ltd.,  
Nungambakkam Branch,  
175, Valluvarkottam High Road,  
Nungambakkam, Chennai - 34.

2. The Chairperson,

The Debt Recovery Appellate Tribunal

Commander-in-Chief Road,

Chennai - 600 105.

... Respondents

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 2nd respondent in I.A.No.624 of 2015 in AIR No.574 of 2015 and its order dated 02.06.2017 and quash the same in so far as it imposed a condition of the payment of Rs.6,00,000/- (Rupees Six Lakhs) and issue all such further or other orders.

For Petitioners : Mr.G.Vetrivelrajan  
For Respondents : Mr.Rajesh Vivekananthan (for R1)

**ORDER**

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

Challenge in this writ petition is to an order made in I.A.No.264 of 2015 in AIR No.574 of 2015 dated 02.06.2017 made by the Debts Recovery Appellate Tribunal, Chennai, directing the writ petitioners to deposit a sum of Rs.6,00,000/- with the Registry of the tribunal, as pre-deposit for entertaining the appeal.

2. Assailing the correctness of the order, writ petitioners have contended that bank has sanctioned a secured Over Draft facility to the tune of Rs. 6 Lakhs to the 1st petitioner-company, for which, petitioner No.5 offered his property as security. Bank has also granted an Inland Letter of Credit facility of Rs.4 Lakhs. Bank instituted O.A.No.128 of 2001 before the Debts Recovery Tribunal, Chennai for recovery of Rs.13,97,343.40p. For realising the said amount, bank prayed for a recovery certificate to be issued. Writ petitioners have contested the original application. After considering the material on record, the Debts Recovery Tribunal-I, Chennai, by order dated 25.06.2015, in O.A.No.128 of 2001, allowed the Original Application, holding that the bank is entitled for recovery of Rs.13,97,343.40p, as against defendants 1 to 5 therein jointly

and severally together with interest at 12.5% per annum (simple) from the

date of original application till the date of realisation, together with costs from the defendants.

3. Earlier on 26.11.2002, when the writ petitioners were set exparte, and a final order came to be passed. Consequently, a Recovery Certificate No.2 of 2003 dated 14.01.2003 has been issued. An order of attachment was also made on 08.05.2003. Writ petitioners filed M.A.Nos.105 & 106 of 2003 to set aside exparte order and also prayed for stay of further proceedings.

4. Vide order dated 17.11.2003, the tribunal directed the writ petitioner to pay 50% of the amount under the recovery certificate. The said order dated 17.11.2003 has been challenged before the DRAT, Chennai in M.A.No.30 of 2004. Vide order dated 19.02.2004, DRAT, Chennai, reduced the amount from Rs.7 Lakhs to Rs.4 Lakhs. Said order has been challenged in this Court, by the writ petitioner as well as the 1st respondent bank viz., Lakshmi Vilas Bank, Nungambakkam Branch, Nungambakkam, Chennai, in W.P.Nos.8995 and 16978 of 2004, respectively.

5. Vide common order in W.P.Nos.8995 & 16978 of 2004, dated 04.12.2006, this Court remanded the matter to the appellate tribunal to render a finding as to whether the final order of dated 17.11.2003, made by

the Debts Recovery Appellate Tribunal in M.A.No.105 & 106 of 2003, requires interference on merits. While remitting the matter, this Court has directed the writ petitioner therein to deposit a further sum of Rs.1 Lakh. In W.P.Nos.8995 & 16979 of 2004 dated 04.12.2006, this Court has also permitted the auction purchaser to intervene in the proceedings before the tribunal.

6. In M.A.No.30 of 2004 (M.A.No.105 of 2003) in O.A.No.128 of 2001, the Debts Recovery Appellate Tribunal, Chennai, vide order dated 26.04.2007 has directed the appellants/writ petitioners to deposit Rs.15 Lakhs with the bank, in no lien account on or before 25.05.2007. Pursuant to the directions, the writ petitioners have deposited a sum of Rs.15 Lakhs. Communication of the bank dated 24.05.2007, addressed to the Debts Recovery Appellate Tribunal, Chennai, supports the receipt of the said sum and the same is extracted hereunder.

*The Lakshmi Vilas Bank Ltd.  
175, Valluvar Kottam High Road,  
Nungambakkam, Chennai - 600 034.*

*Ref.No.GEN/9/2007-08*

*Date: 24th May 2007*

*To  
The Honourable Judge,  
Debt-Recovery Appellate Tribunal,  
Spencers Towers,  
Mount Road,  
Chennai - 600 002.*

*Sub: - Order passed in the Court on 26th April 2007 in the matter of MA 30/2004 against JOINUS INTERIORS & CONSTRUCTIONS LTD., I-D, First Floor, Eldorado, Chennai - 34.*

*This is to bring to your kind attention that as per the orders passed by your Honourable Court, we have received today a sum of Rs.15,00,000.00 (Rupees Fifteen Lakhs Only), from M/s. Trans Global Forex Ltd., Bengaluru, in favour of the Appellants M/s. JOINUS INTERIORS AND CONSTRUCTIONS LTD, which amount has been kept under no lien interest bearing deposit as per your honourable orders for a period of 91 days.*

*Thanking you,*

*Yours Sincerely,*

*For The Lakshmi Vilas Bank Ltd.,  
Manager"*

7. Further, perusal of the order made in O.A.No.128 of 2001 dated 25.06.2015 on the file of the Debts Recovery Tribunal-I, Chennai shows that when the mortgaged property was brought for sale on 30.07.2003 and when sale certificate dated 04.02.2004 was issued, the same has been challenged in M.A.No.30 of 2004.

WEB COPY

8. Thereafter when correctness of the order made in M.A.No.30 of 2004 dated 26.04.2007 of the Debts Recovery Appellate Tribunal was tested by the auction purchaser, this Court in W.P.No.20499 of 2007 dated 19.11.2008, set aside the order dated 26.04.2007, insofar as it relates to

9. Material on record further discloses that MA.No.31 of 2009 in S.A.SR. No.622 of 2009 has been filed to condone the delay of 2002 days in filing the appeal challenging the sale and vide order dated 31st December 2009, M.A.No.31 of 2009 in S.A.SR.No.622 of 2009, has been ordered on payment of cost of Rs.25,000/- to the bank. Thereafter, Appeal No.6 of 2013 has been filed to set aside the sale made by the Recovery Officer dated 30.07.2003, in favour of the 2nd respondent therein, Mrs.D.Rani and to direct the respondent therein to pay the cost. On contest, the Debts Recovery Tribunal-I, Chennai, vide order dated 06.03.2017, dismissed the appeal filed by the writ petitioners.

10. While granting an order of recovery of Rs.13,97,343.40p stated supra, the Debts Recovery Tribunal-I, Chennai, in the order dated 25.06.2015 has made it clear that with regard to the sale of the mortgaged property, the same would be subject to the outcome of the Appeal No.6 of 2013 filed by the defendants therein, as per the directions of this Court in W.P.No.20499 of 2007 filed challenging the sale of the mortgaged property by the Recovery Officer on 30.07.2003 and the subsequent issuance of sale certificate dated 02.04.2004.

11. Challenging the order made in O.A.No.128 of 2001 dated 25.06.2015 on the file of Debts Recovery Tribunal-I, Chennai, AIR No.574 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 exparte order dated 26.11.2002, on the file of Debts Recovery Tribunal, Chennai, a recovery 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 ie., 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, 1993. 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 or 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 AIR No.574 of 2015 in O.A.No.128 of

2001 from the file of DRT-I, Chennai and number the appeal, if it is otherwise in order.

(S.M.K., J.) (V.B.S., J.)  
01.08.2017

Index: Yes/No  
Internet: Yes  
ars

To

1. The Lakshmi Villas Bank Ltd.,  
Nungambakkam Branch,  
175, Valluvarkottam High Road,  
Nungambakkam, Chennai - 34.

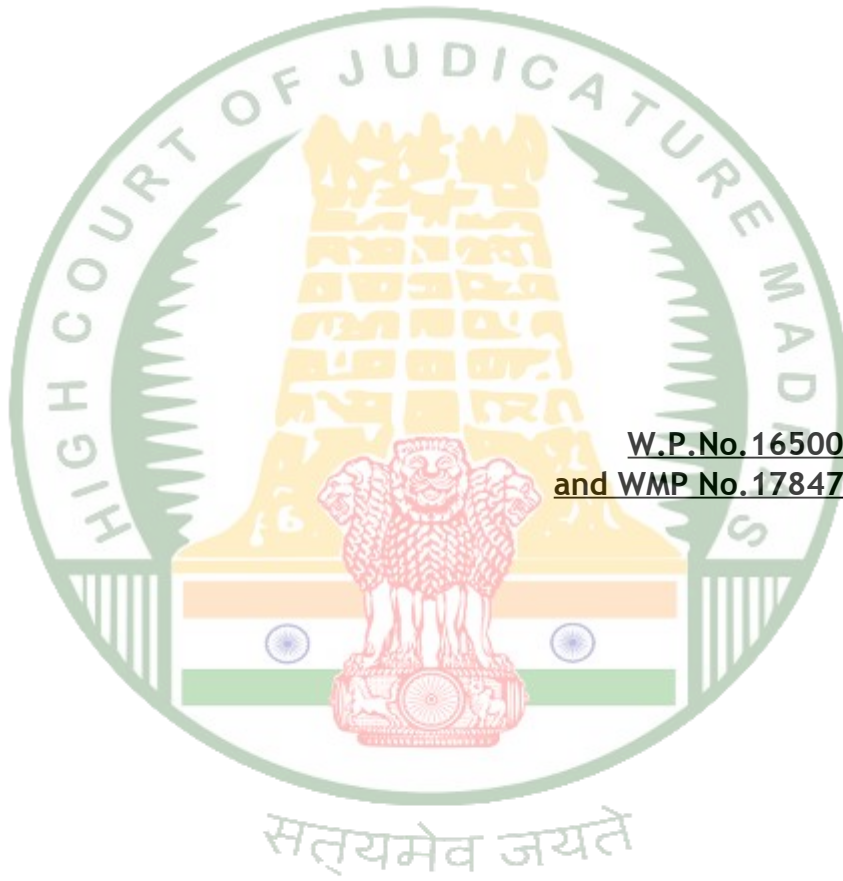
2. The Chairperson,  
The Debt Recovery Appellate Tribunal  
Commander-in-Chief Road,  
Chennai - 600 105.



WEB COPY

S.MANIKUMAR, J.  
AND  
V.BHAVANI SUBBAROYAN, J.

ars



W.P.No.16500 of 2017  
and WMP No.17847 of 2017

WEB COPY

01.08.2017

to call for the records of the 2nd respondent in M.A.No.30 of 2004 and its order dated 19.2.2004 in MA No.30 of 2004 and quash the same in so far as it imposes a condition of the payment of Rupees 4 laksh and direct that the petitioners be afforded an opportunity to defend O.A.No.128 of 2001 on the file of the DRT-1, Chennai, by setting aside of the exparte order unconditionally and the consequential recovery certificate dated 14.1.2003 issued by the presiding Officer, DRT-1, Chennai in terms of orders dated 26.11.2002 in O.A.No.128 of 2001 and issue all such further orders.



WEB COPY