IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2017

CORAM:

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

W.P.No.26984 of 2017
and WMP No.28782 of 2017

Mr.Era. Anbarasu,
Chairman,
M/s.Leatherman Fabrics (p) Ltd.,
No.16/6, Appadurai Street, Vanniyar,
Teynampet,
Chennai - 600 018. ... Petitioner

vs.

1. Indian Bank,
   Rep. by its Manager,
   T.Nagar Branch, Chennai - 600 017.

2. M/s.Leatherman Fabric (p) Ltd.,
   Rep. by the Official Liquidator,
   Kuralagam, Chennai.

3. K.V.Ragavan,
   Managing Director,
   M/s.Leatherman Fabric (p) Ltd.,
   28, II Main Road,
   New Colony, Chromepet, Chennai - 600 044.

4. Dr.P.Kailasam
5. Mr.Subba Rao Sannithi
6. Mr.Prasad Rao Sannithi
7. Mrs.Revathi ... 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 in pursuance of order dated 04.10.2017 in AIR (SA) No.400 of 2016 on the file of DRAT, Chennai and quash the same and consequentially direct the DRAT to dispose the appeal on merits in AIR (SA) No.400 of 2016 on the file of DRAT, Chennai, on merits.

For Petitioner : Mr.S.Balaji

ORDER

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

Material on record discloses that for realiasing of sum of Rs.10,29,98,204/-, Indian Bank, T.Nagar Branch, Chennai, has instituted O.A.No.585 of 2015 on the file of the Debts Recovery Tribunal-II, Chennai for recovery of the abovesaid sum. On contest, vide order dated 15.03.2016, Debts Recovery Tribunal-II, Chennai allowed the siad original application as hereunder.

> 26. In the result, the application (OA) is allowed as under:-
>
> a) the applicant bank is entitled to recover the sum, after deducting the amounts realized during the pendency of the OA including the payments made by the Official Liquidator on appropriate dates from the OA claim of Rs.10,29,98,204.00 (Rupees Ten Crore Twenty Nine Lakh Ninety Eight Thousand Two Hundred and Four only) with interest @ 6% p.a. (simple) from 23.04.1997 till realization and also costs of the OA from the defendants 1 to 6 jointly and severally and by sale of the properties described in Schedule 'A' to the OA in accordance with section 529 (A) of the Companies Act, 1956;
>
> b) the 7the Defendant is liable only to the extent of the mortgage created by her over the property in Schedule 'A2' to the OA;
>
> c) Issue Recovery Certificate in favour of the applicant
>
> bank in terms of this final order;
>
> d) Applicant is directed to file costs memo within two weeks of receipt of this order"

2. Being aggrieved, petitioner has filed AIR (SA) No.400 of 2016 before the Debts Recovery Appellate Tribunal, Chennai for a prayer to set aside the order made in O.A.No.585 of 2015 dated 15.03.2016. Alongwith AIR (SA) No.400 of 2016, petitioner has filed I.A.No.258 of 2017 for condontaion of delay of 151 days in filing and I.A.No.259 of 2017 for waiver.

3. Considering the reasons assigned, delay of 151 days in filing has been condoned and thus, I.A.No.258 of 2017 has been ordered. On the application, I.A.No.259 of 2017, filed for waiver before the Debts Recovery Appellate Tribunal, Chennai, petitioner has contended that he was the Chairman at the initial stage and thereafter, resigned from the Chairmanship and thus not liable to repay. He has also contended that action of the bank can be restricted only to 1/7th of the total debt amount.

4. Considering the said submissions, Debts Recovery Appellate Tribunal, Chennai, in I.A.No.259 of 2017 dated

06.09.2017 has ordered as hereunder

> "Considering the aforesaid, it appears that Appellant wants to challenge his liability on the ground that he has resigned from the chairmanship with information and knowledge of Respondent bank, hence he is not at all liable. In my considered opinion, whatever, has been averred will be decided at the time of final hearing of this appeal, however, in view of the fact that DRAT cannot entertain an Appeal filed by any aggrieved person unless and until the Appellant complies with the formalities on pre-deposit up to 50% of the debt amount, which can be reduced to 25%, but not less than 255 in any case and by extending maximum waiver to the Appellant, I hereby direct the Appellant to make pre-deposit of Rs.2.60 Crores with the Registrar of this Tribunal, out of which Rs.1.30 Crores to be paid by the Appellant within four weeks from today as 1st part of payment and 2nd part of payment of Rs.1.30 Crores will be paid by another four weeks thereafter.
>
> In the event of failure of any part of the amount, the Appeal stand dismissed automatically without any reference by this Tribunal. IA is disposed of and closed.
>
> List of confirmation of pre-deposit of 1st part of payment of Appellant by 04.10.2017.

5. Thereafter, the matter was listed on 04.10.2017 and on the said date, Debts Recovery Appellate Tribunal, Chennai has passed the final orders.

> "Order
>
> This Tribunal has passed orders on pre-deposit directing the Appellant to make pre-deposit of Rs.2.60 Crores. Appellant counsel fairly concedes that he has not complied with the orders on pre-deposit and prays for further some more time to comply with the orders on pre-deposit.
>
> In view of the fact that bank is looking for recovery of more than Rs.10.29 Crores and no good ground is made out for grant of any extension of time. Further, DRAT cannot entertain any Appeal filed by any aggrieved person unless and until the Appellant complies with the formalities on pre-deposit.
>
> As pre-deposit is not complied with, hence appeal stands dismissed for want of compliance on pre-deposit."

6. Being aggrieved by the order made in AIR (SA) No.400 of 2016, dated 04.10.2017, dismissing the appeal, instant writ petition has been filed for a certiorarified mandamus to call for the abovesaid order, to quash the same and consequently to

dispose the said appeal, on merits.

7. By filing an additional typed set of papers dated 21.10.2017, Mr.S.Balaji, learned counsel for the petitioner submitted that substantial payments have been made and further contended that when the writ petitioner has made out a prima facie case on the challenge to the order of the Debts Recovery Tribunal-II, Chennai, dated 15.03.2016, on merits, the Debts Recovery Appellate Tribunal, Chennai, ought to have allowed the waiver application. We are not inclined to accept the said contentions for the reason that perusal of the supporting affidavit filed in I.A.No.259 of 2017, for waiver does not disclose that the petitioner has made any substantive payments, after the order of recovery made in O.A.No.585 of 2015 dated 15.03.2016.

8. Details of the sale made by the learned Official Liquidator and the recovery towards loan are not set out except in the supporting affidavit, at paragraph No.9, wherein, bald averments have been made that learned Official Liquidator appointed by this Court has sold some property, which stood in the name of the company and realized certain portion of debt.

9. Contention of the petitioner that there is a prima facie case on appeal, can be considered only at the time of hearing of the same. Statute mandates pre deposit for entertaining an appeal. Only on such deposit, appeal could be entertained and arguments could be advanced on the merits of the case.

10. 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."

11. In the light of the above discussion and decisions, we find no error in the order impugned and not inclined to entertain the writ petition. Hence, the writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

12. After dismissal of the writ petition, Mr.S.Balaji, learned counsel for the petitioner submitted that pre deposit ordered to be deposited, by DRAT, Chennai, would be made within a period of four weeks from today. Placing on record the above submission, permission is granted to deposit the said amount within four weeks as stated supra, and on such deposit, DRAT,Chennai, to pass suitable orders.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Manager,
   Indian Bank,
   T.Nagar Branch, Chennai - 600 017.

2. The Official Liquidator,
   M/s.Leatherman Fabric (p) Ltd.,
   Kuralagam, Chennai.

3. The Debts Recovery Appellate Tribunal
   Chennai.

+2 Ccs to Mr.S. Balaji, Advocate sr 75095.

W.P.No.26984 of 2017

SKV(CO)
SP(10/11/2017)