IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.3.2017

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

Writ Petition No.18213 of 2014

1. R.Throupathy
2. V.Muthulakshmi .. Petitioners

Vs.

1. M/s. State Bank of India
Overseas Branch
Tiruppur.

2. The Recovery Officer
Debt Recovery Tribunal
Coimbatore.

3. K.J.Anthony

4. M/s. Growell International
Sai Kripa
No.3A, Peritchipalayam East
Tiruppur 641 608.

5. S.P.Balasubramanian .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records relating to the order dated 04.4.2014 made in I.A.No.1097 of 2013 in A.I.R.No.758 of 2011 on the file of the Debts Recovery Appellate Tribunal, Chennai, with regard to the direction to deposit Rs.23,17,000/- being 50% of the debt due on the date of filing of appeal in AIR 758/2011 on or before 25.06.2014 and to quash the same.

For Petitioner	:	Mr.B.Harikrishnan
For Respondent-1	:	Mr.K.Mohandas
For Respondent-3	:	Mr.M.Karunanidhi

O R D E R
(Made by the Hon'ble Acting Chief Justice)

The petitioners have come up with the above writ petition challenging the order dated 04.4.2014 made in I.A.No.1097 of 2013 in A.I.R.No.758 of 2011 on the file of the Debts Recovery Appellate Tribunal, Chennai, directing the petitioners to deposit Rs.23,17,000/- being 50% of the debt due on the date of filing of appeal.

2. Heard the learned counsel for the petitioners and the learned counsel appearing for the first respondent Bank and the third respondent.

3. The father of the petitioners, by name S.Periyasamy Gounder, was one of the guarantors for the loan obtained by the fourth respondent company and had also offered his property towards collateral security. Since the fourth respondent Company committed default, the first respondent Bank filed an application before the Debts Recovery Tribunal, Coimbatore, under Section 19(1) of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 for recovery of a sum of Rs.27,28,922/- from the fourth respondent company, fifth respondent and the guarantors, failing which, to sell the properties executed as collateral security. The Tribunal held that the respondents 4 and 5 and the guarantors, including the father of the petitioners herein, are liable to pay Rs.27,28,922/- together with simple interest @ 9% per annum, failing which, to sell the schedule properties and to adjust the sale proceeds towards the amount due.

4. The said Periasamy Gounder filed an application to stall the auction of his property and the same was dismissed. Hence, Periasamy Gounder filed an appeal to set aside the auction sale along with an interim application to restrain the auction purchaser from alienating the property and the said interim application was dismissed. Against the dismissal of the interim application, the said Periasamy Gounder filed an appal along with interim applications for stay and to condone the delay of 44 days in representing the appeal. Pending the appeal, Periasamy Gounder died and therefore, the petitioners herein an application to implead them as the second and third appellants in the appeal and the said application was allowed. In the interim application filed for waiver, the Debts Recovery Appellate Tribunal, holding that the appeal cannot be entertained without the mandatory deposit as per Section 21 of the Act, directed the petitioners to deposit 75% of the pre-deposit, giving a concession of 25%. Aggrieved by the said order, the petitioners are before this Court.

5. It is not in dispute that as per Section 21 of the Recovery of Debts Due to Bank and Financial Institutions Act, an appeal cannot be entertained without the mandatory deposit. Therefore, the condition imposed by the Debts Recovery Tribunal to deposit 75% of pre-deposit cannot be said to be erroneous. However, it is for the Debts Recovery Appellate Tribunal to take into consideration the amount already paid and also the sale consideration of the property of the petitioner's father, realised by the respondent Bank towards the due payable to them, before imposing the condition of pre-deposit for entertaining the appeal.

6. In view of the fact that the Debts Recovery Appellate Tribunal has not taken note of the amount already paid/realised by the Bank while imposing the condition for pre-deposit of the amount, the petitioners shall approach the Debts Recovery Appellate Tribunal with regard to pre-deposit amount. Till such time the Appellate Tribunal decides on the pre-deposit amount, keeping in mind the amount already realised by the respondent Bank shall not take any coercive steps and it is for the Appellate Tribunal to pass necessary orders, taking note of the observation made by this Court.

The writ petition is disposed of, leaving it open to the parties to raise all the contentions before the Tribunal, including the pre-deposit made by the petitioners. There shall be no order as to costs. Consequently, M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl

To
1 The Recovery Officer
Debt Recovery Tribunal, Coimbatore.

2 The Presiding Officer, Debt Recovery Tribunal
Chennai

+1cc to B. Harikrishnan, Advocate Sr.No.14679
+1cc to Mr. K. Mohandoss, Advocate Sr.No.14826

ks(CO)
md(12/04/2017)

W.P.No.18213 of 2014