IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.07.2017**

CORAM:

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

W.P.No.18402 of 2017
and
WMP No.19981 of 2017

Babu ... Petitioner

vs.

1. The Debts Recovery Appellate Tribunal,
Rep. by its Chair Person,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai.

2. Bank of India,
Chennai Main Branch,
Old No.17, New No.30,
Errabalu Chetty Street (First Floor),
Chennai - 600 001.

3. Mrs.B.Saraswathi ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the 1st respondent pertaining to the order dated 15.06.2017 made in I.A.No.492 of 2017 in AIR No.187 of 2015, on the file of Debt Recovery Appellate Tribunal, Chennai, quash the same and consequently direct the 1st respondent to dispose the above said appeal AIR No.187 of 2015, on merit in accordance with law without insisting any pre-deposit.

For Petitioner : Mr.P.R.Thiruneelakandan

ORDER

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

Order impugned in this writ petition, made in AIR No.187 of 2015 dated 15.06.2017 on the file of Debts Recovery Appellate Tribunal, Chennai is extracted hereunder.

Proceedings dated 15.06.2017

Ld. Counsel Mr.R.Harinath for Appellant present.

Ld. Counsel Mr.K.Nazir Ahmed for R1 Bank present.

Heard on IA-301/2015 application for condonation of delay of 177 days in filing the appeal.

Considering the averments in the IA, delay is condoned.

IA-301/2015 is allowed.

Heard on IA-492/2017 application for waiver of pre-deposit.

Appellant has challenged the order dated 24.11.2014 of DRT-II, Chennai, passed in MA-81/2014 in MA-44/2013 in O.A.No.5/2013 by which MA-81/2014 has been dismissed.

Ld. counsel for Appellant submits that OA of the Bank has been allowed for recovery of a sum of Rs.25.16 lakhs, but without his knowledge and notice. This Appeal has been filed to challenge the order of DRT declining to set aside the order dated 22.7.2014 in MA-44/2013. In such a situation, Appellant cannot be forced to make a pre-deposit because he has challenged only the exparte order and prayed for permission to contest the matter.

Per contra, Ld. Counsel for R1 Bank submits that liability has been crystallised in exparte order. In last four years, debt amount has increased many folds and prayed to *direct the Appellant to deposit 50% of the debt amount due as on today.*

Without making any comments on merits of the case, for the purpose of his Appeal, I consider the debt amount to be Rs.25.16 lakhs. In view of the fact that DRAT cannot entertain any Appeal without ensuring the pre-deposit of 50% of the debt amount, which cannot be reduced to less than 25% in any case, I hereby direct the Appellant to make a pre-deposit of Rs.12,00,000/- (Rupees Twelve lakhs only) within eight weeks. Out of this amount, first part of Rs.6 lakhs shall be deposited with the Registrar of this Tribunal within four weeks from today and second part of Rs.6 lakhs shall be deposited in next four weeks thereof. In case of default to deposit the first instalment within stipulated period, the Appeal shall stand automatically dismissed without reference to this Court.

IA-492/2017 is disposed of.

List for confirmation of first instalment of Rs.6 Lakhs on 13.7.2017."

2. Supporting the prayer sought for and inviting the attention of this Court to Section 21 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993, Mr.P.R.Thiruneelakandan, learned counsel for the petitioner submitted that when the tribunal has not determined the amount of debt due from the borrower, no condition can be imposed to make pre-deposit for entertaining the appeal, much less 50% of the debt amount. According to the learned counsel, the Debts Recovery Tribunal in O.A.No.5

of 2013, has only set the writ petitioner exparte and no amount was determined.

3. Pleadings disclose that the petitioner availed a housing loan of Rs.18,24,000/- on 10.01.2007 by depositing the title deeds of the property. Thereafter, he defaulted. A sum of Rs.25,16,601.50p was the outstanding. Therefore, Bank of India, Chennai filed O.A.No.5 of 2013 on the file of the Debts Recovery Tribunal - II, Chennai for recovery of the said sum, with interest, at the rate of 10% per annum, with monthly rests from 20.11.2012 till the date of realisation and costs of the application. Both the borrower and his wife B.Saraswathi, who stood as guarantor remained absent and that they were set exparte on 25.02.2013. After hearing the bank counsel, and perusing the pleadings and documents, vide order dated 23.04.2013, Debts Recovery Tribunal-II, Chennai passed final order, as hereunder.

"6. In the result, final order is passed allowing:-

(a) the applicant bank to recover a sum of Rs.25,16,601.50 with *pendente lite* and future interest @ 10% p.a. with monthly rests from 20.11.2012 till realization and also costs of the OA from the defendants jointly & severally and by sale of the mortgaged property mentioned in the schedule to the OA.

(b) Issue Recovery Certificate in favour of the applicant bank in terms of this final order;

(c) Applicant is directed to produce costs memo within two weeks of receipt of this order and

(d) Communicate a copy of this order to the parties in terms of Rule 16 read with rule 2(c) of DRT (Procedure) Rules, 1993."

4. Thereafter, recovery certificate in DRC No.105 of 2013, has been issued directing the defendants/writ petitioner and 3rd respondent herein/guarantor, to jointly and severally pay a sum of Rs.26,53,315.70p comprising of Rs.25,16,601.50p as principal, and Rs.1,08,709.20p as interest and Rs.28,005/- as cost, as per the schedule of costs annexed therein and further interest, until realisation.

5. Material on record discloses that petitioner has filed a Miscellaneous Application (MA) No.44 of 2013 in O.A.No.5 of 2013, to condone the delay of 63 days, in filing an application to setaside the exparte final order made in O.A.No.5 of 2013 dated 23.04.2013. He has also to setaside the exparte order. Though, the bank has opposed the prayer for condonation by filing a counter affidavit, vide order in M.A.No.44 of 2013 in O.A.No.5 of 2013 dated 07.07.2014, the Debts Recovery Tribunal-II, Chennai, condoned the delay, on condition to pay cost of Rs.1,000/- to the bank on or before 21.07.2014 and directed the Registry to call the matter on 22.07.2014.

6. On 22.07.2014, when the matter came up before the Debts Recovery Tribunal No.II, Chennai, counsel for the bank was present. Taking note of the fact that the above order dated 07.07.2014 was not complied

with, tribunal vide order dated 22.07.2014, dismissed M.A.No.44 of 2013.

7. As against the dismissal of M.A.No.44 of 2013 in O.A.No.5 of 2013 dated 22.07.2014, borrower has filed another application viz., M.A.No.81 of 2014 contending inter alia that unfortunately, his counsel who appeared before the Debts Recovery Tribunal-II, Chennai had noted the hearing date as 07.08.2014 instead of 07.07.2014 and thus the petitioner could not comply with the conditional order dated 22.07.2014. Before the tribunal in M.A.No.81 of 2014, writ petitioner has contended that neither he nor his counsel had the knowledge of the order dated 07.07.2014 made in M.A.No.44 of 2013. Bank has opposed, the plea to set aside the exparte order dated 22.07.2014 on the grounds that it was nothing but protracting the proceedings and that there was no bonafide. After hearing the arguments of the learned counsel for the parties, the Debts Recovery Tribunal-II, Chennai vide order dated 24.11.2014 in M.A.No.81 of 2014 in M.A.No.44 of 2013 in O.A.No.5 of 2013, dismissed the application as not maintainable.

8. Challenging the above said order the borrower has filed AIR No.187 of 2015 before the Debts Recovery Appellate Tribunal, Chennai. Material on record discloses that there was a delay of 107 days in filing the appeal before the Debts Recovery Appellate Tribunal. Hence, I.A.No.301 of 2015 has been filed to condone the delay in filing. Delay has been condoned.

9. The borrower has also filed I.A.No.492 of 2017 for waiver of pre deposit required under Section 21 of the Recovery of Debts due to Banks and Financial Institution Act, 1993. At paragraph No.12 of the supporting affidavit, the petitioner has contended that he is ready to pay the entire due amount mentioned in the possession notice.

10. Though before the Debts Recovery Appellate Tribunal, Chennai, contention has been made that the bank has obtained an order without his knowledge and notice, instant appeal AIR No.181 of 2015 has been filed only to set aside the order dated 22.07.2014 in M.A.No.22 of 2014 and that there cannot be any condition to make a pre deposit.

11. Rejecting the same, the Debts Recovery Tribunal, vide order made in AIR No.187 of 2015 dated 15.06.2017 ordered as hereunder.

> *Without making any comments on merits of the case, for the purpose of his Appeal, I consider the debt amount to be Rs.25.16 lakhs. In view of the fact that DRAT cannot entertain any Appeal without ensuring the pre-deposit of 50% of the debt amount, which cannot be reduced to less than 25% in any case, I hereby direct the Appellant to make a pre-deposit of Rs.12,00,000/- (Rupees Twelve lakhs only) within eight weeks. Out of this amount, first part of Rs.6 lakhs shall be deposited with the Registrar of this Tribunal within four weeks from today and second part of Rs.6 lakhs shall be deposited in next four weeks thereof. In case of default to*

deposit the first instalment within stipulated period, the Appeal shall stand automatically dismissed without reference to this Court."

As stated supra, instant writ petition has been filed as against the abovesaid order dated 24.11.2014.

12. Though Mr.P.R.Thiruneelakandan, learned counsel for the writ petitioner/borrower reiterated the abovesaid grounds and further added that no amount has been determined by the tribunal, pre-deposit cannot be ordered as a matter of force, this Court is not inclined to accept the said contentions for the reason that, final order determining the amount due and payable by the writ petitioner has already been made on 23.04.2014 in O.A.No.5 of 2013 and it is not a mere order, setting the borrower exparte. Infact, the petitioner has been set exparte on 25.02.2013, and final order is passed on 25.04.2014, determining the amount, due and payable by him. Recovery certificate has also been issued. Directions of the Debts Recovery Appellate Tribunal, Chennai satisfies the requirements of Section 21 of the Recovery of Debts due to Banks and Financial Institutions, 1993.

13. Though learned counsel for the petitioner prayed indulgence of this Court for reduction of the pre condition deposit amount, this Court is not inclined to extend any indulgence in his favour for the reason that

though he has availed loan of Rs.18,24,000/- and also averred before the tribunal in I.A.No.492 of 2017 that he is ready for paying the entire due amount mentioned in possession notice, so far from 28.04.2010, the date on which, possession notice has been issued, he has not made any payment. At every stage of the proceedings, there is a delay. Though tribunal has granted indulgence by condoning the delay, the petitioner has not made any deposit. For confirmation of payment of 1st instalment of Rs.6 Lakhs, Registry of Debts Recovery Appellate Tribunal has been directed to post AIR No.187 of 2015 on 13.07.2017.

14. For the abovesaid reasons, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

(S.M.K., J.) (V.B.S., J.)
20.07.2017

Index: Yes/No.
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To

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4th Floor, Indian Bank Circle Office,
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2. Bank of India,
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