



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
And
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

WP(MD)Nos.2866 and 2867 of 2017
and WMP(MD)Nos.2333 and 2334 of 2017

In both Writ Petitions:

M/s M.A.V.R.Natraja Nadar & Sons
A Partnership firm represented by its
partner R.N.Ramesh
No.75,U11 Street, Virudhunagar. ... Petitioner

-Vs-

1.The Debts Recovery Appellate Tribunal
By its Registrar
Ethiraj Salai, Chennai-600 008.

2.The Depts Recovery Tribunal,
3 & 4th Floors, Kalyani Towers,
4/162, Madurai-Melur Road,
Uthangudi, Madurai-625 107

3.State Bank of India
By its Manager
Virudhunagar Branch
Madurai Road, Virudhunagar. ... Respondents

PRAYER in W.P.(MD)No.2866 of 2017:- Writ Petition filed under Article 226 of The Constitution of India is preyed for a direction of Certiorarified Mandamus calling for records relating to the order dated 17.01.2017 made in I.A.No.119 of 2017 in A.I.R. No.264 of 2012 on the file of the Debts Recovery Appellate Tribunal, Chennai, the first respondent herein and quash the same.

PRAYER in W.P.(MD)No.2867 of 2017:- Writ Petition filed under Article 226 of The Constitution of India for issuance of writ of Certiorari calling for records relating to the order dated 25.11.2016 made in I.A.No.298 of 2012 in A.I.R. No.264 of 2012 on the file of the Debts Recovery Appellate Tribunal, Chennai, the first respondent herein and quash the same.

In both writ petitions:

<https://hcservices.ecourts.gov.in/hcservices/>

For Petitioner : Mr.A.V.Arun
For R3 : Mr.S.Sethurangan



C O M M O N O R D E R

The Writ Petitions have been filed against the orders dated 17.01.2017 and 25.11.2016 made in I.A.Nos.119 of 2017 and 298 of 2012 in A.I.R. No.264 of 2012 on the file of the Debts Recovery Appellate Tribunal, Chennai, the first respondent herein and quash the same.

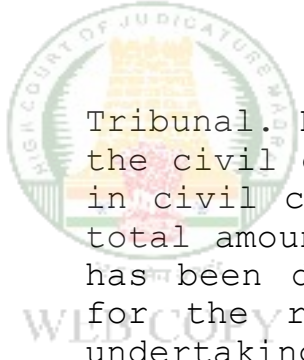
2. Heard the learned counsel for the petitioner and the learned counsel for the third respondent bank.

3. The petitioner, who is the borrower from the third respondent bank, has filed the writ petitions challenging the order passed by the Debts Recovery Appellate Tribunal, Chennai. The writ petition in W.P.(MD)No.2866 of 2017 is filed against the final order passed by the Debts Recovery Appellate Tribunal dated 25.11.2016 in an application for waiver of pre-deposit in I.A.No.298 of 2012. The writ petition in W.P.(MD) No.2867 of 2017 is filed challenging the order passed in I.A.No.119 of 2017 dated 17.01.2017, wherein the petitioner sought for modification of the order dated 25.11.2016.

3. The Tribunal, in our view, rightly dismissed both the applications in terms of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act. Under the said Act, pre-deposit is a necessary formality and appeal cannot be entertained without making pre-deposit, which cannot be less than 25% of the amount due. The Debts Recovery Appellate Tribunal, taking into consideration the decree passed held that pre-deposit of Rs.24,00,000/- (Rupees twenty four lakhs only) should be made by exercising its discretion under proviso to Section 21 of the said Act which provides that the Appellate Tribunal for reasons to be recorded in writing can reduce the amount to be deposited which shall not be less than 25%. Thus, the discretion which can be exercised by the Appellate Tribunal, is to be reduce the pre-deposit upto 25% of the due amount.

4. The above facts would be sufficient to reject the prayer sought for in the Writ Petitions. But however, on account of the subsequent development in the matter we are inclined to issue certain directions. The subsequent development arises under the following circumstances:

5. The respondent Bank initially filed a suit for recovery of money against the petitioner in O.S.No.207 of 1982 on the file of I Additional Sub Court, Madurai. The suit was decreed and is at the stage of execution. Pending disposal of the suit, certain properties owned by the borrower were disposed of and total amount of Rs.4,55,08,714/- was deposited to the credit of the suit. After coming into force of RDDBI Act 1993, the suit was transferred to the Debts Recovery Tribunal. As a consequence of which the amount which was lying to the credit of the suit ought to have been transferred to the Debts Recovery



Tribunal. But that appears to be have not happened and remained in the civil court's deposit. Out of the total amount which was lying in civil court, the respondent bank was permitted to withdraw the total amount Rs.3,75,31,036.44/- and a cheque for the said amount has been directed to be issued in favour of the learned counsel for the respondent Bank Mr.K.M.Vijayakumar, after getting an undertaking affidavit from the Bank. It appears that the condition was complied with and the bank has withdrawn the money. However it appears that the above realization has not been specifically stated in the counter affidavit and the petitioner has been blamed for the delay of 34 years. In the light of the subsequent development it has to be seen as to what is the appropriate direction which has to be given to the Appellate Tribunal.

6. As noticed above, Section 21 of the said Act, mandates that a person who seeks to prefer an appeal before the Appellate Tribunal should deposit 50% of the amount due as determined by the Tribunal, the Tribunal in its discretion may reduce it but not less than 25%. On account of the fact that the bank has realized a sum of Rs.3,75,31,036.44/- obviously the amount due would have been reduced substantially.

7. In such circumstances, the pre-deposit which is required to be made will also reduce. Therefore, though the above is the subsequent event, since the same has taken place during the pendency of the writ petitions, this Court is inclined to take into consideration the same and issue appropriate directions.

8. Accordingly, for statistical reasons, the order passed by the Debt Recovery Tribunal is set aside though not on merits with a direction to the Tribunal to consider the application filed by the petitioner for waiver in I.A.No.298 of 2012 and pass fresh orders in the light of the fact that substantial sum of money has been realized by the respondent bank from the Civil Court as mentioned above. With the above direction these writ petitions are disposed of. No costs. Consequently, connected W.M.P.(MD) Nos. 2333 and 2334 of 2017 are closed.

9. It is needless to state that before directing the petitioner to effect pre-deposit, the Appellate Tribunal shall determine the amount which is due as on date. Since it is mentioned that the amount as per the decree passed by the Tribunal under Section 90 of the Act is Rs. 94 Lakhs.

Sd/-

Assistant Registrar(CS-III)

/True copy/



To

1.The Registrar,
Debts Recovery Appellate Tribunal,
Ethiraj Salai, Chennai-600 008.

WEB COPY

2.The Depts Recovery Tribunal,
3 & 4th Floors, Kalyani Towers
4/162, Madurai-Melur Road,Uthangudi,
Madurai-625 107.

+2cc to Mr.S.Sethuraman, Advocate in SR.No:18266,18267

+2cc to Mr.A.V.Arun, Advocate in SR.No:18042,18041

CM/TSG/TA

AE/JC/13.04.2017/4P/7C

**WP (MD) Nos.2866 and 2867 of 2017
and
MP (MD) Nos.2333 and 2334 of 2017
27.03.2017**