IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/4/2018

C O R A M

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

Writ Petition No.9401 of 2018 and
WMP.NOS.11210 TO 11213 OF 2018

1. M/s. A.R.Moulds and Dies India
Private Limited
rep. By its Managing Director
Mr.Y.Rajan
Nos.33, 34 (3A-5, 3 A-6) Anns Estate
Alamelumangapuram
Ganapathy P.O
Coimbatore 641 006.

2. M/s. A.R.Die Casts India Pvt Ltd
rep. By its Managing Director
Mr.Y.Rajan
Nos.33, 34 (3A-5, 3 A-6) Anns Estate
Alamelumangapuram
Ganapathy P.O
Coimbatore 641 006.

3. Mr.Y.Rajan
Managing Director
M/s. A.R.Moulds and Dies India
Private Limited
Nos.33, 34 (3A-5, 3 A-6) Anns Estate
Alamelumangapuram
Ganapathy P.O
Coimbatore 641 006. ... Petitioners

Vs

M/s. International Asset Reconstruction
Company Pvt Ltd
rep. By its Authorised Officer
2 B, K.G.Retreat, Old No.119, New No.26
G.N.Chetty Road
T.Nagar
Chennai 600 017. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records relating to the impugned orders passed by the Debts Recovery Appellate Tribunal (1), dated 11/4/2018 in I.A.No. 279 of 2018 A.I.R.(SA) No.117 of 2018 and (2) dated 11-04-2018 in AIR.(S.A) No.117 of 2018 and quash the same and consequently, direct the Registry of the Debts Recovery Appellate Tribunal, to number the appeal filed by the petitioner in A.I.R.(SA) No.117 of 2018 and decide the same on merits.

For petitioners ... Mr.T.Sai Krishnan

O R D E R

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

Petitioner borrowed money from Axis Bank and defaulted. Bank issued demand notice, dated 3/11/2012, for Rs.6,37,45,462/-. Demand notice was followed by a possession notice, dated 3/5/2013. Being aggrieved, petitioner filed S.A.No.90 of 2013, on the file of the Debts Recovery Tribunal, Coimbatore. Bank assigned the loan account to M/s. International Asset Reconstruction Company Pvt Ltd., Chennai. Bank approached the District Collector-cum-District Magistrate, Coimbatore, for taking physical possession, under Section 14 of the SARFAESI Act, 2002 and on 31/1/2017, orders were passed.

2. Petitioners have filed I.A.No.2160 of 2017, to permit them to amend the application, relating to the appeal S.A.No.90 of 2017, on the file of the Debt Recovery Tribunal, Coimbatore. On 6/11/2017, Debts Recovery Tribunal in I.A.No.2160 of 2017 in S.A.No.90 of 2017, granted status-quo. On the filing of the vacate stay petition in I.A.No.2375 of 2017 and upon hearing the learned counsel for the parties, vide order dated 8/2/2018, Debts Recovery Tribunal, Coimbatore, vacated the interim order.

3. Being aggrieved, petitioners have filed AIR (SA) No.117 of 2018, before the Debts Recovery Appellate Tribunal, Chennai, with application in I.A.No.279 of 2018 for waiver of pre-deposit.

4. On 14/3/2018, Debts Recovery Appelalte Tribunal, Chennai, passed the following order:-

> "Ld. Counsel Mr.M.T.Sai Krishnan for appellants present.
>
> Ld counsel Mr.Chathan Sagar for respondent IARC present.
>
> Heard on I.A.No.279 of 2018, which is an application for waiver of pre-deposit.
>
> Appellants have challenged the order dated 8/2/2018 of DRT, Coimbatore by which

I.A.No.2375 of 2017 in S.A.No.90 of 2013 was dismissed.

Counsel for appellants fairly submits that respondent Axis Bank had issued two demand notices on 3/11/2012 for a demand of Rs.6,37,45,462/-. Counsel submits that the amount has not been crystalised so far and appellants have challenged only the interim order by which status-quo order was vacated. Property is agricultural in nature and is beyond the scope of SARFAESI Act.

Counsel for respondent submits that since last about more than five years, respondent is looking for recovery of the amount and proceedings are being dragged on unnecessarily. Whether loan in question is agricultural or not is a debatable point. As on today, due amount has become more than Rs.15 crores.

Whatever has been averred by the counsel of the parties shall be heard and decided at the time of final hearing of the case. However, 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, on the basis of Rs.6.37 crores, I hereby direct the appellants to make a pre-deposit of Rs.2 crores in two equal instalments. Out of which, first instalment of Rs.1 crore shall be deposited with the Registrar of this Tribunal within a period of four weeks from today and the second instalment of Rs.1 crore shall be deposited in next four weeks thereof.

It is made clear that if the appellants fail to make the first instalment pre-deposit within the stipulated period, the appeal shall automatically stand dismissed without reference to this Tribunal.

I.A.No.279 of 2018 is disposed of.

List for confirmation of first instalment pre-deposit of Rs.1 crore on 11/4/2018."

5. Sale notice, dated 22/3/2018 has been issued, fixing the auction on 4/5/2018. Amount mentioned in the sale notice, as on 28/2/2018, is Rs.16,22,96,054.20.

6. For non-compliance of the order in I.A.No.279 of 2018, in on 11/4/2018 in A.I.R(SA) No.117 of 2018, dated 14/3/2018, Debts Recovery Appellate Tribunal, Chennai, passed the following order:-

"Ld counsel Mr.K.Kumaraguru for appellant present.

Appellant counsel prays for some time and also files a memo submitting that appellant has preferred a writ against the order of this Tribunal, dated 14/3/2018. Memo filed by the appellant reads as follows:-

> 1. The appellants had filed the above appeal before this Tribunal in AIR (SA) No.117 of 2018 aggrieved by the order dated 8/2/2018 in I.A.No.2375 of 2017 in S.A.No.90 of 2013 on the file of the Hon'ble Debts Recovery Tribunal, Coimbatore.
>
> 2. The appellants moved an application for waiver of the condition for pre-deposit before this Hon'ble Tribunal stating reason the subject matter of the appeal are agricultural properties and as such exempted under the provisions of the SARFAESI Act.
>
> 3. The appellants stated that this Hon'ble Tribunal has passed an order on 14/3/2018 in I.A.No.279 of 2018 in AIR (SA) No.117 of 2018, directing the appellant to make a pre-deposit of Rs.2 crores in two equal instalments. Out of which, first instalment of Rs.1 crore shall be deposited with the Registrar of this Tribunal within a period of four weeks from the order dated 14/3/2018 and the second instalments of Rs.1 crore shall be deposited in next four weeks thereof and if the appellant fail to make the first instalment pre-deposit within the stipulated period, the appellant shall automatically stand dismissed without reference to this Hon'ble Tribunal.
>
> 4. The appellant aggrieved by order of this Hon'ble Tribunal dated 14/3/2018 they approached the Hon'ble High Court by way of writ petition in W.P.SR.No.35527 of 2018, the said writ petition will be listed tomorrow i.e., 12/4/2018."

This Tribunal has directed the appellant to make pre-deposit of Rs.2 crores, but the same has not been complied with.

Bank is looking for recovery of a sum of Rs.6.37 crores since 2012 and no good ground is made out for any extension of time and no stay order is also produced from Hon'ble High Court or Apex Court.

Further, in view of the fact that DRAT cannot entertain any appeal filed by any aggrieved person unless and until the appellant complies with the formalities on pre-deposit, hence appeal stands dismissed for want of compliance on pre-deposit.

It is made clear that in case of any direction from Hon'ble High Court, this matter will be taken suo-moto or by any application as the case be for compliance of such direction.

Appeal dismissed."

7. Assailing the correctness of the orders, dated 14/3/2018 and 11/4/2018, made in A.I.R.(SA) No.117 of 2018 in I.A.No.2375 of 2017 in S.A.No.90 of 2013 and I.A.No.279 of 2018 in A.I.R. (SA) No.117 of 2018, instant writ petition has been filed for a writ of certiorarified mandamus, to quash the above said orders and consequently, for a direction to the Registrar, Debts Recovery Appellate Tribunal, to number the appeal and decide the same on merits.

8. Though by inviting the attention of this Court to the nature of the property as agricultural, in support of which patta passbook, dated 16/6/2006 and patta No.230, dated 7/6/2006, have been filed and contention has been made that no action under SARFAESI Act, 2002 can be taken for recovery and in such circumstances, pre-deposit is not required to be made, we are not inclined to accept the said contention, at this juncture, for the reason that it is one of the grounds urged in the appeal. Any observation or decision in this regard would encroach upon the jurisdiction of the Appellate Tribunal for appropriate decision on merits.

9. As per Section 18 of the SARFAESI Act, 2002,

"Appeal to Appellate Tribunal - (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal (under Section 17, may prefer an appeal along with such fee, as may be prescribed) to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower]

[Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent, of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso]

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

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 decision of the Hon'ble Supreme Court in Narayan Chandra Ghosh vs. Uco Bank & Ors. reported in AIR 2011 SC 1913, we find no illegality in the order impugned, warranting interference. Accordingly, this writ petition is dismissed.

12. After the order of dismissal of the writ petition, Mr.T.Saikrishnan, learned counsel for the petitioner, prayed for extension of time, by four weeks, from today.

13. Submission of the learned counsel is placed on record. While sustaining the order impugned, four weeks time is granted, enabling the petitioners to make the pre-deposit of Rs.2 crores. First instalment of Rs.1 crore, be deposited with the Registrar, Debt Recovery Appellate Tribunal, Chennai, within two weeks from today and the second instalment of Rs.1 crore be deposited with the Registrar, Debt Recovery Appellate Tribunal, Chennai, within two weeks thereafter.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mvs.

To

1.The Registrar,
Debt Recovery Appellate Tribunal,
Chennai.

+1cc to Mr.T.Sai Krishnan, Advocate SR.No.28358

Writ Petition No.9401 of 2018

VSN(CO)
GN(18/04/2018)