

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 NOS.9445 TO 9448 OF 2018

AND WMP NOS.11296 TO 11303 OF 2018

1. The Authorised officer
Tamil Nad Mercantile Bank Ltd
Tirunelveli Regional Officer
3 A/16, I Floor, South Bye-pass Road
Vannarapettai
Tirunelveli 627 003.
2. The Manager
Tamil Nad Mercantile Bank Ltd
Palliyadi Branch
No.24, 14 F Sugandham Building
Palliyadi
Kanyakumari District. ... Petitioners in all the writ petitions

Vs

1. Mr.R.Hari
2. M/s. Kings Soap Works
rep. By its Partner Mr.R.Hari
3. Mr.R.Ravi
4. Mr.D.C.Darwin. ... Respondents in all the writ petitions

Prayer in W.P.No.9445 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records pertaining to the common order dated 13/7/2017 in R.A(SA) No.154 of 2012 in S.A.No.14 of 2012 passed by the Debt Recovery Appellate Tribunal, Chennai and quash the portion of the order "the petitioner to pay interest on the surplus amount of

Rs.28,49,393/- from 27/12/2011 till date of repayment".

Prayer in W.P.No.9446 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records pertaining to the common order dated 13/7/2017 in M.A(SA) No.111 of 2014 in S.A.No.209 of 2011 passed by the Debt Recovery Appellate Tribunal, Chennai and quash the portion of the order "the petitioner to pay interest on the surplus amount of Rs.28,49,393/- from 27/12/2011 till date of repayment".

Prayer in W.P.No.9447 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records pertaining to the common order dated 13/7/2017 in R.A(SA) No.98 of 2014 in S.A.No.209 of 2011 passed by the Debt Recovery Appellate Tribunal, Chennai and quash the portion of the order "the petitioner to pay interest on the surplus amount of Rs.28,49,393/- from 27/12/2011 till date of repayment".

Prayer in W.P.No.9448 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records pertaining to the common order dated 13/7/2017 in M.A(SA) No.114 of 2012 in S.A.No.14 of 2012 passed by the Debt Recovery Appellate Tribunal, Chennai and quash the portion of the order "the petitioner to pay interest on the surplus amount of Rs.28,49,393/- from 27/12/2011 till date of repayment".

FOR PETITIONERS	...	MR.SIVABALAN
IN ALL WPS		FOR MR.S.SETHURAMAN
FOR RESPONDENTS	...	MR.K.A.RAMAKRISHNAN
IN ALL WPS		FOR MR.S.SIVAKUMAR.

C O M M O N O R D E R

(Order of the Court was made by S.MANIKUMAR, J)
Loan borrowed, defaulted in payment by the second respondent, resulted in the sale of the properties mortgaged. After selling the mortgaged property, in 2011 and realising the sale proceeds towards discharge of the outstanding loan amount, Bank has offered to pay the remaining amount to the borrowers, with 6% interest. S.A.No.209 of 2011 was filed by the borrowers, on the file of the Debts Recovery Tribunal, Madurai, challenging the sale notice of Tamil Nad Mercantile Bank Limited, Tirunelveli, first respondent, dated 22/8/2011 and the proceedings initiated under SARFAESI Act. After issuance of the

sale certificate and registration of the same, first and second respondents preferred S.A.No.14 of 2012, on the file of the Debts Recovery Tribunal, Madurai, challenging the sale. When the sale and other proceedings were questioned and pending, borrower, refused to accept the same. Thereafter, S.A.No.209 of 2011 was dismissed by the Debts Recovery Tribunal, Madurai.

2. Being aggrieved, borrowers had filed R.A.(SA) No.98 of 2014. Other orders were also challenged, by way of separate appeals, in R.A.(SA) No.154 of 2012 against the order in S.A.No.14 of 2012, dated 27/8/2012; M.A.(SA) No.111/2014 against the order in S.A.No.209 of 2011, dated 26/9/2011; R.A.(SA) No.98 of 2014 against the order in S.A.No.209 of 2011, dated 31/3/2013 and M.A.(SA) No.114 of 2012 against the order in S.A.No.14 of 2012, dated 14/8/2012.

3. Pending disposal of the above said appeals before the Debts Recovery Appellate Tribunal, Chennai, respondents/borrowers and others came forward to give up their right, interest and possession on the property, provided suitable compensation, is paid in terms of money.

4. Taking note of the above, Debts Recovery Appellate Tribunal, Chennai, by common order, dated 13/7/2017, ordered as hereunder:-

"Ld. Counsel Mr.K.A.Ramakrishnan for appellant present.

Ld. Counsel Mr.S.Sethuraman for R.1 and R.2 Bank present.

Ld. Senior Counsel Mr.N.C.Ramesh for Mr.R.Karthik for R.4 present.

Heard both sides in all the four appeals.

This common order shall govern the disposal of the appeals R.A.(SA) No.154 of 2012 in S.A.No.14 of 2012, by order, dated 27/8/2012; M.A.(SA) No.111/2014 in S.A.No.209 of 2011, by order, dated 26/9/2011; R.A.(SA) No.98 of 2014 in S.A.No.209 of 2011, by order, dated 31/3/2013 and M.A.(SA) No.114 of 2012 in S.A.No.14 of 2012, by order, dated 14/8/2012, because they have been filed against the orders of DRT, Madurai, between the same parties.

After making submissions for some time, it is transpired that appellant is keen and willing to leave his right, interest and possession from the property provided he is suitable compensated in terms of money.

On 22/10/2012, appellant made a deposit of Rs.57,95,467/- by way of pre-deposit in DRAT,

Chennai. After auction sale, respondent bank has appropriated the amount in loan account and since 27/12/2011, a surplus amount of Rs.28,49,393/- is lying with the Bank.

After hearing the counsel for the parties, in my considered opinion, all appeals are disposed of if appellant is made entitled to receive the amount from the respondent Bank as well as from the Registrar, DRAT, Chennai.

Amount kept in the name of Registrar, DRAT, Chennai, will be refunded to the appellant along with interest.

In so far as interest on refund of surplus amount in respondent Bank is concerned, Ld counsel for the respondent Bank submits that it is against the public policy to burden the Bank with interest also where a defaulter has involved and indulged the Bank in series of litigations. At this point of time, Ld counsel for the appellant submits that he undertakes to withdraw all the litigations from all the forums in this regard.

Accordingly, I hereby direct the respondent Bank to give an interest of 6% per annum on the amount of Rs.28,49,393/- from 27/12/2011 till date of refund.

It is made clear that the auction purchaser, who is in possession from 3/10/2012 now is at liberty to deal with the property as he wishes.

All the four appeals stand disposed of in above terms."

5. Being aggrieved, by the abovesaid common order, instant writ petitions are filed by the bank for issuance of a writ of certiorari, to quash the above said common order and in particular, to quash the portion of the order, "directing the petitioner Bank, to pay interest, on the surplus amount of Rs.28,49,393/-, from 27/12/2011 till date of repayment".

6. Supporting the prayer sought for, Mr.Sivabalan, learned counsel for the Bank submitted that when the Bank had already offered to pay the above said amount with interest, way back in the year 2011, and when the respondents had refused to accept the same, Debts Recovery Appellate Tribunal, Chennai, ought not to have directed payment of interest, from 2011 onwards. Appellate Tribunal, ought to have considered that interest ought to have been fastened on the Bank from 2011 onwards.

7. Opposing the prayer sought for, Mr.K.A.Ramakrishnan, learned counsel for the respondents/borrowers submitted that when sale and other proceedings were challenged and pending on the file of the Debts Recovery Tribunal, respondents refused to accept. Ultimately, when the challenge failed, respondents preferred appeals, before the Debts Recovery Appellate Tribunal, Chennai. During pendency of the appeals, respondents decided to give up their right, interest and possession of the property, provided that they are suitably compensated. He therefore, submitted that refusal of the respondents, to receive the balance sale consideration, at 6% interest, offered in the year 2011, cannot be put against them either for waiver of the amount or interest, as ordered by the Debts Recovery Appellate Tribunal.

8. Heard the learned counsel for the parties and perused and materials available on record.

9. As rightly contended by Mr.K.A.Ramakrishnan, learned counsel for the respondents/borrowers, when Bank initiated sale and other proceedings, any person, being aggrieved, is entitled to challenge the same before the Debts Recovery Tribunal, which the respondents have done by filing S.A.No.209 of 2011 and 14 of 2012. But challenge failed. Respondents could have received the balance sale consideration, with interest, as offered in 2011 and without prejudice to the same, still continued to challenge the sale and other proceedings. But respondents had not chosen to do so. But preferred to pursue their remedy before the Appellate forum, by filing R.A.(SA) No.154 of 2012 in S.A.No.14 of 2012, by order, dated 27/8/2012; M.A.(SA) No.111/2014 in S.A.No.209 of 2011, by order, dated 26/9/2011; R.A.(SA) No.98 of 2014 in S.A.No.209 of 2011, by order, dated 31/3/2013 and M.A.(SA) No.114 of 2012 in S.A.No.14 of 2012, by order, dated 14/8/2012.

10. Merely because the respondents did not prefer to receive the balance sale consideration with 6% interest, as offered by the Bank in 2011, and pursued the matter further, the same would not deprive them of the amount, to which they are due.

11. During the course of hearing, when a specific question was posed to the learned counsel for the Bank as to the rate of interest on loan granted, answer was that it depends on the nature of loan, but not certainly not less than 6%.

12. Material on record discloses that the second respondent, a partnership firm has availed term loan, with interest, at the rate of 18.5%, and after classifying the same

as Non-performing Asset, on 14/3/2011, bank demanded future interest, at the rate of 20.5% p.a., from 15/3/2011 for an outstanding amount of Rs.4,21,377/-, as on 14/3/2011. In respect of credit facility, upon classification, on 14/3/2011, Bank has demanded interest from 27/12/2011, till the date of repayment.

13. Bank has granted loan with interest, at higher rates, as stated supra. Direction of the Debts Recovery Appellate Tribunal, Chennai, to the Bank, to pay the balance sale proceeds of Rs.28,49,393/-, with interest at the rate of 6% p.a., from 27/12/2011, till the date of repayment, cannot be said to be grossly excessive, warranting interference. Contention of the Bank that they had offered to pay the said amount in 2011 and that since the respondents, refused to receive the balance sale consideration, and therefore, they are not entitled to receive interest from 2011 also is rejected.

14. For the reasons stated supra, writ petitions are dismissed. Bank is directed to pay the amount, as ordered by the Tribunal, within fifteen days, from the date of issuance of the copy of the order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

mvs.

TO

1. THE REGISTRAR,
THE DEBT RECOVERY,
APPELLATE TRIBUNAL, CHENNAI.

+4 cc to Mr.S.SETHURAMAN, Advocate, S.R.No. 28582

Writ Petition Nos.9445 to 9448 of 2018

NRJK (CO)
TR(18/04/2018)

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