IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P(PD).Nos.2917 to 2928 of 2013
and M.P.Nos. 1 of 2013 (12 MPs)

C.R.P(PD).No.2917/2013

1.Mr.R.Srinivasan
2.Mrs.Viji Srinivasan .. Petitioners

v.

M/s.Vijaya Bank
Mount Raod Branch
No.168, Anna Salai ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 08.02.2013 passed by the Debt Recovery Appellate Tribunal at Chennai in I.A.No.990 of 2010 in A.I.R.No.447 of 2010.

For Petitioners : Mr.R.Parthasarathy
(in all CRPs)

For Respondent :Mr.P.Elaya Rajkumar
(in all CRPs) for M/s.Ramalingam Associates

COMMON ORDER

(Order of the Court made by M.DURAISWAMY,J.)

Since the issue involved in all these Civil Revision Petitions are identical, the Civil Revision Petitions are disposed of by this common order.

2. Challenging the order passed by the Debts Recovery Tribunal-I, Chennai the petitioners filed appeals before the Debt Recovery Appellate Tribunal, Chennai. Under section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Appellate Tribunal, directed the petitioners to make a pre-deposit of 50% of the decreed amount. Aggrieved over the same, the petitioners preferred Civil Revision Petitions before this Court and this Court reduced the pre-deposit amount from 50% to 25%. Thereafter, the petitioners filed applications in I.A.Nos. 957 to 964 of 2012 for modification of the earlier orders passed by directing complete waiver of the pre-deposit and also to accept their immovable property as security as pre-deposit.

3. After considering the case of the petitioners, the Debt Recovery Appellate Tribunal, dismissed the applications filed by the petitioners, which are impugned in the above Civil Revision Petitions.

4. The provisions of Section 21 of the Act was amended with effect from 1.9.2016. For entertaining an appeal, the appellant has to deposit 50% of the amount due from him as determined by the Tribunal under section 19 provided that the Appellate Tribunal may for the reasons to be recorded in writing reduce the amount to be deposited by such amount, which shall not be less than 25% of the amount.

5. Prior to amendment, the pre-deposit amount can be waived in toto. As per present position, the pre-deposit cannot be reduced below 25% of the debt due from the appellant.

6. Now, the petitioners have filed the present applications seeking for modification of the earlier orders by permitting them to give immovable property as security instead of the cash deposit.

7. On a reading of Section 21 of the Act, it is clear that the appellant should deposit atleast, 25% of the amount due and there is no provision under he section for giving a security for the said amount.

8. The learned counsel appearing for the petitioners in support of his contentions relied upon a judgment reported in **2009(2) CTC 289 [Malini Srinivasan v. Canara Bank and others]** wherein, the Division Bench of this Court held that waiver of pre-deposit should be based on undue hardship, which is normally related to economic hardship and which is not merited by conduct of claimant or very much disproportionate to it. The learned counsel submitted that it is the discretion of the Court to waive pre-deposit and therefore, the said ratio can be applied to the case of the petitioner by permitting them to give immovable property as security instead of the cash deposit.

9. The ratio laid down by the Division Bench of this Court is not applicable to the present case for the reason that in the said case, the Debt Recovery Appellate Tribunal had dismissed the case for want of pre-deposit. Ultimately, the Division Bench confirmed the order of the Debt Recovery Appellate Tribunal and dismissed the Writ Petition. No doubt, discretion can be exercised judiciously by the Debt Recovery

Appellate Tribunal, it has no power to reduce it below 25% of the amount due from the petitioners.

10. The learned counsel appearing for the petitioners also relied upon the judgments reported in **2006(13) SCC 347 [Benara Valves Ltd. And others v. Commissioner of Central Excise and another]** and **2007(10) SCC 129 Bhgavya Apparels (P) Ltd. And another v. Union of India and another.** Those cases pertains to Customs Act and Central Excise Act and therefore, the ratio laid down in those judgments are not applicable to the present cases.

11. Since there is no provision under the Act for making pre-deposit by giving the immovable property as security, the Debt Recovery Appellate Tribunal has rightly dismissed all the applications. We do not find any merits in the Civil Revision Petitions. Accordingly, the same are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

(V.K.T., CJ.) (M.D., J.)
22.11.208

Index : Yes/No

Speaking /Non Speaking Order

Rj

To

1. The Debt Recovery Appellate Tribunal
   Chennai

2. M/s.Vijaya Bank
   Mount Road Branch
   No.168, Anna Salai
   Chennai

THE HON'BLE CHIEF JUSTICE
AND
M. DURAISWAMY,J.

Rj

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