IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6/3/2018

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice T.Ravindran

Writ Petition No.4760 of 2018

S.S.Murugesan ... Petitioner

Vs

1. Bank of Baroda
rep. By its Manager
Namakkal Branch
Paramathi Road
Namakkal.

2. The Debts Recovery Appellate Tribunal
Southern Region
No.55 Wellington Estate
Fourth Floor
Ethiraj Salai
Egmore
Chennai 600 008.

3. V. Sengodagounder

4. M. Poongodi. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the order passed by the Debts Recovery Appellate Tribunal, Chennai, made in M.A.No.6 of 2017 on 18/1/2018 and quash the same as illegal and exorbitant in so far as the rate o interest portion @ 11.50% p.a., with quarterly rest is concerned.

For petitioner ... Mr.S.Muthukrishnan

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O R D E R

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

The petitioner has availed loan and there was a default. Bank of Baroda, Namakkal has filed O.A.No.315 of 2011, for recovery of Rs.88,05,951/-. Defendants have entered appearance. Chance for filing reply statement has been closed. Subsequently, Bank filed proof affidavit and documents. Chance for filing proof affidavit on behalf of the defendants has been closed. Thereafter, on 24/2/2015, defendants were set ex parte. After hearing the arguments of the bank and the material on record, Debts Recovery Tribunal, Madurai, in S.A.No.315 of 2011, granted a decree holding that,

a. the defendants are personally/jointly/severally liable to pay the total claim of (a) Rs.5,11,189/- under Term loan - I (b) Rs.6,04,938/- inder Term Loan - II (c). Rs.37,35,858/- under Term loan III and (d) Rs.39,53,966/- under OCC, subject to the reduction of capitalised Penal Interest amount from all the four loans and with subsequent interest from 17/11/2011 at 11.5% p.a., till the date of realization along with costs.

b. In case of the default of payment by the above mentioned amount by the defendants under the above said four loans, the applicant bank is at liberty to sell the movable hypothecated properties described in the Schedule 'A' and to sell the immovable mortgaged properties described in the Schedule 'B' and for appropriation of sale proceeds in and towards the satisfaction of amount due, to the applicant Bank.

c. If the sale proceeds were not sufficient after defraying the expenses of such sale for the payment of all such amounts, the defendants are personally/jointly/severally liable to pay the amount of such deficiency to the applicant Bank with interest mentioned above until realisation.

d. Recovery certificate may be prepared as per the directions given above of this judgment and be issued accordingly.

f. It is further ordered that 30 days time from the date of receipt of this order, is granted to the applicant Bank to file cost memo, along with fresh statement of Account for cash Credit Account after reversing Capital Interest amount debited, so as to prepare the recovery certificate for correct amount with costs and future interest and also to direct the recovery officer to proceed with the matter in accordance with law. In case, cost memo has not been filed before the above mentioned time, Recovery certificate will be prepared with available records of the case and direction will be given to the Recovery Officer to proceed with the order. The Registry is directed to communicate the copy of this order to all the concerned as provided in Rule 16 of the DRT (Procedure) Rules, 1993.

2. Petitioners have filed I.A.No.922 of 2015 in O.A.No.315 of 2011, to condone the delay in filing rely statement and to set aside the ex parte order, dated 24/3/2015, in O.A.No.315 of 2011, on the file of the Debts Recovery Tribunal, Madurai.

3. Bank has filed counter affidavit. After hearing the learned counsel for the parties, vide order, dated 28th September 2016, Debts Recovery Tribunal, Madurai, dismissed the I.A., and observed as hereunder:-

"Therefore having taken into consideration of the attitude of the petitioners narrated supra and the submissions made by the learned counsel for the respondent Bank and the ruling rendered by the Hon'ble Supreme Court, this Tribunal is of the view that the reasons stated by the petitioners/defendants are not sufficient and are not instilling any confidence as to the bonafides of the petitioners. Therefore, this Tribunal is not inclined to consider the prayer of the petitioners. Hence I.A.No.922 of 2015 is dismissed. No costs."

4. Thereafter, petitioner and two others have filed an Appeal, in M.A.No.6 of 2017, before the Debts Recovery Appellate Tribunal, Chennai.

5. In the appeal, contention has been made that about 60.40 lakhs has been recovered, by way of auction sale, in the month of July 2016 and thereafter, petitioners have remitted a sum of Rs.63.42 laks, after five months of the auction sale. In M.A.No.6 of 2016 dated 18/1/2018, Debts Recovery Appellate Tribunal, Chennai, set aside the ex parte order dated 24/3/2015, on the following conditions:-

"i. Since appellants have already paid Rs.63.42 lakhs with DRAT as pre-deposit, will pay balance OA amount along with interest at 11.50% p.a., with quarterly rests within six weeks from today.

(ii). Appellants will deposit the amount before DRT, Madurai and after deposit only, ex parte order will come to an end.

(iii). Respondent Bank will collect the pre-deposit amount lying in this Tribunal and refund the money to auction purchaser along with interest payable according to prevailing rates of interest on term deposits, at the earliest.

It is made clear that default in compliance of aforesaid order will make the appellants borrowers liable for dispossession of the property with immediate effect.

Appeal is disposed of as indicated above. Accordingly, I.A.No.1012/2017 Contempt Petition and I.A.No.514 of 2017 stay application stand closed."

6. Being aggrieved by the rate of interest, instant writ petition has been filed, contending that the rate of interest fixed by the Debts Recovery Appellate Tribunal, Chennai, is unreasonable and against the judgment of the Courts. Debts Recovery Appellate Tribunal, Chennai, has failed to consider the payments made by the

writ petitioners from 2003 onwards. Debts Recovery Appellate Tribunal, Chennai, ought to have fixed interest at 6%, on the agricultural loan, instead 11.50%, with quarterly rests.

7. Though Mr.S.Muthukrishnan, learned counsel for the petitioner made submissions, seeking to reverse the order, made in M.A.No.6 of 2017, dated 18/1/2018, on the file of the Debts Recovery Appellate Tribunal, Chennai, on the above said grounds, we are not inclined to accept the same, for the reason that after considering the submission of the learned counsel for the parties, material on record, Debts Recovery Tribunal, in M.A.No.6 of 2017, dated 18/1/2018, has passed orders as hereunder:-

> "Record reveals that respondent Bank preferred O.A.No.315 of 2011 for recovery of Rs.88,05,951/- on 17/11/2011. On 24/3/2015, PO of DRT decreed the OA mentioning the appellants borrowers ex parte, because they deliberately chose to remain absent in the matter despite due service of the notice and due knowledge of the date of hearing also.
>
> Vide impugned order, prayer of setting aside ex parte was dismissed observing that appellants have no capacity and no intention of repayment of money at all and are only interested in delaying the recovery, because loan was sanctioned in the year 2003 and kept on availing the facility till 2006 in happy manner. But from 2011 to 2015, they did not care for repayment of any amount whatsoever.
>
> Record reveals that after filing of this appeal, i.e., on 7/11/2016, appellants made a deposit of Rs.63.42 lakhs in the name of pre-deposit.
>
> Counsel for respondent Bank submits that prior to that, i.e., on 21/7/2016, Bank has auctioned the property and issued sale certificate also and third party interest has already been created in this case. If this appeal is allowed, then Bank has to refund the money of the auction purchaser with interest.
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> Appellants are keen and willing to compensate the auction purchaser, but need protection of their possession.
>
> On perusal of pleadings of the parties, submissions of the counsel of the parties and record, it becomes clear that appellants availed financial assistance in the year 2003 to 2006. Due to defaults, in the year 2011, respondent Bank preferred OA for recovery of Rs.88,05,951/-. Appellants conveniently managed to pass time of about four years and at last, PO

of DRT was forced to pass ex parte order in O.A. While Bank ensured its recovery of Rs.60.40 lakhs from auction sale in the month of July 2016, then only, appellants tendered the sum of Rs.63,42,000/- that too, after five months of the auction sale.

It is clear that appellants had tendered amount more than the auction purchaser.

In view of the fact that Bank had preferred O.A in the year 2011 for recovery of Rs.88,05,951/- and appellants had already deposited R.63,42,000/- as pre-deposit in this Tribunal, appellants are willing to pay the balance money to be calculated on the basis of O.A amount and interest @ 11.50% p.a., with quarterly rest."

8. Order extracted supra, indicates that before the Appellate forum, in M.A.No.6 of 2017, appellants have expressed their willingness, to pay the balance money, to be calculated, on the basis of O.A amount and interest at 11.50%, with quarterly interest. Submission has also been made that a sum of Rs.63.42 lakhs has already been deposited. Taking note of the above, Debts Recovery Appellate Tribunal, has passed the above orders. At the risk of repetition, the same is reproduced.

"Since appellants have already paid Rs.63.42 lakhs with Debts Recovery Appellate Tribunal as pre-deposit will pay balance O.A amount along with interest at 11.50% with quarterly rests within six weeks from today."

9. Orders have been passed, on the submissions made and therefore, there is no error. We are not inclined to entertain the writ petition and accordingly, writ petition is dismissed.

10. Learned counsel for the petitioner seeks permission to withdraw the writ petition, to file a review before the Debts Recovery Appellate Tribunal. Order speaks for itself and therefore, we are not inclined to grant any permission. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

mvs.

To

1. The Debts Recovery Appellate Tribunal
Southern Region, No.55 Wellington Estate, Fourth Floor
Ethiraj Salai, Egmore, Chennai 600 008.

+1 cc to M/s.S.Muthukrishnan, Advocate SR.NO. 16939

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CNR(CO)
JK 23/03/18