

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. No.20584 of 2018

M/s.Federal Bank Ltd.,  
Asset Recovery Branch,  
No.57, Royapettah High Road,  
Chennai - 600 014.  
Reb by its President

... Petitioner

Vs.

1.The Chairperson,  
Debts Recovery Appellate Tribunal,  
Chennai.

2.S.Baskar

3.B.Kalaivani

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records of the 1<sup>st</sup> respondent leading to passing of the order dated 16.04.2018 in R.A.No.34 of 2008 and to quash the same.

For Petitioner : Mr.S.Sathiyarayanan

For Respondents: R1 - Tribunal  
Mr.M.S.Shanmugasundaram (R2)  
Mr.G.Desingu (R3)

O R D E R

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

The above Writ Petition has been filed by the petitioner to issue a Writ of certiorari to call for the records of the 1<sup>st</sup> respondent leading to passing of the order dated 16.04.2018 in R.A.No.34 of 2008 and to quash the same.

2.According to the petitioner, the Bank had sanctioned credit facilities of Rs.30 lakhs to the 2<sup>nd</sup> respondent in the year 2002. The 2<sup>nd</sup> respondent was carrying on business in the name and style of Sri Vari Steels as its sole Proprietor. According to the petitioner - Bank, the 3<sup>rd</sup> respondent is the

wife of the 2<sup>nd</sup> respondent and she stood as a guarantor to the facilities granted to the 2<sup>nd</sup> respondent. The respondents 2 & 3 executed various loan and security documents such as Promissory Note, Security Delivery Letter, Agreement for Cash Credit and Hypothecation of goods etc. The 3<sup>rd</sup> respondent also executed Guarantee Agreement and also created equitable mortgage.

3. Subsequently, the respondents 2 & 3 committed default in repaying the loan amount, therefore, the petitioner - Bank filed an application in O.A.No.188 of 2004 on the file of the Debts Recovery Tribunal - II, Chennai for recovery of Rs.46,31,550/- together with interest. The Debts Recovery Tribunal - II, Chennai, by order dated 21.02.2008, decreed the claim made by the petitioner - Bank against the 2<sup>nd</sup> respondent as prayed for and restricted the liability of the 3<sup>rd</sup> respondent to Rs.30 lakhs as against the claim of Rs.46.31 lakhs. The interest was also reduced to 12% per annum. The petitioner - Bank preferred an appeal in R.A.No.34 of 2008 before the Debt Recovery Appellate Tribunal, against the order passed by the Debts Recovery Tribunal. The 3<sup>rd</sup> respondent also filed an appeal in R.A.No.208 of 2010 before the Debt Recovery Appellate Tribunal, which was dismissed as withdrawn subsequently. The Debt Recovery Appellate Tribunal, by order dated 16.04.2018, dismissed the appeal and confirmed the order passed by the Debts Recovery Tribunal-II, Chennai. Aggrieved over the same, the petitioner - Bank has filed the above Writ Petition.

4. In the counter filed by the 3<sup>rd</sup> respondent, she has stated that the 2<sup>nd</sup> respondent is the sole Proprietor of the Firm viz., Sri Vari Steels and therefore, the demand Promissory Note executed jointly and severally by the respondent 2 & 3 cannot be taken into account.

5. The 3<sup>rd</sup> respondent having executed the demand Promissory Note along with the 2<sup>nd</sup> respondent, promising to repay the loan amount jointly and severally, she cannot now take a stand that the said Promissory Note cannot be taken into account for the reason that the loan facility was granted only to the sole Proprietor of the Firm and it was operated only by the 2<sup>nd</sup> respondent. When the 3<sup>rd</sup> respondent had admitted the execution of the pro-note, she has to discharge the presumption under Section 118 of the Indian Evidence Act.

6. The contention of the 3<sup>rd</sup> respondent that no consideration had passed on cannot be accepted for the reason that the onus is on her to prove that no consideration had passed on before or at the time of execution of the pro-note.

7. Admittedly, the 3<sup>rd</sup> respondent is the wife of the 2<sup>nd</sup> respondent and they cannot avoid repaying the loan amount to the petitioner - Bank. The Debts Recovery Tribunal as well as the

Debt Recovery Appellate Tribunal on an erroneous view held that the 3<sup>rd</sup> respondent is only a guarantor and not a co-obligant, therefore, her liability should be restricted to Rs.30 lakhs. The reasoning given by both the Tribunal for restricting the liability of the 3<sup>rd</sup> respondent to Rs.30 lakhs are without any basis.

8.The petitioner - Bank, who are dealing with public money, cannot allow the loans advanced to the borrowers un-recovered. The respondents 2 & 3 are bound to repay the loan obtained from the petitioner - Bank without raising some technical issues for not repaying the loan amount.

9.So far as the interest is concerned, the Tribunal fixed the rate of interest as 12% per annum, which according to us is just and proper.

10.For the reasons stated above, the order restricting the liability of the 3<sup>rd</sup> respondent/2<sup>nd</sup> defendant to Rs.30 lakhs is alone set aside. The respondents 2 & 3 are jointly and severally liable to repay the outstanding amount together with interest at the rate of 12% per annum. The Writ Petition is partly allowed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

va

To

1.The Chairperson,  
Debts Recovery Appellate Tribunal,  
Chennai

सत्यमेव जयते

W.P.No.20584 of 2018

JP(CO)  
SP(06/12/2018)

WEB COPY