IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018
CORAM:

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

W.P.No.11202 of 2018
and
W.M.P.No.13125 of 2018

1. M/s.Telescreen Communication Pvt. Ltd.,
Rep. by its Managing Director,
Mr.R.Ravichandran.

2. Mr.R.Ravichandran
3.R.Janaki (Died) ... Petitioners

vs.

1. Indian Overseas Bank,
Large Advances Branch,
Irungattukottai - 602 105,
Sriperumbudur Taluk,
Kancheepuram Taluk.

2. Mr.R.Rajasekaran

3. The Registrar,
Debts Recovery Appellate Tribunal,
No.55, 4th Floor,
Indian Bank Office Circle,
Ethiraj Salai,
Chennai - 600 008. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records of the 3rd respondent in I.A.No.98 of 2018 in A.I.R.No.18 of 2018, order dated 05.04.2018 and quash the same.

For Petitioners : Mr.J.Srinivasa Mohan

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

Indian Overseas Bank, Large Advances Branch, Kancheepuram, has filed O.A.No.332 of 2013, on the file of the Debts Recovery Tribunal-III, Chennai, for recovery of a sum of Rs.53,22,146/-

together with interest thereon, at the rate of 14.75% p.a. together with monthly rests compounded along with 2% penal interest in respect of the facilities availed by the first respondent from the date of filing of the OA till the date of realization, for costs of the application, for sale of the schedule mentioned property in the OA. A counter claim No.1 of 2015, has been filed.

2. Adverting to the rival contentions, vide order dated 03.07.2017 in OA.No.332 of 2013 and Counter Claim No.1 of 2015, Debts Recovery Tribunal-III, Chennai, allowed the original application as hereunder.

> "12.(a). In the abovesaid circumstances, as the defendants are liable to pay the amounts as admitted by them, the defendants are directed to remit the overdue installments from the date of declaring the account as NPA with 12% p.a., with quarterly rests within 30 days from the date of furnishing of the account by the applicant bank after taking into consideration the compliance of the interim condition of Rs.10 lakhs deposited in the SARFAESI appeal by the defendants till the actual date of realization.
>
> (b) Counter Claim No.01/2015 is dismissed.
>
> (c) It is ordered that in case of default to pay the amount adjudged against the said defendants, the applicant bank is entitled to sell all or that much portion of the Schedule mentioned properties to answer the claim of the Recovery Certificate and appropriate the sale proceeds towards the amount due.
>
> (d) If the sale proceeds are not found sufficient after defraying the expenses of such sale for the payment of all such amounts, the defendants are personally liable for the deficiency of the adjudged amount with interest and costs until realisation.
>
> (e) It is further ordered that any amount remitted by the defendants are realised by the applicant bank during the pendency of this OA, shall be given due credit to the respective loan account of the defendants.
>
> (f) The schedule mentioned in the OA shall form part of this order.
>
> 13. It is further ordered that 15 days time is granted to the applicant bank to file costs memo from the date of receipt of this order, to enable the Registry to prepare the recovery certificate as directed above. If in case, the cost memo is not filed within the above mentioned time, Recovery Certificate be prepared based on the available records and forwarded to the Recovery Officer for execution in accordance with law.

14. Recovery Certificate be prepared as per the directions given above of this final order and issued accordingly.

15. A copy of the order be communicated to the parties concerned as per the extant guidelines."

3. Being aggrieved, petitioners have filed an appeal in AIR No.18 of 2018 before the Debts Recovery Appellate Tribunal, with an application I.A.No.97 of 2018, to condone the delay of 157 days in filing the appeal. I.A.No.98 of 2018, has been filed for waiver of pre-deposit. On 05.04.2018, Debts Recovery Appellate Tribunal, Chennai, has passed the following orders,

"Ld. Counsel Mr.J.Srinivasa Mohan for Appellants present.

Ld. Counsel Mr.Y.T.Aravind Gosh for R1 Bank present and files counter in delay petition.

Heard on IA-97/2018 application for condonation of 157 days delay in filing the appeal.

Appellant has challenged the impugned order dated 3.7.2017 of PO, DRT-III, Chennai, passed in O.A.No.332/2013, but filed this Appeal with a delay of about of 157 days, because wife of Appellant expired.

Counsel for R1 Bank submits that as a matter of fact, proof of death is yet to come on record and placing reliance on 1990(1) LLN 457 (Tamil Nadu Mercantile Bank Ltd. Tuticorin Vs. Appellate Authority under The Tamil Nadu Shops and Establishments Act, Madurai and Another), submits that even a single days delay should not be lightly condoned. Rather in such matter, Appellants are heavily duty bound to explain each and every days delay.

On perusal of record, it appears that R1 Bank has to recover the debt amount from Appellants and for that to some extent, merits has to be considered. In view of the facts and circumstances of this case, I consider the delay is explained property and is hereby condoned. IA-97/2018 is allowed.

Heard on IA-98/2018 application for waiver of pre-deposit.

Appellants have challenged the order dated 3.7.2017 of DRT-III, Chennai, by which O.A.No.332/2013 was decreed for recovery of a sum of Rs.53.22 lakhs.

Counsel for Appellants submits that in fact, in this case, only issue is involving mode and manner of calculation of interest and top of that, he had paid a sum of Rs.14 lakhs in earlier past and Appellants lost their business on account of personal problems and tragedies and prays to presume that waiver has been complied with.

On the other hand, Counsel for R1 Bank submits that after considering all the deposits made by the Appellants and after calculating the interest in terms of the contract, now the DRC amount has become more than Rs.70 lakhs and prays to direct the Appellants to make a pre-deposit of 50% of the DRC amount.

Whatever has been averred by the Counsel of both parties will be considered at the time of final hearing of this case. However, for the purpose of this Appeal, I consider the debt amount to be Rs.53.22 lakhs and after considering the deposits, I hereby direct the Appellants to make a pre-deposit of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) with the Registrar of this Tribunal within a period of four weeks from today, failing which, the Appeal shall automatically stand dismissed without reference to the Board.

I.A.98/2018 is disposed of.

List for confirmation of pre-deposit of Rs.15 Lakhs on 3.5.2018."

4. Assailing the correctness of the order directing pre-deposit of Rs.15 Lakhs to the Registrar of the Appellate Tribunal, instant writ petition has been filed.

5. Mr.J.Srinivasa Mohan, learned counsel for the petitioner submitted that a sum of Rs.14 Lakhs has already been paid during the pendency of the OA proceedings. Order directing the pre-deposit is assailed on other grounds, and on merits as well.

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

7. Section 21 of the Recovery of Debts Due to Bank and Financial Institutions, 1993, deals with pre-deposit of filing of an appeal. As per the said section, where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal under section 19: Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

8. Reading of Section makes it clear that an appeal can be entertained on the deposit of debt as determined by the tribunal, under Section 19. In the case on hand, Debts Recovery Tribunal-III, Chennai has determined the amount as more than Rs.70 Lakhs and accordingly Debts Recovery Certificate has been

issued. Without considering the main section, appellate tribunal has invoked the proviso to the main section and after considering the deposit, already made during the OA proceedings, directed pre-deposit of only Rs.15 Lakhs with the Registrar of the Appellate Tribunal, within a period of four weeks from 05.04.2018.

9. When the main provision speaks about the amount determined by the tribunal under Section 19, the Debts Recovery Appellate Tribunal has taken into account, the amount claimed. Proviso is subject to the main section. But the Debt Recovery Appellate Tribunal seemed to have applied the proviso. Discretion exercised, though not challenged before the Tribunal, we do not find any valid reason to interfere with the order impugned, which is advantageous to the petitioner. Impugned writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. Indian Overseas Bank,
Large Advances Branch,
Irungattukottai - 602 105,
Sriperumbudur Taluk,
Kancheepuram Taluk.

2. The Registrar,
Debts Recovery Appellate Tribunal,
No.55, 4th Floor,
Indian Bank Office Circle,
Ethiraj Salai,
Chennai - 600 008.

+1cc to Mr.J.Srinivasa Mohan, Advocate, sr.no.32145

W.P.No.11202 of 2018
W.M.P.No.13125 of 2018

RK(CO)

RRK(23/05/2018)