IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.12673 of 2018
and
W.M.P.No.14802 of 2018

M/s.Seetal Textile Agency
No.28, Natesan Street,
T.Nagar, Chennai - 600 017,
Rep. by its Proprietor,
Sri A. Jeyashankar ... Petitioner

Vs.

1.The Debts Recovery Appellate Tribunal,
Rep by its Registrar,
4th Floor, Indian Bank Zonal Office,
55, Ethiraj Salai,
Egmore, Chennai - 600 105.

2.The Debts Recovery Tribunal - II,
Rep by its Registrar,
Dewa Towers IV floor,
No.770A, Anna Salai,
Chennai - 600 002.

3.The Authorized Officer & Chief Manager,
Indian Bank, Nungambakkam Branch,
Chennai - 600 034. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records in the order dated 11.04.2018 made in AIR (SA) No.737 of 2017 on the file of the Debts Recovery Appellate Tribunal, Chennai, the first respondent herein and quash the same.

For Petitioner : Mr.R.Sugumaran

For R3 : Mr.B.Murugavel

ORDER

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

On 29.06.2013, petitioner has availed credit facility of Rs.45 lakhs, from Indian Bank, Nungambakkam Branch, Chennai/Respondent No.3. Petitioner has defaulted in payment. Bank has issued a demand notice dated 14.01.2016 under Section 13(2) of the SARFAESI Act, 2002. Thereafter, on 04.05.2016, petitioner has paid a sum of Rs.9,00,000/- and sought for time, to pay the balance, with interest. Petitioner sent a letter dated 02.08.2016 for renewal of the account. Bank has issued a possession notice dated 03.09.2016.

2. Being aggrieved, petitioner has filed S.A.No.108 of 2016 before the Debts Recovery Tribunal-II, Chennai. Vide order dated 09.11.2017 in S.A.No.108 of 2016, the Debts Recovery Tribunal-II, Chennai, dismissed the same.

3. Aggrieved by the same, petitioner has filed an appeal in AIR (SA) No.737 of 2017. Along with the same, he has filed I.A.No.42 of 2018 for waiver of pre-deposit under Section 18 of the SARFAESI Act, 2002. After hearing both parties, the Debts Recovery Appellate Tribunal, Chennai, vide order dated 14.02.2018, passed an interim order in I.A.No.42 of 2018, directing the petitioner to deposit a sum of Rs.5 lakhs within a period of four weeks from the that date and a further sum of Rs.5 lakhs within four weeks thereafter.

4. Petitioner has complied with the first portion of the order. As regards the second installment of Rs.5 lakhs to be deposited, the petitioner could not comply with the order, within the time stipulated in that order. Hence, he has sought for extention of time, by two days. Declining extention I.A.No.42 of 2018 has been dismissed on 11.04.2018. Consequently, AIR (SA) No.737 of 2017, has also been dismissed.

5. Being aggrieved by the same, petitioner/borrower has filed the instant writ petition, on the following grounds:-

> "(i) DRAT ought to have shown indulgence in extending time to comply considering the fact that the petitioner has complied with the first limb of the order.

(ii) DRAT ought to have seen that the petitioner has a bona fide case to contest on merits. DRAT ought to have extended the time for compliance of the order.

(iii) Order passed by the learned DRAT is based on surmises and conjectures.

(iv) In any event, the order passed by the learned DRAT is liable to be set aside.

(v) The petitioner states that taking advantage of the order dated 11.04.2018, the 3rd respondent has issued sale notice bringing the property for sale on 20.06.2018. Unless suitable interim orders are granted, the petitioner would be greatly prejudiced and would be put to heavy and irreparable loss and hardship."

6. Considering the limited prayer sought for, Mr.B.Murugavel, learned counsel for the bank, was put on notice, who objected the prayer sought for. Interim Order, dated 11.04.2018 made in I.A.No.42 of 2018 in AIR (SA) No.737 of 2017, on the file of the Debt Recovery Appellate Tribunal, Chennai, is extracted:-

"Ld. Counsel Mr.R.Roshan for Appellant present.

None of Respondent Bank though name of Ld. Counsel Mr.B. Murugavel appears in the cause list today.

On 14.12.2018, this Tribunal has directed the Appellant to make pre-deposit of Rs.10 Lakhs. Out of which an amount of Rs.5 lakhs only was deposited as first instalment and Ld. Counsel prays for two days more time for compliance of condition of 2nd instalment of pre-deposit.

Heard and Record perused.

In the present case, bank is looking for recovery of a sum of Rs.45.59 Lakhs since January, 2016, this Tribunal has taken a very liberal view against the Appellant in the earlier past.

Further, in view of the fact that DRAT cannot entertain any Appeal filed by any aggrieved person unless and untill the Appellant complies with the formalities on pre-deposit, hence appeal stands dismissed for want of compliance on pre-deposit.

It is made clear that part of pre-deposit lying with the Registrar will be lifted by bank to deal with it according to law.

Registry is also directed to refund that amount of pre-deposit to the bank.

Appeal dismissed."

7. Perusal of the impugned order made in AIR (SA) No.737 of 2017 shows that, when the matter came up for hearing on 11.04.2018, learned counsel for the petitioner/borrower, has represented that, out of Rs.10 lakhs, directed to be deposited, as pre-deposit for entertaining the appeal, Rs.5 lakhs has already been deposited and that the petitioner has sought for two more days, for compliance of the second installment of pre-deposit. However, by observing that the Tribunal has taken a very liberal view in the past and that DRAT, Chennai cannot entertain any appeal filed by any aggrieved person unless a pre-deposit is made, DRAT, Chennai Vide order dated 11.04.2018, dismissed the AIR (SA) No.737 of 2017.

8. Section 18 of the SARFAESI Act, 2002, is extracted hereunder:-

> "18. Appeal to Appellate Tribunal - (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal alongwith such fee, as may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:
>
> [Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]
>
> [Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
>
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]"

9. From the facts and circumstances of the case, it could be deduced, that the petitioner has challenged the possession notice dated 03.09.2016 issued under Section 13(4) of the SARFAESI Act, 2002, in S.A.No.108 of 2017 but the same has been dismissed, vide order dated 09.11.2017 by DRT-II, Chennai.

10. Rights of a borrower/guarantor as the case may be to challenge possession notice or any other action taken by the bank under Section 13(4) of the Act, is statutory. In the case on hand, the borrower has failed to succeed before the DRT-II, Chennai. Statutory appeal, cannot be dealt with, lightly. DRAT,

Chennai, ought to have seen that there is no proceeding for recovery by the bank, by instituting any original application. Instead, bank resorted to measure under SARFAESI Act, 2002. The Debt Recovery Appellate Tribunal, Chennai, ought to have seen that out of Rs.45.59 lakhs, alleged to be the debt amount, a direction has been issued for pre-deposit of Rs.10 lakhs, out of which, petitioner has paid the first installment. No serious prejudice would have been caused to the secured creditor, if two days time was granted for making the second installment. On the other hand, hardship and serious prejudice, would be caused to the borrower, to pursue his statutory appeal, and once in for all, right of appeal is foreclosed.

11. For the reasons stated supra, we are of the view that the impugned order of the Tribunal, has to be interfered with, and liable to be set aside and accordingly set aside.

12. Mr.R.Sugumaran, learned counsel for the petitioner submitted that, within one week from the date of receipt of a copy of this order, the petitioner would make the pre-deposit of the remaining amount of Rs.5 lakhs, with the Registrar of the Debts Recovery Appellate Tribunal, Chennai, to the credit of AIR (SA) No.737 of 2017. On such deposit, Registrar, Debt Recovery Appellate Tribunal, Chennai, is directed to process the appeal, assign regular appeal and place it before the Debt Recovery Appellate Tribunal, Chennai. While making deposit of the 2nd installment, learned counsel for the petitioner is permitted to file a memo.

13. In the result, writ petition is allowed. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dm

To

1.The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Zonal Office,
55, Ethiraj Salai,
Egmore, Chennai - 600 105.

2.The Registrar,
Debts Recovery Tribunal - II,
Dewa Towers IV floor,
No.770A, Anna Salai,
Chennai - 600 002.

+1cc to MR.A.V.Arun, Advocate Sr.36333

W.P.No.12673 of 2018
and
W.M.P.No.14802 of 2018

srg 26/06/2018