

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/6/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition Nos.12822 to 12824 of 2018

Writ Petition No.12822 of 2014

1. M/s.D.M.Traders
rep. By Mr.D.Sampath
Mrs.S.Geetha
Partners
59 Karukkinil Amarthaval Koil Street
Kancheepuram 631 501.
2. D. Sampath
3. S. Geetha Petitioners

Vs

1. The Authorised Officer
Tamil Nad Mercantile Bank Ltd
Chennai Region, No.45 Pulla Avenue
Shenoy Nagar
Chennai 600 030.
2. The Registrar
Hon'ble Debts Recovery Appellate Tribunal
Chennai. Respondents

W.P.No.12823 of 2018

1. M/s.D.M.Modern Rice Mill
rep. By Mr.D.Sampath
Mrs.S.Geetha
Partners
59 Karukkinil Amarthaval Koil Street
Kancheepuram 631 501.
2. D. Sampath
3. S. Geetha Petitioners

Vs

1. The Authorised Officer
Tamil Nad Mercantile Bank Ltd
Chennai Region, No.45 Pulla Avenue
Shenoy Nagar
Chennai 600 030.
2. The Registrar
Hon'ble Debts Recovery Appellate Tribunal
Chennai. ... Respondents

W.P.No.12824 of 2018

1. M/s.D.M.Silks
rep. By Proprietrix
Mrs.S.Geetha
59 Karukkinil Amarthaval Koil Street
Kancheepuram 631 501.
2. D. Sampath ... Petitioners

Vs

1. The Authorised Officer
Tamil Nad Mercantile Bank Ltd
Chennai Region, No.45 Pulla Avenue
Shenoy Nagar
Chennai 600 030.
2. The Registrar
Hon'ble Debts Recovery Appellate Tribunal
Chennai. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of Writs of certiorari to call for the records, pertaining to the impugned orders, in AIR (SA) Nos.69, 70, 67/2018, dated 26/4/2018 passed by the Hon'ble Debts Recovery Appellate Tribunal, Chennai and quash the same and consequently, waive the pre-deposit of Rs.13.00 lakhs, 8 lakhs, and Rs.5 lakhs, ordered in AIR (SA) Nos.69, 70 and 67 of 2018, dated 26/4/2018.

For petitioners ... Mr.T.V.Badrinarayanan

For R1 ... E.Kumar,

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C O M M O N O R D E R

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

Order impugned in W.P.No.12822 of 2018, is as follows:-

"Ld. Counsel Mr.P.Rajavelu for appellant present.

Ld. Counsel Mr.Kumar for respondent Bank present.

Heard I.A.No.297 of 2018 which is an application for waiver.

Appellant has challenged the order dated 1/1/2018 passed by DRT - II, Chennai, in S.A.No.235 of 2014, by which PO has dismissed the SA.

Appellant counsel submits that respondent Bank issued notice dated 10/2/2014 demanding a sum of Rs.50.65 lakhs under Section 13 (2) of SARFAESI Act. After issuance of notice, Appellant had deposited a sum of Rs.14.79 lakhs so far and prayed to presume waiver has been complied with.

Respondent counsel submits that nothing has been paid after 2015 by appellant and the debt amount has increased to too many folds during the last four years.

Whatever has been averred by the parties shall be considered at the time of final hearing of the case, further, DRAT cannot entertain any appeal unless and until the appellant complies with the formalities on pre-deposit upto 50% of debt amount, which can be reduced to 25% but not less than 25% in any case.

In view of the above said fact considering the debt amount to be Rs.50.65 lakhs and also deposits made by the appellant, I hereby direct the appellant to make pre-deposit of Rs.13 lakhs with the Registrar of this Tribunal within a period of four weeks from today.

In the event of failure in complying with the order on pre-deposit, the appeal shall stand dismissed automatically for want of mandatory compliance. IA is disposed of.

List for confirmation of pre-deposit of appellant by 24/5/2018."

2. On 23/5/2018, a Hon'ble Division Bench of this Court has ordered notice to the first respondent.

3. Today, when the writ petitions came up for further hearing, learned counsel appearing for both parties submitted that for non-deposit of the amount, I.A.Nos.297, 299 and 295 of 2018, respectively, filed for waiver have been dismissed, by Debts Recovery Appellate Tribunal and consequently, A.I.R.(SA) Nos.69, 70 and 67 of 2018 have also been dismissed.

4. Though placing reliance on the subsequent orders, dated 8/6/2018, Mr.T.V.Badrinarayanan, learned counsel for the petitioners submitted that the Appellate forum has observed that consequent to any decision/direction from this Court, matter would be suo motu taken up or by any application, as the case may be, for compliance of such direction, to be issued by the High Court, this Court has already disapproved the said decision of the Debts Recovery Appellate Tribunal, Chennai.

5. It is well settled that an interim order passed, merges with the disposal of the main case. Accordingly, Interim order passed in I.A.Nos.297, 299 and 295 of 2018 merges with the Final Order made in A.I.R.(SA) Nos.69, 70 and 67 of 2018, respectively. On the principle of law that interim order merges with final orders, we deem it fit to consider few decisions.

(i) In South Eastern Coalfields Ltd v. State of MP and Others reported in (2003) 8 SCC 648, the Hon'ble Supreme Court held as follows:

"The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage.

(ii) In Prem Chandra Agarwal and Another v. Uttar Pradesh Financial Corporation and Others reported in (2009) 11 SCC 479, the Hon'ble Supreme Court held that once a final order is passed, all the earlier interim orders merge into the final order, the interim orders cease to exist.

(iii) In State of West Bengal and Others Vs Banibrata Ghosh and Others reported in (2009) 3 SCC 250, the Hon'ble Apex Court held that the Interim Order does not decide the fate of the parties to the litigation finally, it is always subject to and

merges with the final order passed in the proceedings.

6. In view of the decisions stated supra, nothing survives for adjudication in the instant writ petitions filed against interim orders. Hence, instant writ petitions are dismissed.

7. Learned counsel for the petitioners volunteered, to deposit Rs.7.5 lakhs, Rs.5 lakhs and Rs.3 lakhs, respectively, with the Registrar, Debts Recovery Appellate Tribunal, as an additional pre-deposit amount, for entertaining the appeals and that the said offer is duly acknowledged by Mr.E.Kumar, learned counsel for the Bank.

8. Submission of the learned counsel for the petitioners is placed on record.

No costs. Liberty is given to the petitioners to challenge both interim orders as well as the final orders.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Authorised Officer
Tamil Nad Mercantile Bank Ltd
Chennai Region, No.45 Pulla Avenue
Shenoy Nagar
Chennai 600 030.
2. The Registrar
Hon'ble Debts Recovery Appellate Tribunal
Chennai.

+3cc to Mr.K.N.CHINNAKRISHNAN, Advocate, S.R.No. 39443 TO 39445
+3cc to Mr.P.RAJAVELU, Advocate, S.R.No.39618 TO 39620

W.P.Nos.12822 to 12824 of 2018

TR(11/07/2018)