IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2/8/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition Nos.13705 & 13706 of 2018
and
Writ Miscellaneous Petition Nos.16165 & 16166 of 2018

S. Rangasamy,
S/o. Sellamuthu,
Proprietor of M/s. Shanthi Aarts & Handcrafts,
No.4/1, Namakkal Main Road,
Unjanai Post - 637 205,
Tiruchengode Taluk,
Namakkal District. ... Petitioner in both the writ petitions

Vs

1. Authorised Officer,
Union Bank of India
Mallasamudram branch
No.57/1-A, Dr. Subbarayan Road,
Mallasamudram, Tiruchengode Taluk,
Namakkal District - 637 503.

2. The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai
Chennai - 600 008 ... Respondents in both the writ petitions

R2 - deleted as per order dt. 29.06.2018 by SMKJ & SPJ in Writ Petition Nos.13705 and 13706 of 2018.

Petitions filed under article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the Hon'ble Debts Recovery Appellate Tribunal, Chennai, in I.A Nos. 307 & 309 of 2018 and A.I.R. Nos.53 and 54 of 2018, respectively, dated 09.05.2018 and quash the same and consequently, and direct the Registry of the R-2 to number he appeal and decide the same on merits.

For Petitioner ... M/s. S. Rangasamy
Party in Person (P-IN-P)

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COMMON ORDER

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

Though the Authorised Officer, Union Bank of India, first respondent has been served and name shown in today's cause list, there is no representation either in person or through Pleader. Hence this Court is constrained to pass orders on merits.

2. Being aggrieved by the proceedings, dated 9/5/2018, in A.I.R. (SA) Nos.53 and 54 of 2018, in S.A.No.241 of 2013 and O.A.No.193 of 2012, respectively, on the file of Debts Recovery Appellate Tribunal, Chennai, directing the petitioner, to make pre deposit of Rs.6.25 lakhs and Rs.17,00,000/-, respectively, instant writ petitions are filed.

3. Material on record discloses that Bank has filed O.A. No.193 of 2012, on the file of Debts Recovery Tribunal, Madurai, for the following reliefs:-

> "i) Directing the Defendants to pay jointly and severally the sum of Rs.63,57,649/- as on 16.03.2012 towards CC (H) Limit account together with the pendent lit and future interest at the rate of 15.50% per annum with monthly rests raising and falling with Union Bank of India advance rate with effect from 17.03.2012 namely the date of application till the date of realization and to draw a Recovery Certificate.
>
> ii) To pass an order that in default of the payment of debts, the property described in the Schedule hereunder mortgaged to the Applicant Bank may be sold out under the supervision of this Honourable Tribunal and net sale proceeds be appropriated towards the debt due mentioned in Column (i) above.
>
> iii) In case the sale proceeds of the Mortgaged Property is not sufficient to meet out the entire dues to the Applicant Bank, suitable action may be initiated against the personal properties of the Borrowers/D-1 and D-2.
>
> iv) To attach the Schedule Mentioned Property before judgment.
>
> v) To award cost of the present application in favour of the Applicant Bank and against D-1 and D-2.

vi) Any other relief which this Honourable Tribunal may deem fit and proper in the circumstances of this case may also be granted to the Applicant Bank and against D-1 and D-2."

4. Being aggrieved by the SARFAESI action initiated by the bank, resulting in auction sale notice, dated 20/9/2013, petitioner has filed S.A.No.241 of 2013 on the file of the Debts Recovery Tribunal, Madurai, for the following reliefs:-

(i). quash the entire SARFAESI proceedings ending up with tender-cum-auction sale notice, dated 20/9/2013 issued by the respondent bank as illegal and void.

(ii). To restore the possession of the schedule properties to the appellant herein

(iii). To pay the costs of the proceedings."

5. Petitioner has contended that in S.A. No.241 of 2013, Debts Recovery Tribunal, Madurai, granted stay of auction, in I.A.No.1500 of 2013, subject to payment of Rs.19,00,000/-, in two installments. The first installment of Rs.10,00,000/-, should be paid on or before 15/11/2013 and the second installment of Rs.9,00,000/-, should be paid, on or before 30/11/2013. According to the petitioner, the said sum of Rs.19,00,000/- has been deposited with the Union Bank of India, within the stipulated time.

6. Material on record further discloses that O.A.No.193 of 2012, was allowed, on 20/12/2017, as hereunder:-

"The Applicant Bank is entitled to recover from the Defendants a sum of Rs.63,57,646/-, as on 16.03.2012, together with pendent lit and future interest @ 15.50% per annum with monthly rests raising and falling with Union Bank of India Advance rate with effect from 17.03.2012 till the date of realization towards CC(H) Limit account and also the costs.

The Defendants are directed to pay, jointly and severally, a sum of Rs.63,57,649/-, together with pendent lit and future interest @ 15.50% per annum with monthly rests raising and falling with Union Bank of India Advance rate with effect from 17.03.2012 till the date if realization and also the costs. On failure to pay the above said debt to the Applicant Bank, the Applicant Bank is directed to bring the mortgaged and hypothecated properties, more fully described in Schedule 'A' and 'B' of the application, for sale to realize its dues and costs.

The Registry is directed to prepare DRC in terms of this final order. The Applicant Bank shall file memo of costs within 15 days from the date of this order. Registry is directed to communicate the copy of this order to both parties as provided in Rule 16 of the Debts Recovery Tribunal (Procedure) Rules, 1993, as amended in 2003."

7. S.A.No.241 of 2013 again auction notice was dismissed, on 28/12/2017, as hereunder:-

"After issuance of the possession notice, the applicant did not come forward to settle the outstanding loan dues. Therefore, the respondent was constrained to proceed with the sale of the property with issuance of the sale notices. The applicant has miserably failed to prove his contention that there are procedural violations in respect of initiation of SARFAESI proceedings to bring the mortgaged property for sale by the respondent Bank.

In view of the foregoing reasons, this Tribunal holds that the applicant is not entitled to get the relief as prayed. Thus, this point is answered.

In the result, the SA No.241 of 2013 is dismissed. No costs."

8. Being aggrieved by the order made in S.A.No.241 of 2013, dated 28/12/2017, on the file of Debts Recovery Tribunal, Madurai, petitioner has filed an appeal in A.I.R.(SA)No. 53 of 2018, before the Debts Recovery Appellate Tribunal, Chennai.

9. Being aggrieved by the order made in O.A.No.193 of 2012, dated 20/12/2017, passed by the Debts Recovery Tribunal, Madurai, petitioner has filed A.I.R.No.54 of 2018, on the file of the Debts Recovery Appellate Tribunal, Chennai.

10. Contending inter-alia that the petitioner has already deposited a sum of Rs.19,00,000/-, in compliance of a pre-conditional order for stay of auction, in

S.A.No.241 of 2013, on the file of Debts Recovery Tribunal, Madurai, in I.A. No.307 of 2018 in A.I.R (SA) No.53 of 2018, petitioner has sought for an order from Debts Recovery Appellate Tribunal, Chennai, to the respondent Bank, to deposit Rs.19,00,000/- with interest, at the rate of 15% per annum, monthly rests or for a prayer from Debts Recovery Appellate Tribunal, Chennai, to the respondent Bank, to return Rs.19,00,000/-, with interest, to the petitioner.

11. Adverting the above said prayer, and taking note of the fact that a sum of Rs.24,87,172.46 was demanded by the bank, in the notice, dated 25/5/2007, under Section 13 (2) of SARFAESI Act, 2002, and further observing that the Debts Recovery Appellate Tribunal, Chennai, cannot entertain any appeal, unless and until the appellant complies with the formalities of pre-deposit of 50% of the debt amount, which can be reduced to 25%, but not less than 25%, in any case, the Debts Recovery Appellate Tribunal, Chennai, vide proceedings, dated 9/5/2018, in A.I.R.No.53 of 2018, has directed the petitioner to make a pre-deposit of Rs.6.25 lakhs with the Registrar of the Appellate Tribunal, within a period of four weeks, from the date of passing of the order.

12. Though the petitioner has pleaded that a sum of Rs.19,00,000/-, has already been deposited with the bank, and if that amount is refunded, he would make the pre deposit, for the purpose of entertaining the appeal, Debts Recovery Appellate Tribunal has observed that the petitioner was not in a position to tell the date of deposit of Rs.19,00,000/-. Thus the representation of deposit already made, was not considered.

13. Similarly, in A.I.R.No.54 of 2018, filed against the order made in O.A.No.193 of 2012, dated 20/12/2017, passed by the Debts Recovery Tribunal, Madurai, on 9/5/2018, the Debts Recovery Appellate Tribunal, ordered as hereunder:-

> "Mr.R.Thirunavukkarasu (GPA) for appellant present.
>
> Ld Counsel Mr.T.Gopinathan for respondent Bank present and files memo of vakalat of M/s. T.Govindasamy today.
>
> Heard IA 309 of 2018, which is an application for waiver.
>
> Appellant has challenged the order dated 20/12/2017, passed by DRT, Madurai in OA 193 of 2012, by which OA was decreed.
>
> Appellant counsel submits that bank had filed OA before DRT and the same was decreed against this appellant for recovery of a sum of Rs.63.57 lakhs. In

connected matter, appellant submits that he has deposited a sum of Rs.19 lakhs in connection with some appeal, and was not in a position to tell the date of deposit. Impugned order is also suffering from various illegalities.

Appellant counsel further submits that this matter relates to provisions of old act, hence this Tribunal has power to totally waive the pre-deposit amount also, and prayed for total waiver.

Respondent counsel submits that procedure as of today is that 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 and the OA due amount has increased to too many folds during the last six years from the date of filing of OA.

Whatever has been averred by the parties can be appreciated and decided at the time of final hearing of the case. On the basis of OA decreed amount of Rs.63.57 lakhs and considering the deposits made by appellant, and having extending maximum waiver. I hereby direct the appellant to make pre-deposit of Rs.17 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 6/6/2018."

14. Challenging the roder made in A.I.R.No.53 of 2018 and A.I.R.No.54 of 2018, instant W.P.Nos.13705 and 13706 of 2018 have been filed.

15. When Writ Petition Nos.13705 and 13706 of 2018 were filed, challenging the proceedings, dated 9/5/2018, made in A.I.R.(SA)Nos.53 and 54 of 2018, passed by the Debts Recovery Appellate Tribunal, Chennai, came up for hearing, Mr. S. Rangasamy, Party-in- Person, drew the attention of this court to the order passed by the Tribunal, in S.A.No.241 of 2013 and O.A.No.193 of 2012, on the file of the Debts Recovery Tribunal, Madurai, and also the photo copies of the Demand Draft and cash receipt, to substantiate compliance of the orders of the Tribunal, in S.A. No.241 of 2013 and the deposit made.

For brevity, proceedings, dated 5/11/2013, made in S.A.No.241 of 2013 is reproduced hereunder:-

> "Heard arguments. Without going to merits, considering the submissions and arguments stay is granted subject to payment of Rs.19,00,000/- in two installments. The 1st installment of Rs.10,00,000/- should be paid on or before 15.11.2013 and the 2nd installment of Rs.9,00,000/- should be paid on or before 30.11.2013. However, the Respondent Bank is at liberty to proceed with the auction on 06.11.2013 but not to confirm the sale. In case of non payment of any installments in time, the stay stands vacated automatically and the Respondent Bank is at liberty to proceed further. Under these circumstances, the IA.No.1500/13 (Stay petition) is closed with these directions accordingly. For filing proof of payment, Vakalat, Counter and Typeset and bank is directed to file original mortgage register. Call on 04.02.2014.
>
> PO
> SA 241/13
> Counsel for the Applicant (Mr. Saravanakumar) present. Counsel for the Respondent Bank (Mr. Kasirajan) present. Counsel for the Applicant submitted that conditional order complied with. Counsel for the Respondent Bank submitted that they are brought the original documents for verification of the Applicant and documents verified by the Counsel for the applicant. Counsel for the Applicant sought time for inquiry. Time granted call on 29.04.2014.
>
> PO
> SA 241/13
> R. Thirunavukkarasu present in person and submitted that Applicant is son and he is Authorized by his father to representing his favour in person and also stated that already filed memo (S.R.No.3176 dated 28.04.2013) further he served a copy of additional typeset and written arguments to other side. Counsel for the Respondent Bank sought time for filing their counter and typeset and inquiry. Time granted call on 08.05.2014.

PO
SA 241/13
Mr.R.Thirunavukkarasu present in person and representing his son. Counsel for the Respondent Bank (Mr. Govindasamy) present. Arguments heard on behalf of the Applicant and reply arguments by the Respondent Bank. The bank submitted that bank filed relevant documents in OA and they may be looked into these issues of limitation. At this stage, party submitted that bank may be directed to file copy of the same in SA. So that it will be on record of this SA. Counsel for the Respondent Bank sought time for filing copies of OA documents. Thereafter the party commenced his reply and during reply he requested two months time for filing attested and additional documents and for further arguments, Time granted for both side for filing documents. Call on 25.07.2014.

PO
SA 241/13
Mr.R.Thirunavukkarasu present in person and representing on behalf of Applicant (Mr.S.Rangasamy) and submitted that on 24.07.2014, filed written arguments and Additional typeset along with CD before Registry and copy served other side. Counsel for the Respondent Bank (Mr. T. Govindasamy) present and took objections for the said written statements which contains new facts and new relief sought. If at all new relief, the Applicant has to file separate petition and bank has to file counter and no new facts can be raised changing character of the case. Further objected CD can not be taken on record and it is not a valid evidence. Counsel for the Respondent Bank filed additional typeset (copy of OA) and served the same to party in compliance of orders dated 08.05.2014. Party made acknowledgment having received the same."

16.Photo copy of the challan, dated 13/11/2013 for making payment of Rs.10,00,000/- with the bank is extracted:-

UNION BANK OF INDIA
Mallasamudram
MAIL TO 13.11.2013

We have credited your __________ account with us as under 501/104 DRT/ MADURAI 1500/2013	M/s. Shanthi Arts & Handcrafts
	A/c 501/104
	AS PER DRT/ MADURAI No.1500/2013

Cash received from				
Mr. S. Rangasamy				
M/s. Shanthi Arts & Handcrafts				
Rs. Ten lakhs only				
Rs.	10	00	00 0	/-

GEN

Accountant

B&A

17. Photo copy of the challan dated 27/11/2013, to substantiate payment of Rs.9,00,000/- with the bank is reproduced:-

UNION BANK OF INDIA
Mallasamudram
MAIL TO 27.11.2013

We have credited your __________ account with us as under 501/104 DRT/ MADURAI 1500/2013	M/s. Shanthi Arts & Handcrafts
	A/c 334205010000104
	AS PER DRT/ MADURAI No.1500/2013 suit filed account

Cash received from				
Mr. S. Rangasamy				
M/s. Shanthi Arts & Handcrafts				
Rs. Nine lakhs only				
Rs.	9	00	00 0	/-

GEN

Accountant

B&A

18. Though, on 9/5/2018, before the Debts Recovery Appellate Tribunal, Chennai, petitioner/party-in-person was not in a position to tell the date of deposit of

Rs.19,00,000/-, from the documents produced before this court, it is evident that there was an order made in S.A. No.241 of 2013, dated 5/11/2013, pursuant to which the petitioner has also deposited the said sum, duly acknowledged by the bank on 4/2/2014. Record of proceedings dated 5/11/2013 and 4/2/2014, have been extracted in the foregoing paragraphs.

19. Section 18 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest (SARFAESI) Act, 2002, enables:

> "(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.]
> (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

20. In the case on hand, being aggrieved by the order, made in S.A. No.241 of 2013, on the file of Debts Recovery Tribunal, Madurai, dated 28/12/2017, petitioner has filed A.I.R. (SA) No.53 of 2018, with a petition in I.A. No. 307 of 2018, for waiver.

21. Being aggrieved by the order made in O.A. No. 193 of 2012, dated 20/12/2017, on the file of the Debts Recovery Tribunal, Madurai, petitioner has filed A.I.R. No.54 of 2018. Thus, two appeals have been filed.

22. O.A. has been decreed for Rs.63.57 lakhs. As per the second proviso to Section 18 of SARFAESI Act, 2002, no appeal shall be entertained unless the borrower has deposited with the bank 50% of the amount due from him, as claimed by the secured creditors or determined by the DRT, Madurai, whichever is less. Appellate tribunal for the reasons to be recorded in writing, reduce the amount to not less than 25% of the debt referred to in the second proviso.

23. As stated supra, a sum of Rs.19,00,000/- has already been deposited with the bank, which represents more than 25% of the debt determined by the Debts Recovery Tribunal, Madurai, in O.A.No.193 of 2012. The only reason for not accepting the contention of the petitioner before the Debts Recovery Tribunal was that he was not in a position to furnish the date of deposit of Rs.19,00,000/-. Before this court, the petitioner has placed materials, to substantiate the contention more than 25% of the debt determined by the Tribunal, has been deposited.

24. Going through the material on record, in the entirety, we are of the view that the petitioner need not be mulcted with liability to deposit more than the amount already deposited with the bank, pursuant to the conditional order, as stated supra.

25. In the light of the discussion,we are inclined to set aside the order impugned in writ petitions.

26. In the result, these writ petitions are allowed and impugned orders are set aside. Registrar of the Debts Recovery Appellate Tribunal, Chennai is directed to process the appeals, if they are otherwise in order, assign the numbers and place them before the Appellate Tribunal. No costs. Consequently the connected miscellaneous petitions are closed.

mvs.

Sd/-/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
1. Authorised Officer,
Union Bank of India
Mallasamudram branch
No.57/1-A, Dr. Subbarayan Road,
Mallasamudram, Tiruchengode Taluk,
Namakkal District - 637 503.

2. The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai
Chennai - 600 008

+1cc to Mr.S.RANGASAMY , Advocate SR.No. 52640

Writ Petition Nos.13705 & 13706 of 2018
RSI(CO)
ASK(07/09/2018)