IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.P.No.1399 of 2018
and W.M.P.No.1769 of 2018

Mrs.N.Sharadha .. Petitioner

Vs.

1. Indian Overseas Bank,
Rep. by its Authorised Officer,
Spencer Plaza Branch,
III Floor, Spencer Plaza,
No.762, Anna Salai,
Chennai - 600 002.

2. The Registrar,
The Debts Recovery Appellate Tribunal,
Chennai - 600 008. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the entire records culminated in the order dated 04.01.2018, passed by the Second Respondent in I.A.No.1654 of 2017, in AIR No.638 of 2017 and quash the same and consequently direct the second respondent to treat the amount of Rs.60 lakhs paid by the petitioner to the first respondent as per deposit to entertain the Appeal AIR.No.635 of 2017.

For Petitioner : Mr.T.Mahendran

For Respondent 1 : Mr.F.B.Benjamin George

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O R D E R

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

On 23.01.2018, we passed the following order:

"Vide proceedings dated 04.01.2018 in I.A.No.1654 of 2017 in AIR No.638 of 2017, Debts Recovery Appellate Tribunal, Chennai, has directed the writ petitioner to make pre deposit of Rs.1.50 Crores with the Registrar of the appellate Tribunal, within four weeks from the abovesaid date, as a condition precedent for entertaining the appeal AIR No.638 of 2017. Debts Recovery Appellate Tribunal, Chennai, has directed I.A.No.1654 of 2017 in AIR No.638 of 2017, to be listed on 01.02.2018, for confirmation.

2. Abovesaid proceedings is impugned on the grounds inter alia that the order directing deposit of Rs.1.50 Crores, is contrary to the proviso to Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Act, which states that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent of the amount of such debt so due to be deposited under this section. Added further, Mr.Sriram Panchu, learned senior counsel submitted that the reasoning of the tribunal, directing deposit of Rs.1.50 Crores on the sum claimed of Rs.5.44 Crores in O.A.No.521 of 2014 on the file of Debts Recovery Tribunal - II, Chennai, is erroneous and prayed that the petitioner be directed to deposit on the principal amount borrowed.

3. Heard the learned senior counsel for the petitioner and perused the materials available on record.

4. In O.A.No.521 of 2014, on the file of Debts Recovery Tribunal-II, Chennai, Indian Overseas Bank, has prayed for an order under Section 19(20) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Act, against the defendants therein, holding them jointly and severally liable to pay a sum of Rs.5,44,04,563/- with interest at the rate of 15.25% per annum monthly rests on Rs.5,05,72,589/- and 14.75% p.a monthly rests on Rs.38,31,974/- from the date of the application to till the date of its reasliastion in full and to issue recovery certificate and for further orders.

5. Defendants 6 & 7 therein have filed a common reply statement. After considering the rival contentions, vide order dated 06.09.2017 in O.A.No.521 of 2014, the Debts Recovery Tribunal-II, Chennai, has allowed the OA, as hereunder.

> "20. In the result, the application (OA) is allowed as under:-
>
> a) the applicant bank to recover the total sum of Rs.5,44,04,563/- (Rupees five crore forty four lakh four thousand five hundred and sixty three only) with interest @ 9% p.a.(simple) from the date of institution of the OA till realisation and also costs of the OA from the defendants 1 to 6 jointly and severally and in case of default, by sale of the schedule mentioned mortgaged / hypothecated properties;
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> b) The 7th defendant is not liable to the OA claim and is discharged from the OA;
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> c) Issue Recovery Certificate in favour of the applicant bank in terms of this final order;
>
> d) Applicant is directed to file costs memo within two weeks of receipt of this order and
>
> e) Communicate a copy of this order to the parties concerned."

6. Being aggrieved, Mrs.N.Sharadha, Defendant No.6, in O.A.No.521 of 2014, has filed an appeal in AIR No.638 of 2017 with an Interlocutory Application No.1654 of 2017, for waiver. Before the Debts Recovery Appellate Tribunal, Chennai, submission has been made that payment of Rs.60 Lakhs, before the tribunal was not taken note of.

7. After considering the abovesaid submission, Debts Recovery Appellate Tribunal, Chennai vide proceedings dated 04.01.2018 in I.A.No.1654 of 2017 in AIR No.638 of 2017, has ordered, as hereunder.

> "Whatever has been averred by the Ld. Counsel for the parties will be heard and decided at the time final hearing of the matter and in view of the fact that DRAT cannot entertain an Appeal filed by any aggrieved person unless and until the Appellate complies with the formalities on pre-deposit up to 50% of debt amount, which can be reduced to 25%, but not less than 25% in any case.
>
> In the present case bank is look for recovery of a sum of Rs.5.44 Crores since 2014 even after taking into consideration the amount of Rs.60 Lakhs paid by the Appellant on the basis of balance amount of Rs.4.80 Crores pre-deposit is decided.
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> In view of the aforesaid, I hereby direct the Appellant to make pre-deposit of Rs.1.50 Crores with the Registrar of this Tribunal within a period of four weeks from today.
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> In the event of failure in complying with the order on pre-deposit, the Appeal shall stand dismissed automatically without any reference by this Tribunal. IA is disposed of.
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> List for confirmation of pre-deposit of Appellant by 01.02.2018."

8. As per Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Act, when 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 fifty 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,

reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent of the amount of such debt so due to be deposited under this section.

9. In the case on hand, amount, due as per the claim made in O.A.No.521 of 2014 on the file of Debts Recovery Tribunal-II, Chennai, is Rs.5,44,04,563/- with interest, as stated supra.

10. When the main Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Act, speaks about entertaining an appeal by the tribunal, on the deposit of 50% of the amount of debt, so due form any person, as determined by the tribunal under Section 19, proviso to the said Section empowers the appellate tribunal, may for reasons to be recorded in writing reduce the amount to be deposited by such amount, which shall not be less than 25% of the amount of such debt so due, to be deposited under the Section.

11. From the order impugned, we could deduce that the Debts Recovery Appellate Tribunal, Chennai has exercised discretion, under proviso to Section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Act.

12. Sum claimed is Rs.5,44,04,563/- with interest, as stated supra. 25% of the debt so due, amounts to Rs.1.36 Crores. Writ petitioner is stated to have deposited Rs.60 Lakhs, before the Debts Recovery Tribunal, and the balance amount representing 25% of the debt due, as per the claim amount determined, is Rs.76 Lakhs.

13. Having regard to the above, we direct the petitioner to deposit Rs.76 Lakhs with the Registrar of Debts Recovery Appellate Tribunal, Chennai, within four weeks from the date of receipt of the copy of the order made in this writ petition.

> 14. Writ petitioner is permitted to file a memo to that effect before Debts Recovery Appellate Tribunal, Chennai, on the next hearing date.
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> 15. Issue notice to the respondents, through Court and privately, returnable by, 20.02.2018.
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> 16. Post on 20.02.2018.
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> 17. There shall be an order of interim stay, as prayed for, till then."

2. Today, Mr.T.Mahendran, learned counsel appearing for petitioner, submitted that the conditional order dated 23.01.2018, has been complied with and that a sum of Rs.76,00,000/-, has been deposited with the Registrar of Debts Recovery Appellate Tribunal, Chennai.

3. Amount so far secured, towards the debt due, from the writ petitioner, is Rs.1,36,00,000/- in two spells, one by way of deposit of Rs.60,00,000/-, in the bank and Rs.76,00,000/-, by way of pre-deposit, with Registrar of Debts Recovery Appellants Tribunal, Chennai, as ordered by this Court.

4. Though, Mr.F.B.Benjamin George, learned counsel for the respondent bank, submitted that whatever deposited with the bank cannot constitute, pre-deposit as per Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and therefore, the prayer sought for, should not be granted and that therefore should not be any adjustment, we are not inclined to accept the said contention. Right of appeal, is statutory. Though, a sum of Rs.5,44,04,563/-, has been claimed as amount due, the same may vary, at the time of determination, by the Tribunal, under Section 19 of the Act. More than 25% of the debt amount, is now assured.

5. Having regard to the Constitutional right of Right to Property under Article 300-A of the Constitution of India and that a sum of Rs.1,36,00,000/-, now in bank deposit / pre-deposit, with the Registrar of Debts Recovery Appellate Tribunal, Chennai, represents 25% of the debt claimed, we are of the view that there is no need to fasten the writ petitioner to make any further deposit with the Registrar of Debts Recovery Appellate Tribunal, Chennai, we reject the contention of the learned counsel for the bank.

6. In the light of above discussion, impugned order in I.A.No.1654 of 2017 in AIR No.638 of 2017, dated 04.01.2018, on the file of the Debts Recovery Appellate Tribunal, Chennai, deserves to be set aside and accordingly, set aside. Registrar of the Debts Recovery Appellate Tribunal, Chennai, is directed to assign a regular appeal number, if the appeal papers are otherwise in order and place the same before the learned Appellate Tribunal. Writ petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Authorised Officer,
   Indian Overseas Bank,
   Spencer Plaza Branch,
   III Floor, Spencer Plaza,
   No.762, Anna Salai,
   Chennai - 600 002.

2. The Registrar,
   The Debts Recovery Appellate Tribunal,
   Chennai - 600 008.

+1cc to Mr.T.MAHENDRAN, Advocate, S.R.No. 16778

W.P.No.1399 of 2018 and
W.M.P.No.1769 of 2018

TR(07/03/2018)