IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.DURAISWAMY

C.R.P(PD).Nos.2429 & 2430 of 2014
and C.M.P.Nos.3219 & 3220 of 2016

Canara Bank
SME Perungudi Branch,
Old Mahabalipuram Road,
Chennai – 600 096. .. Petitioner in both the CRPs

Vs.

1.R.Balagurunathan .. 1st Respondent in both CRPs

2.M/s.Hobby Screens,
No.4, Veeramamunivar Street,
Kandanchavadi,
Chennai – 600 095. .. 2nd Respondent in CRP.2430/14
(R2 has been set exparte in M.A.No.563 of 2010. Hence, R2 is given up)

Civil Revision Petitions filed under Article 227 of the Constitution of India against the orders dated 05.03.2014 passed in M.A.No.90 of 2013 and M.A.No.563 of 2010 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For Petitioner (in both CRPs) : Mr.S.Vijayakumar for M/s.G.Bharadwaj

For Respondent : No appearance (R1) (in both CRPs)
R2 – given up (CRP.2430/2014)

COMMON ORDER

(Order of the Court made by M.DURAISWAMY,J.)

Heard the learned counsel for the petitioner. Though sufficient opportunities were given to the 1st respondent, consistently, none appeared for the 1st respondent. When the matter was listed on 10.09.2018, there was no representation on behalf of the 1st respondent, hence the matter was adjourned to 12.09.2018. When the matter was listed on 12.09.2018 also, there was no representation on behalf of the 1st respondent, hence, the matter was adjourned to 05.10.2018. On 05.10.2018 also, there was no representation on behalf of the 1st respondent and in order to give one last opportunity, the matter was adjourned to 30.10.2018. Today also there is no representation on behalf of the 1st respondent. Hence, we heard the submissions made by the learned counsel for the petitioner and decided the matter on merits.

2.Since the issues involved in both the Civil Revision Petitions are common, both the Civil Revision Petitions are disposed of by this common order.

3.C.R.P.(PD).No.2429 of 2014 has been filed by the petitioner – Bank challenging the order passed in M.A.No.563 of 2010 on the file of the Debt Recovery Appellate Tribunal, Chennai. C.R.P.(PD).No.2430 of 2014 has been filed by the petitioner – Bank challenging the order passed in M.A.No.90 of 2013 on the file of the Debt Recovery Appellate Tribunal, Chennai.

4.It is the case of the petitioner – Bank that the 1st defendant viz., M/s.Hobby Screens represented by its Partner 2nd defendant, originally availed loan facilities with M/s.Catholic Syrian Bank Limited and the petitioner – Bank had taken over the working loan limit/term loan liabilities of the 1st defendant from Catholic Syrian Bank tenable till 08.01.2009. The petitioner had granted Over Draft facility of Rs.150 lakhs to the 1st defendant on 28.01.2008 on the collateral security of the properties owned by the partners of the 1st defendant Firm as well as the property and personal guarantee of the 1st respondent herein, who is none else than the cousin of the partners of the 1st defendant. The petitioner also granted term loan of Rs.23,37,000/- and Rs.2,04,000/- for the purchase of machineries, irrevocable letter of credit of Rs.25 lakhs, car loan of Rs.4,08,000/- and temporary Over Draft to the tune of Rs.150 lakhs since April 2008. Since the 1st defendant committed default in repaying the loan amounts, the accounts of the 1st defendant became Non Performing Asset. In these circumstances, the petitioner – Bank filed O.A.No.31 of 2009 on the file of the Debts Recovery Tribunal – III, Chennai to recover a sum of Rs.3,62,44,702.32 together with interest.

5.Before the Tribunal, except the 6th defendant, the other partners of the 1st defendant - Firm remained *exparte*. The 6th defendant in O.A.No.31 of 2009 is the 1st respondent herein. The 1st respondent filed his written statement contending that the alleged mortgage and guarantee was not extended by him in respect of the loans availed by the 1st defendant and therefore, he is not liable to pay the amount claimed by the Bank.

6.During the pendency of the O.A., the petitioner – Bank brought 3 immovable properties of the partners of the 1st defendant and also the hypothecated machineries and car for sale with the permission of the Debts Recovery Tribunal and realized nearly Rs.145.44 lakhs out of Rs.3.62 crores claimed in O.A.No.31 of 2009. The property belonging to the 1st respondent alone was not sold in the proceedings so far.

7.After the commencement of the trial in O.A.No.31 of 2009, the 1st respondent filed I.A.No.480 of 2009 in O.A.No.31 of 2009 for production of eight documents. Before the Debts Recovery Tribunal, the petitioner – Bank contended that the documents filed by them are sufficient to prove the claim and that the 1st respondent cannot decide about the documents to be filed by the petitioner and that except the documents executed by the 1st respondent, seeking production of other documents is unwarranted.

8.The Debts Recovery Tribunal, after taking into consideration the case of both parties, allowed the application in part by directing the petitioner – Bank to produce 1) application of the 1st defendant for credit limits; 2) sanction letter; 3) application and request of the borrower for adhoc limit and 4) sanction letter for adhoc facilities of Rs.1.50 crores. After the passing of the said order, the petitioner - Bank produced sanction letter dated 09.01.2008 and an application for request of Over Draft facility. However, contended that in respect of the temporary (adhoc) facility of Rs.1.50 crores, there was no written application and sanction and the same was granted only on oral request by the 1st defendant and as such, there is no document available with them. Challenging this order, the 1st respondent preferred an appeal in M.A.No.563 of 2010 before the Debt Recovery Appellate Tribunal, Chennai and the petitioner - Bank preferred an appeal in M.A.No.90 of 2013 before the Debt Recovery Appellate Tribunal.

9.In M.A.No.563 of 2010, the Debt Recovery Appellate Tribunal, by order dated 05.03.2014, allowed the appeal by directing the petitioner – Bank to produce all the eight documents sought for by the 1st respondent. So far as M.A.No.90 of 2013 is concerned, the Debt Recovery Appellate Tribunal, by order dated 05.03.2014, observed that in view of the orders passed in M.A.No.563 of 2010 no orders are necessary in M.A.No.90 of 2013.

10.It is pertinent to note that while allowing the appeal in M.A.No.563 of 2010, the Appellate Tribunal has not considered the case of both the parties, instead, has passed an order without assigning any reason. It is also relevant to extract the order dated 05.03.2014 passed by the Debt Recovery Appellate Tribunal in M.A.No.563 of 2010, which reads as follows:

> "It is seen that out of eight document sought for by the Appellant three have been ordered to be produced by the Ld. Presiding Officer. A reading of paragraph 4 of the order reveals that the reasons set out for the refusal of the other documents cannot be sustained and therefore it would be appropriate in the interest of justice that all the eight documents sought for by the appellant in IA.No.480/2009 in OA.No.31/2009 on the file of DRT-III Chennai are directed to be produced before the Tribunal below. Accordingly, the respondent bank is directed to produce all the eight documents sought for by the appellant in IA.No.480/2009 in OA.No.31/2009 on the file of the DRT-III Chennai before the Tribunal below."

11.Since the Appellate Tribunal has allowed the appeal without assigning any reason, the said order cannot be sustained. It is also pertinent to note that the 1st respondent has been filing petition after petition for keeping the O.A. pending. Though the O.A. was filed before the Debts Recovery Tribunal as early as in the year 2009, the same is still pending before the Debts Recovery Tribunal. The 1st respondent has filed several applications to drag on the matter for an indefinite period. When the O.A. was taken up for trial, filing an application for producing the documents itself would establish that the 1st respondent is bent upon prolonging the matter indefinitely.

12.It is settled position that the burden of proof lies only on the plaintiff to establish their case. When the petitioner – Bank had filed the O.A. for recovery of the amounts due from the defendants, the burden lies only on the Bank to prove their case by producing oral and documentary evidence. The 6th defendant cannot compel the Bank to produce the documents. In any event, pursuant to the order passed by the Debts Recovery Tribunal, the petitioner - Bank had produced two documents and contended that the other two documents are not available with them for the reason that the temporary Over Draft was sanctioned orally.

13.In these circumstances, for the reasons stated above, the order passed by the Debt Recovery Appellate Tribunal in M.A.No.563 of 2010 and M.A.No.90 of 2013 are set aside.

14.Since the petitioner – Bank had already produced two documents viz., the sanction letter dated 09.01.2008 and the application for request of Over Draft facility, the parties should establish their case based on the available evidence. Since the petitioner – Bank contended that the other two documents mentioned in the order passed by the Debts Recovery Tribunal are not available with them for the reason that only oral request and sanction was made in respect of temporary Over Draft, the order passed in respect of those two documents by the Debts Recovery Tribunal is also set aside.

15.With these observations, both the Civil Revision Petitions are allowed. Since the O.A. is pending for nearly ten years, we direct the Debts Recovery Tribunal – III, Chennai to dispose of the said O.A. as expeditiously as possible on merits and in accordance. No costs. Consequently, the connected miscellaneous petitions are closed.

(MRS.V.K.TAHILRAMANI, CHIEF JUSTICE.)   (M.DURAISWAMY)

30.10.2018

Index : Yes/No

Internet : Yes

Speaking /Non Speaking Order

va

THE HON'BLE
MRS.V.K.TAHILRAMANI
CHIEF JUSTICE
AND
M. DURAISWAMY,J.

va

C.R.P(PD).Nos.2429 & 2430 of 2014
and C.M.P.Nos.3219 & 3220 of 2016

30.10.2018