

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/2/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition Nos.1907 to 1914 of 2018

Mrs.Shirin Iqbal

rep. By her Power of Attorney

Mrs.Arjumand Abdullah.

... Petitioner in WP.Nos.1907 to 1910 of 2018

Mrs.Shirin Iqbal

...Petitioner in WP.No.1908,1909,1910 of 2018

Mrs.Munira Haroon

Rep.by Poa Mrs.Arjumand Abdullah

No.15, Rutland Gate 5th St.

Nungambakkam,

Chennai 34

...Petitioner in WP.No.1911 to 1914 of 2008

Vs

1. Indian Bank
Madras George Town Branch
No.155 Thambu Chetty Street
Chennai 600 001.
2. M/s. Hamosons Apparels (P) Ltd
No.18 Vannier Street
Chennai 600 001.
3. M/s. Hamosons Apparels (P) Ltd
A partnership firm
represented by its Partners
(Defendants 2, 4, 5 and 6)
Guindy
Chennai 600 097.
4. Mr.Abdul Razak Osman
5. Mr.Mohammed Hanif Osman
Mrs.Zubeida Osman (since deceased)
6. Mrs.Munira Haroon
7. The Registrar
Debts Recovery Appellate Tribunal
Chennai.

...Respondents in WP.No.1907 of 2018

- 1 Indian Bank
Madras George Town Branch No.155 Thambu
Chetty Street Chennai 1.
- 2 M/s.Hamosons A Partnership
Firm Rep by its Partners H.M. Centre No.
15A Nungambakkam High Road Chennai 34

Mrs.Zubeida Osman (since deceased)
- 3 Abdul Razak Osman
- 4 Mohammed Hanif Osman
- 5 Hamosons Apparels (P) Ltd.
Rep by its Partners (Defendants 3 to 5) H.M.
Centre No.15A Nungambakkam High Road
Chennai 34
- 6 Mrs.Munira Haroon
- 7 The Registrar
Debts Recovery Appellate Tribunal Chennai
...Respondents in WP.No.1908 of 2018

- 1 Indian Bank
Madras George Town Branch No.155 Thambu
Chetty Street Chennai 1.
- 2 M/s.Hanif Bros. A Partnership
Firm Rep by its Partners D5 to D8 H.M.
Centre No.15A Nungambakkam High Road
Chennai 34

Mrs.Zubeida Osman (since deceased)
- 3 Nargis Abdul Razak
- 4 Mohammed Hanif Osman
- 5 Mrs.Farzana Hanif Osman
- 6 Ms.Rizwana Abdul Razak
- 7 Abdul Razak Osman
- 8 Mrs.Munira Haroon Rep by her
Power of Attorney Mrs.Arjumand Abdullah
No.15 Rutland Gate 5th Street
Nungambakkam Chennai 34 permanently resi at
Madurai 625 002

- 9 M/s.Hamosons A Partnership
Firm Rep by its Partners (Defendants 1 3 4
and 5) No.51 North Phase Guindy Industrial
Estate Guindy Chennai 97
- 10 The Registrar
Debts Recovery Appellate Tribunal Chennai.
...Respondents in WP.No.1909 of 2018

- 1 Indian Bank
Madras George Town Branch No.155 Thambu
Chetty Street Chennai 1.
- 2 M/s.H.M.Hajee Moosa
60/1 Godown Street Madras 1
Mrs.Zubeida Osman (since deceased)
- 3 Nargis Abdul Razak
- 4 Mohammed Hanif Osman
- 5 Mrs.Farzana Hanif Osman
- 6 Ms.Rizwana Abdul Razak
- 7 Abdul Razak Osman
- 8 Mrs.Munira Haroon Rep by her
Power of Attorney Mrs.Arjumand Abdullah
No.15 Rutland Gate 5th Street
Nungambakkam Chennai 34 permanently resi at
Madurai 625 002

- 9 M/s.Hamosons
Rep by D3 D5 and D8 Hamosons Apparels
No.51 North Phase Guindy Industrial Estate
Guindy Chennai 97
- 10 The Registrar
Debts Recovery Appellate Tribunal Chennai.
...Respondents in WP.No.1910 of 2018

- 1 Indian Bank
Madras George Town Branch NO.155 Thambu
Chetty Street Chennai-600 001
- 2 M/s.Hamosons Apparels (P)
Ltd No.18 Vannier St Chennai-01 Also at
No.51 North Phase Guindy Industrial Estate
Guindy Chennai-97

- 3 M/s.Hamosons A Partnership
Firm rep by its Partners (Defendants 2 4 5
and 6) No.51 North Phase Guindy Industrial
Estate Guindy Chennai-97
- 4 Mr.Abdul Razak Osman
- 5 Mr.Mohammed Hanif Osman
Mrs.Zubeida Osman (since deceased)
- 6 Mrs.Shirin Iqbal
P.O.Box No.2756 Ajman United Arab Emirates
Having Res. at No.15 Rutland Gate 5th
Street Nungambakkam Chennai-34
- 7 The Registrar
Debts Recovery Appellate Tribunal Chennai
...Respondents in WP.No.1911 of 2018
- 1 Indian Bank
Madras George Town Branch NO.155 Thambu
Chetty Street Chennai-600 001
- 2 M/s.Hamosons A Partnership
Firm rep by its Partners H.M.Centre No.15A
Nungambakkam High Road Chennai-34 Mrs.
Zubeida Osman (Since Deceased)
Mrs.Zubeida Osman (since deceased)
- 3 Mr.Abdul Razak Osman
- 4 Mr.Mohammed Hanif Osman
- 5 Mr.Hamosons Appearls (P)
Ltd rep by its Partners (Defendants 3 to 5)
H.M.Centre No.15A Nungambakkam High Road
Chennai-34
- 6 Mrs.Shirin Iqbal
W/o.Mr.Iqbal Abdullah P.O. Box No.2756
Ajman United Arab Emirates Having Residence
at No.15 Rutland Gate 5th Street
Nungambakkam Chennai-34
- 7 The Registrar
Debts Recovery Appellate Tribunal Chennai
...Respondents in WP.No.1912 of 2018
- 1 Indian Bank
Madras George Town Branch NO.155 Thambu
Chetty Street Chennai-600 001

- 2 M/s.Hanif Bros.
A Partnership Firm rep by its Partners D5
to D8 H.M.Centre No.15A Nungambakkam High
Road Chennai-34 Mrs.Zubeida Osman (since deceased)
- 3 Nargis Abdul Razak
- 4 Mr.Mohammed Hanif Osman
- 5 Mrs.Farzana Hanif Osman
- 6 Ms.Rizwana Abdul Razak
- 7 Mr.Abdul Razak Osman
- 8 Mrs.Shirin Iqbal
W/o.Mr.Iqbal Abdullah P.O. Box No.2756
Ajman United Arab Emirates Having Residence
at No.15 Rutland Gate 5th Street
Nungambakkam Chennai-34
- 9 M/s.Hamosons A Partnership
Firm rep by its Partners (Defendants 1 3 4
and 5) No.51 North Phase Guindy
Industrial Estate Guindy Chennai-97
- 10 The Registrar
Debts Recovery Appellate Tribunal Chennai
...Respondents in WP.No.1913 of 2018
- 1 Indian Bank
Madras George Town Branch NO.155 Thambu
Chetty Street Chennai-600 001
- 2 M/s.H.M.Hajee Moosa
60/1 Godown Street Chennai-1 rep by its
Partners a) Abdul Razak Usman and b) Mohamed
Hanif Usman
Mrs.Zubeida Osman (Since Deceased)
- 3 Nargis Abdul Razak
- 4 Mr.Mohammed Hanif Osman
- 5 Mrs.Farzana Hanif Osman
- 6 Ms.Rizwana Abdul Razak
- 7 Mr.Abdul Razak Osman

- 8 Mrs.Shirin Iqbal
W/o.Mr.Iqbal Abdullah P.O.Box No.2756
Ajman United Arab Emirates having res. at
No.15 Rutland Gate 5th Street
Nungambakkam Chennai-34
- 9 M/s.Hamosons A Partnership
Firm rep by its Partners (Defendants 1 3 4
and 5) No.51 North Phase Guindy Industrial
Estate Guindy Chennai-97
- 10 The Registrar
Debts Recovery Appellate Tribunal Chennai

Prayer in W.P.No.1907 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records of the DRAT with respect to the order dated 20/10/2017 in A.I.R.No.507 of 2013 and quash the same as being non reasoned illegal and arbitrary and consequentially direct the DRAT to hear the appeal on merits.

WP.No.1908 of 2018:Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the DRAT with respect to the order dated 20.10.2017 in A.I.R. No. 508 of 2013 and quash the same as being non reasoned illegal and arbitrary and consequentially direct the DRAT to hear the appeal on merits.

WP.No.1909 of 2018::Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the DRAT with respect to the order dated 20.10.2017 in A.I.R. No. 509 of 2013 and quash the same as being non reasoned illegal and arbitrary and consequentially direct the DRAT to hear the appeal on merits

WP.No.1910 of 2018:Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the DRAT with respect to the order dated 20.10.2017 in A.I.R. No. 510 of 2013 and quash the same as being non reasoned illegal and arbitrary and consequentially direct the DRAT to hear the appeal on merits.

WP.No.1911 of 2018:Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the DRAT with respect to the order dated 20.10.2017 in A.I.R. No.511 of 2013 and quash the same as being non reasoned illegal and arbitrary and consequentially direct the DRAT to hear the appeal on merits.

WP.No.1912 of 2018:Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the DRAT with respect to

the order dated 20.10.2017 in A.I.R. No.512 of 2013 and quash the same as being non reasoned illegal and arbitrary and consequentially direct the DRAT to hear the appeal on merits.

W.No.1913 of 2018::Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the DRAT with respect to the order dated 20.10.2017 in A.I.R. No.513 of 2013 and quash the same as being non reasoned illegal and arbitrary and consequentially direct the DRAT to hear the appeal on merits.

WP.No.1914 of 2018::Writ petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the DRAT with respect to the order dated 20.10.2017 in A.I.R. No.514 of 2013 and quash the same as being non reasoned illegal and arbitrary and consequentially direct the DRAT to hear the appeal on merits.

For Petitioners... Mrs.Ananda Gomathy

For respondents... Mr.Jeyesh B.Dolia
for M/s. Aiyar & Dolia
for Indian Bank/R.1
in all WPs.

C O M M O N O R D E R

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

M/s. Hamosons Apparels (P) Ltd., Chennai, a partnership firm, borrowed loan from Indian Bank, Chennai, first respondent. One of the co-owners of the property, comprised in land and building, situated at No.2, Old No.15, Rutlan Gate, 5th Street, Nungambakkam, Chennai 600 034, Abdul Razak Osman, Managing Partner of Hamosons Apparels (P) Ltd., offered the said property, as security, in favour of Indian Bank, Asset Asset Recovery/Management Branch, Chennai.

2. Mrs.Shirin Iqbal, writ petitioner, in W.P.Nos.1907 to 1910 of 2017, executed a Deed of Guarantee, on 13/8/1991 and stood as guarantor, but according to the petitioner, the Deed of Guarantee has not been invoked and expired. Mrs.Munira Haroon, writ petitioner, in W.P.Nos.1911 to 1914 of 2017, also stood as guarantor, for the loan availed by M/s. Hamosons and also executed a Deed of Guarantee, on 13/8/1991.

3. For the default, Bank filed O.A.Nos.1214, 1371, 1217 of 2011 and 53 of 2004, respectively, before the Debts Recovery Tribunal - II, Chennai, impleading the borrower and the above said guarantors.

4. After adjudication, the Debts Recovery Tribunal, issued recovery certificate in each of the OAs as detailed hereunder:-

O.A.NO. (BEFORE DRT)	NAME OF THE BORRO- WER	SUIT AMOUNT	RECOVERY CERTIFI- CATE	DRAT APPEAL	CONDITI- ONAL ORDER AMOUNT PAID BY BORRO- -WER
O.A.No.121 4 of 2001	Hamasons Apparels (P) Ltd	80,6 1,223.27 + 59,73,682 1,11,34,944	2.51 crores with interest	459/2013	8,00,000/
O.A.No.137 1 of 2001	Hamosons	17.21 laks	61.00 lakhs	457/2013	4,50,000/
O.A.No.121 7 of 2001	Hanif Bros	31.31 lakhs	33.64 lakhs	458/2013	8,00,000/
O.A.No.53 of 2004	H.M.Haje e Moosa	4.86 lakhs	32 lakhs	460/2013	1,25,000/

5. Material on record discloses that being aggrieved by the final orders made in each of the original Applications, the borrower and guarantor have filed A.I.R.Nos.457 of 2013 to 460 of 2013, respectively.

6. Mrs. Shirin Iqbal, guarantor/writ petitioner in W.P.Nos.1907 to 1910 of 2018, filed I.A.Nos.855 to 858 of 2013 in A.I.R.Nos.507 to 510 of 2013 for waiver of pre-deposit. Mrs.Munira Haroon/writ petitioner in W.P.Nos.1911 to 1914 of 2018, filed I.A.Nos.871 to 874 of 2013, for waiver of pre-deposit.

7. Vide order, dated 21/9/2017, Debts Recovery Appellate Tribunal, Chennai, directed the appellants, viz., Mrs.Shirin Iqbal and Munira Haroon, to make a pre-deposit of Rs.8 lakhs, with the Registrar of the Tribunal, within a period of four weeks, from 21/9/2017. Debts Recovery Appellate Tribunal, Chennai, has further directed that in the event of failure in complying with the order on pre-deposit, the appeals shall stand dismissed, automatically without any further reference to the Tribunal and posted the matters, on 20/10/2017, for confirmation.

8 . Subsequently, on 20/10/2017, Debts Recovery Appellate Tribunal, has dismissed the appeals as hereunder:-

"Appellant counsel fairly concedes that he has not complied with the orders on pre-deposit and prays for some more time as they have preferred writ before Hon'ble High

Court.

In view of the fact that DRAT cannot entertain any appeal filed by any aggrieved person unless and until the appellant complies with the formalities on pre-deposit, also no stay order from Hon'ble High Court is produced today.

As pre-deposit is not complied with, hence appeal stands dismissed for want of compliance on pre-deposit.

It is made clear that if any direction is passed by Hon'ble High Court, this Tribunal will take up the matter suo-moto or by an application, as the case may be, for compliance."

9. Being aggrieved by the dismissal of the appeals, Mrs.Shirin Iqbal, has filed W.P.Nos.1907 to 1910 of 2018 and Mrs.Munira Haroon has filed W.P.Nos.1911 to 1914 of 2018.

10. One of the contentions raised in the instant writ petitions to set aside the orders impugned is that when the borrowers, had already made a pre-deposit of Rs.8 lakhs, as directed by the Debts Recovery Appellate Tribunal, there is no need for a direction to the guarantors, to make pre-deposit of Rs.8 lakhs, in each of the appeals, preferred by them.

11. By inviting the attention of this Court to the amount mentioned in the Debts Recovery Tribunal Certificate Rs.32 lakhs, submission was made that direction to the guarantors to make pre-deposit of Rs.8 lakhs each with the Registrar of the appellate forum, in addition to the direction issued to the borrowers to deposit would exceed the amount mentioned in the Debts Recovery Certificate.

12. It is also the contention of the learned counsel for the petitioners that the Tribunal has mechanically passed orders, both in I.As and A.I.Rs, without considering the contention of the guarantors that the conditional order has been complied with.

13. On the above submissions, yesterday, when the matter came up for hearing, we directed Ms.Ananda Gomathy, learned counsel for the petitioners, to file necessary documents to substantiate deposit made by the borrower.

14. Proceeding of the Debts Recovery Appellate Tribunal, dated 21/9/2017, in A.I.R.Nos.457 to 460 of 2013, submitted today, as proof of compliance by the borrower, are extracted hereunder:-

CASE No.	CAUSE TITLE	PROCEEDINGS
A.I.R.No.457 of 2013	M/s. Hamosons & Ors Vs. Indian Bank & Ors	Ld. Counsel Mr.K.Krishnamoorthy for Appellants present.
A.I.R.No.458 of 2013	M/s. Hanif Bros & Ors Vs. Indian Bank & Ors	Ld. Counsel Mr.M.P.Balasubramanian for R.1 Bank present.
A.I.R.No.459 of 2013	M/s. Homosons Apparels (P) Ltd & Ors Vs. Indian Bank & Ors	Order of Pre-deposit has been complied.
A.I.R.No.460 of 2013	M/s. H.M.Hajee Moosa & Ors Vs. Indian Bank & Ors.	Registry is directed to number the appeal. In view of the fact that order on pre-deposit has been complied with, parties are directed to maintain status-quo. List for final hearing on 15/11/2017.

15. Perusal of the proceeding, dated 21/9/2017, by the Debts Recovery Appellate Tribunal, Chennai, directing pre-deposit of Rs.8 lakhs, with the Registrar of the Tribunal shows that though a contention has been made by the learned counsel for the guarantors that the borrower has also challenged the final order made in S.A.No.37 of 2007 and complied with the pre-deposit and that there is no need for the guarantors, once again, to make pre-deposit, Debts Recovery Appellate Tribunal, Chennai, has not considered the said submission at all, on the other and, only taken note of the fact that the DRC is pending for Rs.32 lakhs and hence directed the guarantors, to make pre-deposit of Rs.8 lakhs, in each of the appeals filed.

16. Without adverting to the submission that pre-deposit has already been made by the borrowers, order has been passed. There cannot be any repetition of pre-deposit.

17. For the reasons stated supra, we are of the view that the order impugned in the instant writ petitions, deserve to be set aside and accordingly, set aside.

18. In the result, all the writ petitions are allowed. Registrar of the Debts Recovery Appellate Tribunal, Chennai, is directed to scrutinise the appeals filed by the guarantors, assign regular appeal numbers, if they are otherwise in order and place the same before the Debts Recovery Appellate Tribunal, Chennai, as expeditiously as possible. No costs.

mvs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

TO

1. Indian Bank
Madras George Town Branch
No.155 Thambu Chetty Street
Chennai 600 001.
2. The Registrar
Debts Recovery Appellate Tribunal
Chennai.

+1cc to M/s.Ananda Gomathy, Advocate Sr.No.13580

+1cc to M/s.Aiyar & Dolia, Advocate Sr.No.13533

SSV(co)

sm:22.3.2018

W.P.Nos. 1907 to 1914 of 2018

सत्यमेव जयते

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