IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.34140 of 2017 and
W.M.P.Nos.37928 &37929 of 2017

M/s. Challenger Leathers
Rep by its Managing Partner
R.L.Manoharan
No.6, 4th Street
Srirampuram
Ambur, Vellore District .. Petitioner

v.

1 The Manager
Indian Bank, Ambur Branch
Vellore District

2 C. Madanraj

3 B. Rajendra Babu .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records leading to the issue of the order dated 31.01.2017 in M.A.No.38 of 2010 on the file of the Chairperson DRAT, Chennai and quash the same and grant time for the petitioner to make the pre deposit under section 21 of the RDDB & FI Act.

For Petitioner : Mr.K.Sridhar
For Respondents: Mr.P.V.Muralidharan - for R1

Mr.Shanmugam - for R2
for M/s.Shanmugam Associates

No appearance - for R3

O R D E R

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

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records leading to the issuance of the order dated 31.01.2017 in M.A.No.38 of 2010 on the file of the Debt Recovery Appellate Tribunal, Chennai, to quash the same and grant time for the petitioner to make the pre-deposit under section 21 of the Recovery of Debts Due To Banks & Financial Institutions Act.

2. It is the case of the petitioner that they have challenged the order dated 11.06.2007 passed by the Debts Recovery Tribunal-III, Chennai in S.R.No.804 of 2007 in M.A.No.13 of 2007 in R.P.No.5 of 2007 in DRC No.21 of 2006 in T.A.No.1767 of 1997 and subsequently re-numbered as T.A.No.29 of 2007, by which M.A.No.13 of 2013 and two other un-numbered appeals in S.R.Nos.802 and 803 of 2007 were dismissed by the Debts Recovery Tribunal as infructuous.

3. As per section 21 of the Recovery of Debts Due To Banks & Financial Institutions Act, the Debt Recovery Appellate Tribunal cannot entertain any appeal without making the pre-deposit of 50% of the debt amount, which cannot be reduced less than 25% in any case.

4. It is also the case of the petitioner that they have already made deposit of Rs.36,00,000/- [Rupees thirty six lakhs only] as pre-deposit and was lying in "no lien account".

5. By order dated 29.06.2007, the Debt Recovery Appellate Tribunal, directed the petitioner to make pre-deposit of Rs.35,00,000/- [Rupees thirty five lakhs only]. Challenging the order passed by the Debt Recovery Appellate Tribunal, the petitioner filed a Writ Petition in W.P.No.32871 of 2007 and this Court, by order dated 11.10.2007, directed the petitioner to make deposit of Rs.36,00,000/-. Thereafter, at the instance of the petitioner, the Division Bench of this Court, by order dated 10.12.2007, extended the time for depositing the sum of Rs.36,00,000/- upto 15.12.2007.

6. Pursuant to the order passed by this Court, the petitioner deposited a sum of Rs.36,00,000/- with the bank on 13.12.2007. Thereafter, M.A.No.38 of 2010 came up for hearing before the Debt Recovery Appellate Tribunal and the Tribunal, by order dated 12.03.2015, dismissed the appeal for default on the same day .

7. On the same day (i.e.) on 12.03.2015, in I.A.No.1061 of 2015 filed by the 3rd respondent, the Debt Recovery Appellate Tribunal directed the 1st respondent bank to refund/return the amount lying in "no lien account" with the 1st respondent Bank along with accrued interest. Further, the Tribunal directed the 1st respondent Bank to disburse the amount lying in "No lien account" to the petitioner after 45 days.

8. Pursuant to the order passed by the Debt Recovery Appellate Tribunal, the petitioner got refund of the amount together with interest. After getting back the amount deposited by them from the Tribunal, there was no pre-deposit as contemplated under section 21 of the RDDB & FI Act, was available before the Debt Recovery Appellate Tribunal. In these circumstances, the Tribunal had dismissed the appeal for want of pre-deposit, which is a mandatory provision under the Act.

9. The learned counsel appearing for the 2nd respondent submitted that the property belonging the petitioner was brought to sale and the auction purchaser had purchased the same and a sale certificate was also issued in his favour on 22.06.2007 itself. Further, the learned counsel submitted that the petitioner has filed the application before the Tribunal even without making the auction purchaser as a party.

10. Even after a lapse of 11 years from the date of issuance of sale certificate in favour of the auction purchaser, the petitioner has not made the pre-deposit before the Debt Recovery Appellate Tribunal. The conduct of the petitioner would only establish that they are prosecuting the matter only for dragging on the matter for an indefinite period. Since the petitioner has not made the pre-deposit as contemplated under section section 21 of the RDDB & FI Act, the appeal was rightly rejected by the Debt Recovery Appellate Tribunal.

11. In these circumstances, we do not find any reason to interfere with the order passed by the Debts Recovery Appellate Tribunal. The Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Manager
   Indian Bank, Ambur Branch
   Vellore District

2. The Debt Recovery Appellate Tribunal
   Chennai.

+2 ccs to M/s.Sridhar Associates sr 68408

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