IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.25155 of 2018 and
W.M.P.No.29231 of 2018

Tamil Nadu Cooperative Marketing Federation Ltd
Represented by its Secretary
No.91 St. Marys Road
Chennai - 600 018

.. Petitioner

vs.

1 The Registrar
Debt Recovery Appellate Tribunal
Chennai

2 Asset Reconstruction Company (India) Ltd
Shrepati Arcade
August Kranti, Marg
Nana Chowk
Mumbai 400 036

3 Maxwell Exim Foods Ltd.
Rayala Towers 781 Anna Salai
Chennai - 600 002

4 Sri G.Balakrishran
5 Srimathi B.Dara
6 M.S.Mani
7 S.Madhusudhanan
8 C.Rajaraman
9 V.P.Haran
10 K.Sai Jagannathan
11 A.V.Anand

12 Well Stores (Madras) Private Ltd
Anna Arivalayam
2nd Floor, 268 Anna Salai
Chennai - 600 018

13 State Bank of Hyderabad
56, Cathedral Road
Chennai - 600 086

14 The Bank of Rajasthan Ltd
191, N.S.C.Bose Road
Chennai - 600 001

15 Smt.Hemamalini
16 Ms.Kavitha
17 Sri.Satish
18 Smt.A.Shanthi
19 A.Arunraj
20 Minor A.Kirithika
D/o.Late A.V.Anand
Rep by Mother & Natural Guardian
Smt.A.Shanthi

21 Smt.V.Chandralekha .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the Debt Recovery Appellate Tribunal, Chennai, the 1st respondent herein vide Proceedings dated 24.8.2018 in I.A. No.806 of 2018 in AIR No. 641 of 2017 (OA No. 408 of 2001-on the file of DRT II - Chennai) on the file of the said Appellate Tribunal and quash the order passed in I.A. No.806 of 2018 so far it relates to the direction to this petitioner Tamil Nadu Cooperative Marketing Federation Ltd. represented by its Secretary, Chennai to make a pre-deposit of Rs.40 crores with the Registrar of the Debt Recovery Appellate Tribunal Chennai out of which Rs.20 crores to be paid first by the Appellant the petitioner herein within four weeks from 24.8.2018 as 1st part payment and 2nd part of payment of Rs.20 crores to be paid in another four weeks thereafter and "in the event of failure, Appeal shall stand dismissed automatically for want of mandatory compliance and I.A.No.7806 of 2018, application for waiver comes disposed of" and quash the e same and direct the Debts Recovery Appellate Tribunal the first respondent here in to hear and dispose the appeal of this petitioner, Tamil Nadu Cooperative Marketing Federation Ltd., (TANFED) without making any deposit amount.

For Petitioner : Mr.A.E.Chellaiah
for J.Milton Arul Rajendran

For Respondents : Mr.AR.L.Sundaresan, Senior Counsel
for Mr. Akhil Bhamsali - for R2

ORDER

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

The above writ petition has been filed by the petitioner to issue a Writ of Certiorarified Mandamus to call for the records of the Debt Recovery Appellate Tribunal, Chennai, vide proceedings dated 24.8.2018 in I.A. No.806 of 2018 in AIR No. 641 of 2017 (OA No. 408 of 2001) on the file of the Debts Recovery Tribunal II, Chennai and to quash the same in so far it relates to the direction to the petitioner to make a pre-deposit of Rs.40 crores in two installments with the Registrar of the Debt Recovery Appellate Tribunal, Chennai.

2.1 It is the case of the petitioner that they entered into an agreement with the 3rd respondent for the procurement of raw cashew nets. Since there was breach of the terms of the agreement, a Civil Suit in C.S.No.304 of 1997 was filed against the 3rd respondent and 2 others for recovery of a sum of Rs.9,30,64,953/- [Rupees nine crores thirty lakhs sixty four thousand nine hundred and fifty three only] with interest and there was attachment before the judgment of the properties of the defendants. The suit was decreed on 13.12.2002.

2.2 According to the petitioner, when the order of attachment was in force, the Indian Bank filed O.A.No.408 of 2001 against the respondents 3 to 21 before the Debts Recovery Tribunal for the recovery of the loan amount. Subsequently, by an assignment agreement, the loan account was transferred in favour of the 2nd respondent, who got substituted in the place of the Indian Bank. Subsequently, the 2nd respondent brought the property for sale.

2.3 The petitioner filed a petition in O.A.No.408 of 2001 before the Debts Recovery Tribunal to get themselves impleaded. However, the petitioner was not impleaded in O.A.No.408 of 2001. The Debts Recovery Tribunal passed an order on 31.03.2017 allowing the O.A.No.408 of 2001

2.4 Challenging the order passed by the Debts Recovery Tribunal, the petitioner preferred an appeal before the Debt Recovery Appellate Tribunal along with an application in I.A.806 of 2018 to waive the pre-deposit.

3. The Debts Recovery Tribunal II, Chennai decreed the O.A.No.408 of 2001 for a sum of Rs.147.63 crores against the borrowers and guarantors.

4. Admittedly, the petitioner was not a party to the proceedings pending before the Debts Recovery Tribunal II,

Chennai. In such circumstances, the petitioner sought for total waiver of the pre-deposit, which is a mandatory provision under section 18 of the SARFAESI Act.

5. The Debt Recovery Appellate Tribunal, Chennai, by order dated 24.08.2018, directed the petitioner to make pre-deposit of Rs.40 crores with the Registrar of the Tribunal in two installments of Rs.20 crores each. Challenging this order, the petitioner has filed the writ petition.

6. The learned Senior Counsel appearing for the petitioner submitted that since the petitioner is not a party to the proceedings before the Debts Recovery Tribunal, the petitioner should not be called upon to pay a sum of Rs.40 crores as pre-deposit.

7. As per section 18 of the SARFAESI Act, even if the petitioner is neither a borrower nor a guarantor and if he is aggrieved over the order passed by the Debts Recovery Tribunal, he should file an appeal only as per the provisions of the section 18 of the SARFAESI Act. Section 18 of the SARFAESI Act, does not give any exemption to the third parties in making the pre-deposit. As per section 18 of the SARFAESI Act, any person aggrieved, over the order passed by the Debts Recovery Tribunal is liable to make pre-deposit.

8. When the 2nd respondent has obtained a decree against the borrowers, the rights of the petitioner in intervening in the proceedings itself is questionable. The 2nd respondent is the secured creditor, who got every right to recover the outstanding amounts from the defaulting borrowers. Since the petitioner has filed an appeal before the Debt Recovery Appellate Tribunal, we are not giving any finding with regard to the rights of the petitioner.

9. So far as the properties mortgaged with the 2nd respondent are concerned, they have every right to proceed against the said properties. The pre-requisite condition for entertaining of appeal is that the appellant has to deposit 50% of the amount as determined by the Debts Recovery Tribunal or as claimed by the secured creditor whichever is less. The Appellate Tribunal has power to reduce the amount of deposit to not less than 25% for which reasons have to be recorded in writing. The requirement of pre-deposit under sub-section (1) of Section 18, is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in section 18 of the Act. The right to appeal is neither an absolute right nor an inherent of natural justice. The right to appeal is a statutory right and it can be circumscribed by the condition in its grant. The right of appeal is a creature

of the statute. Without a statutory provision, creating such a right, persons aggrieved is not entitled to file an appeal. The legislature while granting right of appeal can impose conditions for exercise of such right. In the absence of any special reasons, there powers to be no legal or constitutional impediment to the imposition of such conditions. Once an appeal under section 18 is filed, the applicant will have to comply with the order passed by the Debt Recovery Appellate Tribunal as regards the compliance to the pre-deposit condition.

10. In these circumstances, we are of the considered view that the order passed by the Debt Recovery Appellate Tribunal is just and proper. We do not find any reason to interfere with the order passed by the Tribunal. The Writ petition is dismissed. No costs. Consequently, Consequently, the connected miscellaneous petition is closed.

11. After the pronouncement of the order, the learned Senior Counsel appearing for the petitioner orally sought for leave to file an appeal to the Hon'ble Supreme Court of India. But the learned Senior Counsel is not able to make out a case that substantial question of law of public importance arise in this writ petition. Hence, we do not find any reason to grant leave. Accordingly, the request made by the learned Senior Counsel for the petitioner is rejected.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Rj
To

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Debt Recovery Appellate Tribunal
Chennai

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6 The Bank of Rajasthan Ltd
191, N.S.C.Bose Road
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+1cc to Mr.J.Milton Arul Rajandran, Advocate, S.R.No.66458
+1cc to Mr.Akhil Bhamsali, Advocate, S.R.No.66718

W.P. No.25155 of 2018 and
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PP(CO)
GSP(11/10/2018)