IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.25226 of 2018

and W.M.P.Nos.29337 and 29338 of 2018

1. M/s.Durga Arts,
   Old No.42,New No.20,
   Siddi Vinayagar Kovil Street,
   T.Nagar, Chennai-17
   rep. by its Sole Proprietor.

2. P.Palani,
   Pro. M/s.Durga Arts,
   Old No.42,New No.20,
   Siddi Vinayagar Kovil Street,
   T.Nagar, Chennai-17.

3.Shahul Hameed

4.M.Annamalai

5.S.Kumarasamy

6.S.Vettrivelan

7.P.Amutha .. Petitioners

Vs.

1. Central Bank of India,
   Chandramukhi, Nariman Point, Mumbai,
   Having Branches amongst other places at
   AC-10, II Avenue, Annanagar West,
   Chennai-600 040, herein represented by its
   Principal Officer & Senior Manager.

2. The Registrar,
   Debts Recovery Tribunal-I,
   6th Floor, Deva Towers,
   770-A, Anna Salai,
   Chennai – 600 002.

3.The Registrar,
Debts Recovery Appellate Tribunal, Chennai,
IV Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records pertaining to the order dated 11.8.2017 in R.A.No.25 of 2016 on the file of the Debt Recovery Appellate Tribunal, Chennai and quash the same.

For Petitioners : Mr.P.V.Balasubramaniam

For Respondents : Mr.B.Thilak Narayanan for 1st respondents
R2 & R3 - Tribunal

O R D E R

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

The petitioners have filed the above writ petition to issue a Writ of Certiorari calling for the records pertaining to the order dated 11.8.2017 in R.A.No.25 of 2016 on the file of the Debt Recovery Appellate Tribunal, Chennai and to quash the same.

2. The 1st respondent Bank has filed O.A.No.29 of 2007 on the file of the Debts Recovery Tribunal-I, Chennai under Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 against the petitioners for recovery of a total sum of Rs.1,49,34,261.32 together with interest. The Debts Recovery Tribunal-I, Chennai, by an order dated 15.7.2016 passed a decree declaring that borrowers have paid a sum of Rs.1,49,34,261.32 towards the loan account, hence, they have fully discharged their liability of repayment and decreed the Original Application only for pendente lite and future interest at the rate of 9% per annum.

3. The 1st respondent Bank has challenged the order passed by the Debts Recovery Tribunal-I, Chennai by way of appeal before the Debt Recovery Appellate Tribunal stating that the borrowers have paid only a sum of Rs.1,03,25,000/-, whereas the amount due from them was Rs.4,32,53,580.75. The Debt Recovery Appellate Tribunal, Chennai, by an order dated 11.8.2017, partly allowed the appeal by modifying the order passed by the Debts Recovery Tribunal-I, Chennai by passing a decree for a sum of Rs.1,49,34,261.32. Further, the Debt Recovery Appellate Tribunal, Chennai, observed that payments made by the borrowers in the loan account in the preceding years shall be first adjusted against the interest, then remaining will be adjusted

towards the principal amount The Debt Recovery Appellate Tribunal, Chennai also observed that the parties are not prevented to settle the matter amicably for the reason that the 1st respondent Bank had offered OTS of Rs.109 lakhs, which was ultimately agreed by the borrowers. Challenging the order passed by the Debt Recovery Appellate Tribunal, Chennai, the borrowers have filed the above writ petition.

4. It is pertinent to note that by a letter dated 17.8.2016, the petitioners have submitted their OTS proposal for Rs.101 lakhs. By their reply dated 18.11.2016, the 1st respondent Bank informed the petitioners that their higher authorities have advised them to improve the offer to Rs.109.52 lakhs and also requested the petitioners to give their consent so as to recommend the same to their higher authorities for approval. Subsequently, by a letter dated 23.11.2016, the petitioners have increased their OTS proposal from Rs.101 lakhs to Rs.103 lakhs. For this proposal, by a reply letter dated 30.11.2016, the 1st respondent Bank again informed the petitioners that their higher authorities have advised them to improve the offer to Rs.109.52 lakhs. Even in the letter dated 30.11.2016, the 1st respondent Bank requested the petitioners to give their consent so as to recommend the same to their higher authorities for approval. Thereafter, the petitioners gave another OTS proposal enhancing the offer to Rs.105 lakhs from Rs.103 lakhs by their letter dated 09.12.2016. Again by their reply letter dated 16.12.2016, the 1st respondent Bank informed the petitioners that any OTS offer for the amount less than Rs.109.52 lakhs was not acceptable and advised the petitioners to improve their offer to Rs.109.52 lakhs. On receipt of this reply letter, by a letter dated 19.12.2016, the petitioners have accepted the OTS amount of Rs.109.52 lakhs.

5. Having received the letter of acceptance from the petitioners, the 1st respondent Bank, for the reasons best known to them, kept quite till 28.8.2017 and by their letter dated 28.8.2017 rejected the OTS proposal given by the petitioners informing them that the OTS proposal was not accepted by their higher authorities.

6. It is also pertinent to note that the Debts Recovery Tribunal-I, Chennai, by the order dated 15.7.2016, recorded that the petitioners have discharged their entire liability. In the appeal preferred by the 1st respondent Bank before the Debt Recovery Appellate Tribunal, Chennai, the Debt Recovery Appellate Tribunal decreed the claim made by the 1st respondent Bank by the order dated 11.8.2017.

7. Rejection of OTS proposal was made on 28.8.2017 i.e., after the pronouncement of the order by the Debt Recovery

Appellate Tribunal., Chennai. When the petitioners have accepted the amount of Rs.109.52 lakhs towards the OTS amount on 19.12.2016 itself, for no reason, the 1st respondent Bank kept quite for eight months for taking a decision. Probably the 1st respondent Bank decided to reject the proposal after the pronouncement of the order by the Debt Recovery Appellate Tribunal. The 1st respondent Bank had changed their mind and rejected their own offer of Rs.109.52 lakhs. When the 1st respondent Bank has repeatedly stated in their reply to the OTS proposals given by the petitioners that their higher authorities have advised the borrowers to increase the proposal to Rs.109.52 lakhs, the 1st respondent Bank cannot go back and take a different stand that too after a lapse of eight months. When the petitioners have accepted the figure stated by the 1st respondent Bank i.e., Rs.109.52 lakhs by their letter dated 19.12.2016 itself, in all fairness, the 1st respondent Bank should have accepted the proposal and asked the petitioners to make payment of the said amount. For the fault committed by the 1st respondent Bank, the petitioners cannot be penalised.

8. In these circumstances, we are of the considered view that the petitioners can be directed to pay the said amount of Rs.109.52 lakhs together with interest at the rate of 9% per annum from 16.12.2016 till the date of actual payment. Accordingly, we direct the petitioners to pay the sum of Rs.109.52 lakhs together with interest at the rate of 9% per annum from 16.12.2016 till the of actual payment.

9. The learned counsel appearing for the petitioners submitted that the petitioners have paid a total sum of Rs.45 lakhs during last six months period towards the loan account. In view of the above, the petitioners are directed to make the payment as stated above after deducting the sum of Rs.45 lakhs from the total amount.

10. With these observations, the writ petition is disposed of. The petitioners are directed to make the payment as mentioned above within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.Nos.29337 and 29338 of 2018 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Principal Officer & Senior Manager.
   Central Bank of India,
   Chandramukhi, Nariman Point, Mumbai,
   Having Branches amongst other places at
   AC-10, II Avenue, Annanagar West,
   Chennai-600 040,

2. The Registrar,
   Debts Recovery Tribunal-I,
   6th Floor, Deva Towers,
   770-A, Anna Salai,
   Chennai - 600 002.

3. The Registrar,
   Debts Recovery Appellate Tribunal, Chennai,
   IV Floor, Indian Bank Circle Office,
   55, Ethiraj Salai,
   Chennai - 600 008.

+1cc to Mr.P.V.Balasubramaniam, Advocate, S.R.No.75641
+1cc to M/S.T.M.Hariharan, Advocate, S.R.No.75119

W.P.No.25226 of 2018

GJII(Co)
CS/02/11/2018