IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.29538 of 2018

1.Dr.Zubaida Begum
2.Dr.Akthar Hussain ...Petitioners

Vs.

1.Indian Bank,
rep. by its Manager,
Guindy Branch,
Chennai - 600 032.

2.The Chief Manager,
Indian Bank,
Asset Recovery Management Branch,
Wellington Estate,
No.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 10.8.2018 and 07.9.2018 in I.A.No.1376 of 2009 in AIR (SA) No.779 of 2009 passed by the Debt Recovery Appellate Tribunal-II, Chennai and quash the same as illegal arbitrary and untenable.

For Petitioners : Mr.S.Sethuraman

For Respondents : Mr.Jayesh B.Dolia
for M/s.Aiyar and Dolia

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 to call for the records pertaining to the orders dated 10.8.2018 and 7.9.2018 in I.A.No.1376 of 2009 in

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AIR (SA) No.779 of 2009 passed by the Debt Recovery Appellate Tribunal-II, Chennai and quash the same.

2. Challenging the order passed in S.A.No.75 of 2008 on the file of the Debts Recovery Tribunal-II, Chennai, the petitioners have preferred appeal in AIR (SA) No.779 of 2009 before the Debt Recovery Appellate Tribunal, Chennai. In the said appeal, the petitioners have filed an application in I.A.No.1376 of 2009 for waiver of pre-deposit.

3. The petitioners have filed the appeal in S.A.No.75 of 2008 challenging the notice dated 22.8.2002 and 17.9.2007 issued by the respondent Bank. The Debts Recovery Tribunal-II, Chennai, by an order dated 06.5.2009, dismissed S.A.No.75 of 2008 which has been challenged in AIR (SA) No.779 of 2009 before the Debt Recovery Appellate Tribunal, Chennai.

4. Notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act') dated 22.8.2002 was issued by the respondent Bank claiming a sum of Rs.2.37 Crores and the Original Application filed by the respondent Bank was also decreed for a sum of Rs.2.37 Crores with further interest. The Debt Recovery Appellate Tribunal, Chennai directed the petitioners to make pre-deposit of Rs.3.00 Crores in two equal instalments. The first instalment within four weeks from the date of the order and the second instalment within four week from the date of making the first instalment payment. While arriving at the said figure, the Debt Recovery Appellate Tribunal, Chennai took into consideration that in the year 2010 a sum of Rs.21.00 Crores was due and payable by the petitioners and it would have become more than Rs.30.00 Crores. Challenging the said order passed by the Debt Recovery Appellate Tribunal dated 10.8.2008 directing the petitioners to make the pre-deposit of Rs.3.00 Crores, the petitioners have filed the above writ petition.

5. When the matter is taken up for hearing, the learned counsel for the petitioners submitted that instead of going into the merits of the order passed by the Debt Recovery Appellate Tribunal, it would be suffice to grant three weeks time to the petitioners to make the pre-deposit as directed by the Debt Recovery Appellate Tribunal, Chennai and the amount may be kept in an interest bearing no lien account with the respondent Bank.

6. Mr.Jayesh B.Dolia, learned counsel appearing for the respondent Bank submitted that the respondents have no objection to the petitioners depositing the amount of Rs.3.00 Crores in a interest bearing no lien account with the respondent Bank.

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7. In view of the submissions made by the learned counsel appearing on either side, without going into the merits of the matter, we grant three weeks time to the petitioners to make the pre-deposit of Rs.3.00 Crores with the respondent Bank and the respondent Bank is directed to deposit the said sum of Rs.3.00 Crores in an interest bearing no lien account till the disposal of the appeal in AIR (SA) No.779 of 2009. On such deposit being made within the said period, the order passed by the Debt Recovery Appellate Tribunal, Chennai dated 07.9.2018 shall stand set aside and the Debt Recovery Appellate Tribunal, Chennai is directed to decide the appeal filed by the petitioners on merits and in accordance with law. The order dated 10.8.2018 is modified as stated above. We also direct the Debt Recovery Appellate Tribunal, Chennai to pass appropriate orders with regard to the deposit of Rs.3.00 Crores lying with the respondent Bank while passing orders in the appeal.

8. With the above observations, the writ petition is disposed of. No costs.

bbr

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

To
1.Debt Recovery Appellate Tribunal - II,
Chennai.

2.The Manager,
Indian Bank,
Guindy Branch,
Chennai - 600 032.

3.The Chief Manager,
Indian Bank,
Asset Recovery Management Branch,
Wellington Estate,
No.55, Ethiraj Salai,
Chennai - 600 008.

+1cc to M/s.S.Sethuraman, Advocate, S.R.No.85596
+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.85422

W.P.No.29538 of 2018

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