

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.10.2018

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

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.26249 & 26230 of 2018 and
W.M.P.Nos.30659 & 30471 of 2018

1.M/s.Sekar Stores Home Mart
rep by its Partner S.V.S.Manivannan
No.37, Arcot Road,
Kodambakkam, Chennai - 600 024.

2.S.V.S.Manivannan ... Petitioners in both W.Ps

Vs.

1.The Authorized Officer,
Pridhvi Asset Reconstruction & Securitisation
Company Ltd.,
Door No.8-2-622/5/A/3, 3rd Floor,
Indira Towers, Road No.10,
Banjara Hills, Hyderabad - 500 034.

2.The Debts Recovery Appellate Tribunal,
At Chennai, 4th Floor, Indian Bank Building,
No.55, Ethiraj Salai, Egmore,
Chennai - 600 008. ... Respondents in both W.Ps

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent made in AIR (SA). Nos.154 & 156 of 2018 dated 03.09.2018 and quash the same and directing the 3rd respondent to take the appeals filed by the petitioners without insisting on the mandatory deposit in terms of 2nd proviso to Section 18 of SARFAESI Act and to decide the case on merits and in accordance with law.

For Petitioners : Mr.Silambanan, Senior Counsel
(in both W.Ps) for M/s.J.Arun Prasad

For Respondents : Mr.Srinath Sridevan (R1)
(in both W.Ps) R2 - Tribunal

C O M M O N O R D E R
(Order of the Court made by M.DURAI SWAMY, J.)

Since the issues involved in both the Writ Petitions are identical and between the same parties, the Writ Petitions are disposed of by this common order.

2.The petitioners have filed the Writ Petitions to issue writs of certiorarified mandamus to call for the records of the 2nd respondent made in AIR (SA).Nos.154 & 156 of 2018 dated 03.09.2018 and to quash the same and to direct the 3rd respondent to take up the appeals filed by the petitioners without insisting on the mandatory deposit in terms of 2nd proviso to Section 18 of SARFAESI Act and to decide the case on merits and in accordance with law.

3.Challenging the orders passed in S.A.Nos.115 & 116 of 2013 on the file of the Debts Recovery Tribunal - III, Chennai, the petitioners filed appeals in AIR (SA).Nos.154 & 156 of 2018 respectively. In the said appeals, the petitioners filed I.A.No.483 of 2018 in AIR (SA).No.154 of 2018 and I.A.No.487 of 2018 in AIR (SA).No.156 of 2018 for waiver of pre-deposit. In both the appeals pending on the file of the Debt Recovery Appellate Tribunal, the petitioners have challenged the orders passed by the Debts Recovery Tribunal - III, Chennai, which affirmed the possession notices issued by the respondent - Bank. In AIR (SA).No.154 of 2018, the Debt Recovery Appellate Tribunal directed the petitioners to make a pre-deposit of Rs.1 crore. While arriving at the sum of Rs.1 crore, the Tribunal found that the petitioners are liable to pay a sum of Rs.8 crores after giving credit to all the payments made by them. Similarly, in AIR (SA).No.156 of 2018, the Tribunal directed the petitioners to make a pre-deposit of Rs.1.90 crores on the basis of the notice amount (i.e.) Rs.7.60 crores.

4.Admittedly, a Section 13(2) notice dated 11.01.2013 was issued for a sum of Rs.4.12 crores and another 13(2) notice dated 11.01.2013 for a sum of Rs.7.60 crores.

5.It is also brought to the notice of this Court that the petitioners' property was sold in the auction for a sum of Rs.7.2 crores and that the petitioners have challenged the sale before the Debts Recovery Tribunal. When the petitioners have challenged the sale of the property, they cannot now contend that the sale proceeds should be adjusted in the outstanding loan amount.

6.The learned senior counsel appearing for the petitioners submitted that the respondent - Bank had issued two Section 13 (2) notices dated 11.01.2013 claiming a total sum of Rs.11.72 crores.

7. In paragraph - 13 of the affidavit filed in support of the Writ Petitions, the petitioners have stated that the property was sold for a sum of Rs.7 crores and an additional sum of Rs.1.5 crores, in all, Rs.8.5 crores was paid to the respondent on 13.09.2013 in both the accounts. Apart from the same, the petitioners had deposited a further sum of Rs.60 lakhs as per the orders of the Tribunal and a further sum of Rs.25 lakhs as per the directions of this Court in W.P.No.6313 of 2017 dated 15.03.2017. The learned senior counsel submitted that a sum of Rs.9.35 crores, in both the accounts, has been paid by the petitioners so far to the respondent - Bank.

8. From the averments stated in the affidavit filed in support of the Writ Petitions, it is clear that the petitioners have also included the sale proceeds in the total sum of Rs.9.35 crores claimed to have been paid by them. When the petitioners have challenged the sale before the Debts Recovery Tribunal, the sale proceeds cannot be added to the payments made by the petitioners.

9. The learned senior counsel appearing for the petitioners submitted that the petitioners need not have to make any pre-deposit for the reason that they have almost cleared the entire outstanding amounts.

9.1. In support of his contention, the learned senior counsel relied upon the judgment reported in AIR 2012 Madras 57 [Sivakumar Textiles Vs. Debt Recovery Appellate Tribunal, Chennai and others] wherein the Division Bench of this Court held that "the amount of debt due from the borrower as claimed by the secured creditor" would have no other meaning except the amount claimed in the notice under Section 13(2). Further, the Division Bench held that the amount of debt due would be the amount specified in the notice under Section 13(2) ignoring the interest component.

10. Countering the submissions made by the learned senior counsel for the petitioners, the learned counsel appearing for the respondent - Bank submitted that the Debt Recovery Appellate Tribunal, after taking into consideration the outstanding amount payable by the petitioners, have rightly directed the petitioners to make a pre-deposit of 25% of the claim made in Section 13(2) notice. Further, the learned counsel submitted that the Tribunal should also take into consideration the interest on the outstanding amount payable by the petitioners.

10.1. In support of his contentions, the learned counsel relied upon the judgment reported in IV (2016) BC 1 (DB) (Bom.) [MRB Roadconst. Pvt. Ltd., Vs. Rupee Co-op. Bank Ltd.] wherein the Division Bench of Bombay High Court, considering the judgment of this Court reported in AIR 2012 Madras 57 [Sivakumar

Textiles Vs. Debt Recovery Appellate Tribunal, Chennai and others] cited supra, held that when interest is specifically included in the definition of the word "debt", the same should not be excluded while determining the amount that has to be taken into consideration for the purpose of arriving at the figure to be deposited by the borrower in the 2nd proviso to Section 18 of the SARFAESI Act. Further, the Division Bench held as follows:

"...

13. To understand the present controversy, it would be necessary to refer to the provisions of section 18 of the SARFAESI Act. Section 18 reads as under:-

"18. Appeal to Appellate Tribunal.--(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under Section 17, may prefer an appeal along with such fee, as may be prescribed to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder." (emphasis supplied)

14. Section 18(1) provides that any person aggrieved by any order made by the DRT under section 17, may prefer an appeal to the DRAT within 30 days from the date of receipt of the order of the DRT. The 1st proviso stipulates that different fees may be prescribed for filing an appeal by a borrower and by a person other than the borrower. The 2nd proviso, and which is really germane for our purposes, inter alia stipulates that no appeal shall be entertained unless the borrower has deposited with the DRT fifty

per cent of the amount of debt due from him as claimed by the secured creditors, or determined by the DRT, whichever is less. The 3rd proviso gives power to the DRAT to reduce the deposit amount from 50% to 25% provided reasons for the same are recorded in writing by the DRAT. As stipulated in the 3rd proviso, the DRAT has no power to reduce the amount of deposit less than 25% of the debt referred to in the 2nd proviso. Section 18(2) stipulates that save or otherwise provided in the Act, the DRAT shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the "RDDB Act") and the Rules made thereunder.

15. Since the 2nd proviso to section 18 stipulates that the borrower has to deposit 50% of the amount of debt due from him, it would also be apposite to refer to the definition of the word "debt" appearing in section 2(ha) of the SARFAESI Act and which reads as under :-

"(ha) 'debt' shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act 1993 (51 of 1993);"

16. As can be seen from the definition, the word "debt" shall have the meaning assigned to it in clause (g) of section 2 of the RDDB Act. Section 2(g) of the RDDB Act reads thus:-

"(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;"

17. On an ex-facie reading of the said definition, it is clear that the word "debt" has been given an extremely wide meaning and means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution during the course of any business activity undertaken by such bank or financial institution under any law for the time being in force, in cash or

otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.

18. On a plain reading of the 2nd proviso to section 18(1) of the SARFAESI Act read with the definition under the word "debt" as defined in section 2(g) of the RDDB Act, it is clear that before an appeal can be entertained by the DRAT, the borrower has to deposit 50% of the amount of debt due from him as claimed by the secured creditors or as determined by the DRT whichever is less. If there is no determination of the debt by the DRT under the provisions of the RDDB Act, then the borrower would have to deposit 50% of the amount of debt due from him as claimed by the secured creditors. The provision on a plain reading does not in any way exclude taking into consideration the future interest that is accrued on the debt owed by the borrower to the secured creditor. In fact, the definition of the word "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution. Therefore, if the claim made by the secured creditor in the section 13(2) notice includes future interest, the same would certainly be included in the "amount of the debt due" from the borrower to the secured creditor as contemplated under the 2nd proviso to section 18(1) of the SARFAESI Act. There is therefore no justification to hold that it is only the figure that is mentioned in the section 13(2) notice that is to be taken into consideration and not the future interest accrued on the said sum, whilst determining the deposit amount under the 2nd proviso to section 18 of the SARFAESI Act. The amount of deposit would have to be determined on the basis of the amount of debt due by the borrower to the secured creditor on the date when the appeal is filed in DRAT. This would not only include the amount mentioned in the section 13(2) notice but also interest accrued thereon till the date of filing of the appeal under section 18 of the SARFAESI Act. To our mind, this is the only interpretation that is possible of the 2nd proviso to section 18 of the SARFAESI Act. If we were to accept the contention of the Petitioner that the amount to be deposited by the borrower [under the 2nd proviso to section 18(1)] would be only on the basis of the sum/figure as mentioned in the section 13(2) notice and not the interest accrued thereon after the date of the said notice, the same would be violating the plain

language of the statute. To interpret the 2nd proviso to section 18(1) in this fashion, to our mind, would clearly violate the plain and unambiguous language of the said section.

...
22. Having said this, we shall now deal with the judgments relied upon by Mr Shah. The first judgment relied upon by Mr Shah was a decision of the Madras High Court in the case of Sivakumar Textiles, AIR 2012 Madras 57. On careful perusal of the aforesaid decision, what can be culled out therefrom is that the amount of "debt due from the borrower as claimed by the secured creditor" would have no other meaning except the amount claimed in the notice under section 13(2). We have no difficulty in accepting the aforesaid proposition. However, the question still remains whether the amount claimed in the 13(2) notice would be inclusive of future interest or otherwise. If the claim for future interest has been made in the notice under section 13(2), then the same would certainly have to be taken into account for determining the figure that would be required to be deposited by the borrower before his appeal can be entertained. This is more so when one looks at the definition of the word "debt" as defined under the SARFAESI Act which means any liability inclusive of interest claimed as due from any person by a bank or financial institution during the course of any business activity undertaken by the said bank or financial institution. We must also mention that on a close scrutiny of the said decision, we do not find any reference being made to the definition of the word "debt" appearing in section 2(ha) of the SARFAESI Act. We therefore find that this decision would not carry the case of the Petitioner any further.

23. The second judgment relied upon by Mr Shah was a decision of the Delhi High Court in the case of Poonam Manshani, MANU/DE/2954/2009 : AIR 2010 Delhi 28. It appears from the said decision that the Delhi High Court has taken a view that the expression "amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less" would have to be determined ignoring the interest component. On a close scrutiny of the aforesaid decision, we find no reference in the same to the definition of the word "debt" as defined under the provisions of the SARFAESI Act. As mentioned earlier, the word "debt" means any liability inclusive of interest claimed as due from any person by a bank or financial institution during the course of any business activity undertaken by the said bank or

financial institution. When interest is specifically included in the definition of the word "debt", we see no reason why the same ought to be excluded whilst determining the amount that is to be taken into consideration for the purpose of arriving at the figure to be deposited by the borrower under the 2nd proviso to section 18(1) of the SARFAESI Act. In fact, on a perusal of the said judgment, we do not find any reason given for making such an exclusion. We, therefore, with great respect to the Delhi High Court, are unable to agree with the ratio laid down in the aforesaid decision."

10.2. The learned counsel for the respondent - Bank also relied upon a judgment reported in 2017 1 Bankmann (Debts Recovery Tribunal) 326 [Nathi Lal Rathore Vs. The Debt Recovery Appellate Tribunal and 2 others] wherein the Allahabad High Court held as follows:

"...

16. The term 'debt' as per the definition given in the statute is inclusive of interest, which is claimed as due, from a person, by the Bank or Financial Institutions. The proviso to Section 18(1) contemplates pre deposit, with reference to the debt due, as claimed by the secured creditor or determined by Tribunal, whichever is less. Even if the notice under Section 13 (2) is seen, in right perspective, it would be apparent that not only the sum quantified therein, but even future interest, is a part of debt due in terms of second and third proviso to section 18 (1) of the Act. There is nothing in the statute which may restrict the debt due to the sum quantified in the notice under Section 13(2) of the Act alone, and exclude the amount of interest accrued which may have fallen due till the date of filing of appeal. Law is settled that if language employed in statute is plain, and does not admit any ambiguity, its literal meaning would have to be assigned. Merely because it causes hardship, would not be a ground to depart from the words used in the statute. Reference may be had to the Judgement of Apex Court in Rohitash v. Om Prakash Sharma, 2013 (11) SCC 451 and Narayan v. Baba Saheb, 2016 (6) SCC 725. Thus, I am inclined to hold that it is not just the sum specified in Section 13(2) alone, but the interest accrued thereupon till the filing of appeal, which needs to be reckoned for working out the amount of pre-deposit in terms of second proviso to Section 18 of the Act. The judgement of this Court in Gopal Ji Gupta (Supra) since fails to notice the definition of 'debt', as provided in the Act itself, as such, with greatest respect, I fail to agree with the ratio laid down therein.

17. For the view which I propose to take, I am supported by a Division Bench Judgement of Bombay High Court in M.R.B Road Construct. Pvt. Ltd. v. Rupee Co-op Bank Ltd. Para 17 to 19 of the Judgement, which is relevant for the present purposes, reads as under:-

"17. On an ex-facie reading of the said definition, it is clear that the word "debt" has been given an extremely wide meaning and means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution during the course of any business activity undertaken by such bank or financial institution under any law for the time being in force, in VRD 13 of 26 RPW78.15 FINAL.doc cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application."

11. On a perusal of Section 13(2) notices dated 11.01.2013, it could be seen that the respondent - Bank had claimed a sum of Rs.11.72 crores as on 31.03.2012 together with interest. The petitioners have not taken into consideration the interest payable by them towards the loan amount. Even after a lapse of six years, the petitioners have not discharged their liability in entirety.

12. The ratio laid down by the Division Bench of the Bombay High Court and Allahabad High Court apply to the facts and circumstances of the present case. Therefore, the orders passed by the Debt Recovery Appellate Tribunal directing the petitioners to make a pre-deposit of 25% of the amount claimed in Section 13(2) notices cannot be held as onerous or unreasonable.

13. For the reasons stated above, we do not find any ground to interfere with the orders passed by the Debt Recovery Appellate Tribunal. Accordingly, the Writ Petitions are dismissed. The petitioners are granted three weeks time from the date of receipt of a copy of this order to make the pre-deposit as directed by the Debt Recovery Appellate Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Authorized Officer,
Pridhvi Asset Reconstruction & Securitisation
Company Ltd.,
Door No.8-2-622/5/A/3, 3rd Floor,
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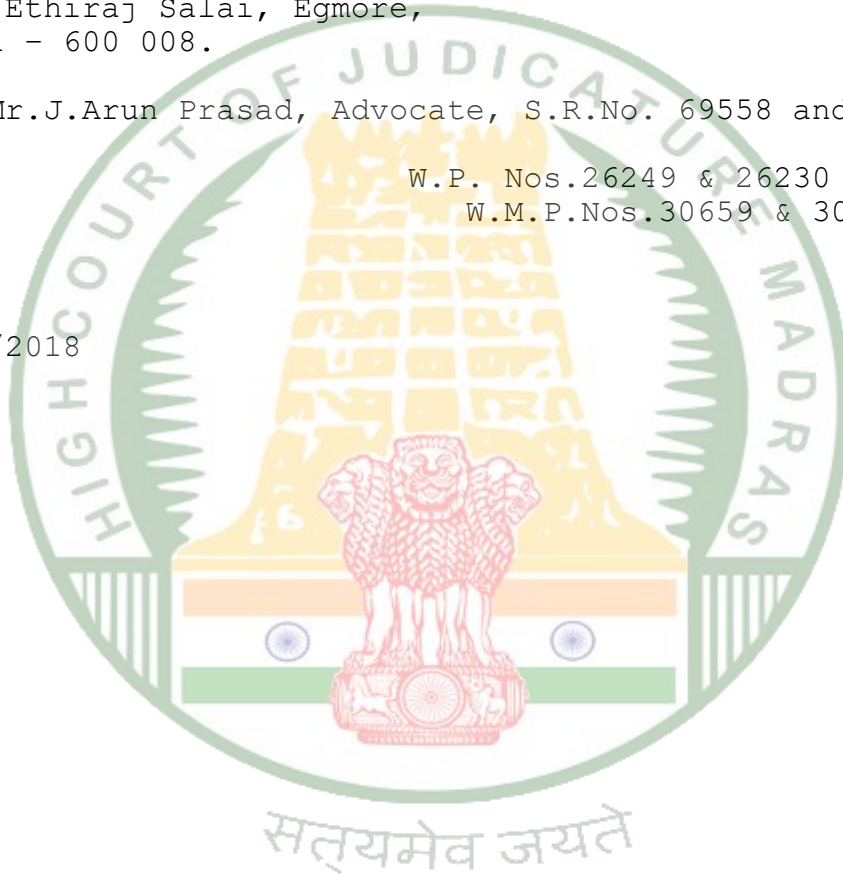
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+2ccs to Mr.J.Arun Prasad, Advocate, S.R.No. 69558 and 69559

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RJI (CO)

rrs 10/10/2018



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