IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.No.8179 of 2019

1.K.C.Balasundaram
2.B.Karpagambigai ...Petitioners

..Vs..

The Authorised Officer,
ICICI Bank Ltd.,
Santhome Branch, R.K.Mutt Road,
Mylapore, Chennai-600 004. ...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for a Writ of Certiorari to call for the records in AIR (SA) No.133/2017 order passed by Learned Debt Recovery Appellate Tribunal dated 20.08.2018 and quash the same.

For Petitioner : Mr.S.Nambirajan

For Respondent : M/s.Aishwarya S.Nathan
for M/s.Srinath Sridevan

O R D E R

(Delivered by DR.VINEET KOTHARI, J.)

This Writ Petition has been directed against the order dated 20.08.2018 in AIR (SA) No.133/2017 passed by Learned Debt Recovery Appellate Tribunal dated 20.08.2018, whereby the Appeal filed by the petitioners was dismissed for the non compliance of the order dated 19.07.2018 passed by the Tribunal directing the petitioners to make a pre-deposit of Rs.10 lakhs.

2. The learned counsel for the Petitioner submitted that the housing loan was taken by the Petitioner from the Respondent-Bank and the substantial portion of loan was already repaid and for the balance amount to be repaid the respondent issued

possession notice for which he approached the learned Tribunal by filing Appeal in AIR(SA) 133/2017. The learned Tribunal on 19.07.2018 has directed the petitioners to pre-deposit a sum of Rs.10,00,000/- before the Registrar of the Tribunal. As the same was not complied with the learned Tribunal dismissed the Appeal filed before it. The learned counsel for the petitioner submitted that the condition to pre-deposit of a sum of Rs.10,00,000/-is onerous and the same needs to be reduced

3. The learned counsel for the bank however supported the impugned order stating that the petitioner never approached the respondent for One Time Settlement and therefore SARFAESI proceedings were initiated against the petitioners.

4. The learned counsel for the respondent relied upon the Judgment of the Co-ordinate Bench of this Court in the case of Sekar Stores Home Mart and Ors Vs., The Authorized Officer, Pridhvi Asset Reconstruction & Securitisation Company Ltd. [W.P.Nos.26249 and 26230 of 2018] and submitted that the interest is the part of the debt and therefore the learned counsel for the petitioner submitted that the amount of outstanding loan is inclusive of both principal and interest. Therefore, the pre-deposit direction of the learned Tribunal is justified.

5. We have heard the learned counsel for the petitioners and perused the materials on record.

6. The Co-ordinate Bench of this Court in paragraph 17 and 18 of the aforesaid order has held hereunder:

> " 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.
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> 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."

7. Section 18 of the Act is also quoted below for ready reference.

"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 the Appellate Tribunal within thirty days from the 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 percent of debt refererred to in the second proviso.

(2) Save as otherwise as 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."

8. Second proviso to Section 18 clearly provides for a range of 25% to 50% of the debt to be deposited by the persons according to which appeal shall be filed before the Debts Recovery Appellate Tribunal. Since the petitioner already paid a sum of Rs.5 lakhs, in terms of the order passed by the learned Tribunal vide order dated 10.02.2012, we are of the opinion that the learned Tribunal may consider the case of the petitioner fairly and consider the objections again and direct the reasonable amount of pre deposit subject to the minimum procedure.

9. In these circumstances, having we are of the opinion that the Impugned order passed by the learned Tribunal does not require any interference under Article 226 of constitution of India and the pre deposit in terms of provisions of the Act to maintain the Appeal before the Tribunal appears to be justified. However since the substantial portion of the amount was repaid, the learned Tribunal may consider the Pre Deposit aspect sympathetically. Therefore, we direct the learned Tribunal to reconsider the case of the petitioner while passing the impugned order regarding the pre- deposit of the amount sympathetically.

10. Accordingly we set aside the impugned order dated 20.08.2019 and remit the matter back to the learned Tribunal for passing orders afresh, in accordance with law. The learned Tribunal shall consider the case of the petitioner fairly and consider the objections again and direct the reasonable amount of pre-deposit subject to the minimum.

With the above directions, this Writ Petition is disposed of. No costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

The Debts Recovery Appellate Tribunal
Chennai

+1 CC to Mr.S.Nambirajan, Advocate sr 79087
+1 CC to Mr. Srinath Sridevan, Advocate sr 79838.

W.P.No.8179 of 2019

LN(CO)
SP(03/10/2019)