

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.12238 of 2019 and
W.M.P.Nos.12521 & 12526 of 2019

- 1 J.S.Traders,
Rep. by its Proprietor, M.Jeyam
S/o.S. Mahalingam, 3-2 Singara Garden,
4th Street, Old Washermanpet,
Chennai 600 004.
 - 2 M/s.M.K.Garments,
Rep. by its Proprietor, M.Mahalingam,
S/o.S. Mahalingam, 3-2 Singara Garden,
4th Street, Old Washermanpet,
Chennai 600 004.
 - 3 M/s.Jayam Silks,
Rep. by its Proprietor, Mr.M.Jeyam
443/N No. 850 -862, Jewahar Bazaar, Karur 639 002.
 - 4 M.Mahalingam
 - 5 M.Jeyam
- Petitioners

v.

The Lakshmi Vilas Bank,
Rep. by its Branch Manager,
Vengamedu Branch, 533, Salem Main Road,
Vengamedu, Karur 639 006.

.... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorari, to call for the records of the proceedings dated 03.04.2019 in A.I.R 85 of 2019 on the file of the Debt Recovery Appellate Tribunal at Chennai and to quash the same as illegal and without Jurisdiction.

For Petitioners : Mr.V.Lakshminarayanan
for Mr.Govind Chandrasehar

For Respondent : Mr.R.Kannan

ORDER

(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 of the proceedings dated 03.04.2019 in A.I.R 85 of 2019 on the file of the Debt Recovery Appellate Tribunal, Chennai and to quash the same.

2. Before the Debts Recovery Tribunal, Madurai, the respondent/bank filed an Original Application in O.A.No.673 of 2018 for recovery of the outstanding amount from the petitioners. In the said Original Application, the respondent-bank, took out an application in I.A.No.1727 of 2018, to direct the petitioners to furnish security for Rs.15,77,16,521.20, and in default, to order attachment before judgment of 2/3 right held by the defendants 4 and 5 in the immovable property.

3. The Debts Recovery Tribunal, by order dated 17.08.2018, ordered attachment before Judgment.

4. Challenging the interim order passed in I.A.No.1727 of 2018 in O.A.No.673 of 2018, on the file of the Debts Recovery Tribunal, Madurai, the petitioners have filed an appeal before the Debt Recovery Appellate Tribunal in A.I.R. 85 of 2019.

5. The Debt Recovery Appellate Tribunal, by order dated 03.04.2019, directed the petitioners to make a pre-deposit of Rs.5 crores for entertaining the appeal.

6. The learned counsel appearing for the petitioners submitted that in view of the Judgment of this Bench, reported in 2019(3) CTC 497 [Sree Jeya Soundharam Textile Mills Pvt. Ltd. v. Canara Bank and others], if an appeal is filed as against the interlocutory order, the appellants are exempted from making pre-deposit.

7. In the above referred judgment, we have held that, the appellant, who has filed an appeal before the Debt Recovery Appellate Tribunal as against the interlocutory order passed by the Debts Recovery Tribunal, is not liable to make the pre-deposit, if the liability is not determined by the Debts Recovery Tribunal in the interlocutory order.

8. The ratio laid down in the said Judgment squarely applies to the facts and circumstances of the present case.

9. Following the ratio laid down in the Judgment reported in 2019(3) CTC 497 [citd supra], the order passed by the Debt recovery Tribunal directing the petitioners to make a pre-deposit of Rs.5 crores is liable to be set aside. Accordingly, the same is set aside. The Debt Recovery Appellate Tribunal is directed to entertain the appeal filed by the petitioners in A.I.R 85 of 2019 and decide the appeal, on merits and in accordance with law, without insisting the petitioners to make pre-deposit.

With these observations, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Debts Appellate Recovery Tribunal,
Chennai.

2.The Branch Manager,
Lakshmi Vilas Bank,
Vengamedu Branch, 533, Salem Main Road,
Vengamedu, Karur 639 006.

+1cc to Mr.R.Kannan, Advocate Sr.66205

+1cc to Mr.Govind Chandrasekhar, Advocate Sr.65895

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