IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10 .06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRP (PD).Nos.888 to 890 of 2018
and
CMP Nos.4857 to 4859 of 2018

CRP.No.888 of 2018

1. M/s.Taj Beedi Works
represented by its Proprietor
Syed Abdul Samad

2. Syed Abdul Samad .. Petitioners in CRP.888/2018

Versus

1. Indian Bank
Branch at No.46-51 Katpadi Road
Vellore – 632 004
represented by its Zonal Manager

Mrs.Tajunnisa Begum (Deceased)

2. Sadique Begum
3. S.Mohammed Sherif
4. S.Ismail Sherif
5. S.Aaribha
6. Syed Abdul Siddique
7. Asset Reconstruction Company (India) Ltd.,
   ARMS Unit 101 to 106
   1st Floor, Raheja Arcade
   Plot No.61, Sector 11,
   C.B.D. Belapur
   Near Belapur Railway Station
   Navi Mumbai – 400 614.

.. Respondents in CRP.888/2018

CRP.No.888 of 2018 has been filed to set aside the common order dated 08.02.2017 passed by the Debt Recovery Appellate Tribunal in M.A.No.171 of 2010, affirming the order passed by the learned Presiding Officer, Debt Recovery Tribunal – III in I.A.No.324 of 2008 in O.A.No.209 of 2007.

For Petitioners : Mr.R.Parthasarathy

CRP.No.889 of 2018

Mrs.Tajunnisa Begum (Deceased)

1. S.Mohammed Sherif
2. S.Ismail Sherif
3. S.Aaribha .. Petitioners in CRP.889/2018

versus

1. Indian Bank
Branch at No.46-51 Katpadi Road
Vellore – 632 004
represented by its Zonal Manager
2. M/s.Taj Beedi Works
represented by its Proprietor
Syed Abdul Samad
3. Syed Abdul Samad
4. Sadique Begum
5. Syed Abdul Siddique
6. Asset Reconstruction Company (India) Ltd.,
ARMS Unit 101 to 106
1st Floor, Raheja Arcade
Plot No.61, Sector 11,
C.B.D. Belapur
Near Belapur Railway Station
Navi Mumbai – 400 614.

.. Respondents in CRP.889/2018

CRP.No.889 of 2018 has been filed to set aside the common order dated 08.02.2017 passed by the Debt Recovery Appellate Tribunal in M.A.No.172 of 2010, affirming the order passed by the learned Presiding Officer, Debt Recovery Tribunal – III in I.A.No.325 of 2008 in O.A.No.209 of 2007.

For Petitioners : Mr.R.Parthasarathy

<u>CRP.No.890 of 2018</u>

Sadique Begum .. Petitioner in CRP.890/2018

versus

1. Indian Bank
Branch at No.46-51 Katpadi Road
Vellore – 632 004
represented by its Zonal Manager

2. M/s.Taj Beedi Works
represented by its Proprietor
Syed Abdul Samad

3. Syed Abdul Samad

Mrs.Tajunnisa Begum (Deceased)

4. S.Mohammed Sherif
5. S.Ismail Sherif
6. S.Aaribha
7. Syed Abdul Siddique
8. Asset Reconstruction Company (India) Ltd.,
   ARMS Unit 101 to 106
   1st Floor, Raheja Arcade
   Plot No.61, Sector 11,
   C.B.D. Belapur
   Near Belapur Railway Station
   Navi Mumbai – 400 614.

.. Respondents in CRP.890/2018

CRP.No.890 of 2018 has been filed to set aside the common order dated 08.02.2017 passed by the Debt Recovery Appellate Tribunal in M.A.No.173 of 2010, affirming the order passed by the learned Presiding Officer, Debt Recovery Tribunal – III in I.A.No.326 of 2008 in O.A.No.209 of 2007.

For Petitioners : Mr.R.Parthasarathy

COMMON ORDER

(Order of the Court was delivered by **V.BHAVANI SUBBAROYAN**,J.)

The present Civil Revision Petitions have been filed against the common order passed by the Debt Recovery Appellate Tribunal at Chennai in M.A.Nos.171, 172 and 173 of 2010, dated 08.02.2017.

2.The respondent Bank had initiated recovery proceedings in O.A.No.209 of 2007 claiming to recover Rs.40,78,244.35/- being the amount due on over drafted facility of Open Cash Credit Limit together with interest at 20.40% p.a till the date of payment in full with quarterly rest, apart from, seeking sale of immovable property and to pass a personal decree against the defendants 1 to 3 and 5 to 8 therein, in case, the sale proceeds are insufficient to satisfy the dues.

3.The challenge before this Court is only against the order passed by the Debt Recovery Appellate Tribunal. The petitioner herein seems to have filed I.A.Nos.324, 325 and 326 of 2008 seeking for a prayer to grant leave to cross-examine one C.G.Baskar, who has filed the proof affidavit on behalf of the applicant/Bank. The Debt Recovery Tribunal-III, by common order, dated 15.12.2009 had dismissed the applications seeking cross-examination of the official witness, who has filed the proof affidavit on behalf of the Bank. That order was challenged by the petitioner herein in M.A.Nos.171, 172 and 173 of 2010 respectively. Pending M.As', the petitioner has also filed I.A.Nos.437, 438 and 439 of 2010 in M.A.Nos.171, 172 and 173 of 2010 respectively, seeking stay of all further proceedings in O.A.No.209 of 2007, on the file of the Debt Recovery Tribunal-III, Chennai.

4.The main ground on which I.A filed seeking for cross-examination of the official witness, who has filed the proof affidavit on behalf of the Bank was that since the petitioner raised substantial defence which could be proved only by way of cross-examination by the Bank witness and to prove the genuineness of certain documents and material alterations of such documents, the petitioner herein has sought for leave of the Tribunal for cross-examination of the officials, who filed the proof affidavit on behalf of the Bank. However, both the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal had dismissed the applications filed by the petitioner on the ground that the petitioner had approached the Tribunal belatedly and only the documentary evidence would be enough to prove or disprove the rival contentions made by the parties against each other. Against such order, the present revisions are being filed by the petitioner herein.

5.The learned counsel appearing for the petitioner herein contended that the DRAT while confirming the order of the Debt Recovery Tribunal holding that the case does not require any oral evidence, without appreciating the peculiar facts of the case, that the Debt Recovery Tribunal has committed a grave error in not allowing the petitioner to cross-examine the official witness, especially when the Bank has committed various illegalities, which can only be established by cross-examination of the official witness.

6.The learned counsel appearing for the petitioner further contended that neither the Debt Recovery Tribunal nor the Debt Recovery Appellate Tribunal had examined the records placed before it for consideration and had the Tribunals examined, it would have come across the genuineness of the petitioner's stand seeking cross-examination of the Bank official, who had filed the proof affidavit, as the Bank had deliberately failed to furnish certain documents which the Tribunal ought to have considered and adverse inference ought to have been drawn against the Bank.

7.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

8.It is the case where the Bank has initiated recovery proceedings as early as in the year 1999 in O.A.No.261 of 1999 before Debt Recovery Tribunal, Chennai, which came to be transferred to Debt Recovery Tribunal-III, Chennai and renumbered as O.A.No.209 of 2007 and each and every defendant therein had filed their written statement along with counter-claim, as early as on 04th October, 1999. In fact, later in the year 2007, the respondent Bank herein had filed proof affidavit along with necessary documents. Thereafter, the petitioner seems to have taken out individual applications to cross-examine the official, who had filed the proof affidavit on behalf of the Bank.

9.It could be seen from the sworn affidavits filed in support of the applications seeking to cross-examine the official witness that one Mr.Syed Abdul Samad, who claims to be the second defendant in O.A., Mrs.Tajunnisha Begum, who claims to be the fourth defendant in O.A and Mr.Sadique Begum, who claims to be the fifth defendant in O.A, had filed three different I.A's in I.A.Nos.324, 325 and 326 of 2008 respectively, seeking cross-examination of the Bank official.

10.A common counter has been filed by the respondents defending the prayer sought for by the petitioners herein. The Debt Recovery Tribunal-III, Chennai, by common order, dated 15.12.2009, while dismissing the applications, has held that it is common knowledge that hardly any transaction with the Bank would be oral and without proper documentation whether in the form of letters or formal agreements and in such cases, the need for oral examination of the witness should rarely arise. There has to be a very good ground to hold that the affidavits in such cases would not be sufficient. The Debt Recovery Appellate Tribunal also confirmed the order passed by the Debt Recovery Tribunal.

11.On a perusal of the order passed by the Tribunals below, it could be seen that the petitioners in their affidavits filed in support of the applications seeking cross-examination has not raised any valid ground seeking the intervention of the Tribunal granting permission for cross-examination of the Bank official. Moreover, the written statement has been filed as early as December, 1999, along with the counter-claim. It could be seen that the relationship between the Bank and their customers are purely contractual in nature and borne out only by documents. The parties, who claimed that the Bank had suppressed to produce certain documents, are at liberty to file such application seeking for production of the documents that has to be relied upon by the borrowers. Any failure to produce such documents, despite there being an order of the Tribunal, the Tribunal can always draw adverse inference against the Bank. However, in the present case, when there being a claim and counter-claim borne out of contractual agreement, which can only be established by producing documents and the Tribunal is duty bound to do so. However, with regard to the question of seeking cross-examination, when the parties can establish rights and liabilities through the documents, the applications filed by the petitioners seeking leave to cross-examine the Bank official is nothing but only to prolong and to protract the case. The petitioners have not raised any valuable reason for seeking cross-examination and there is no valid reason or exceptional circumstances shown by the petitioner seeking for permission to cross-examine the official witness of the Bank.

12.Under these circumstances, this Court is of the view that the revisions filed as against the order passed by the Debt Recovery Tribunal-III, as confirmed by the Debt Recovery Appellate Tribunal, Chennai, cannot be interfered with and thus, the Revisions fail. Moreover, the Original Application filed for recovery is of the year 1999 and we are at present in the year 2019 and for the last 20 years, the petitioners have succeeded in protracting the issue for a very long time. Hence, the Debt Recovery Tribunal-III is directed to complete the procedures in accordance with law on a day-to-day basis within a period of three months from the date of receipt of copy of this order.

13.With the above direction, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(S.M.K.J.,) (V.B.S.J.,)
10 .06.2019

ps/mra
Index : Yes/No
Internet : Yes/No

Speaking / Non-speaking

To

1. The Presiding Officer
Debt Recovery Appellate Tribunal
Chennai.

2. The Presiding Officer
Debt Recovery Tribunal - III
Chennai.

S.MANIKUMAR, J.
and
V.BHAVANI SUBBAROYAN, J.
ps/mra

CRP (PD).Nos.888 to 890 of 2018
and
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