IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM :

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

C.R.P. (Npd) No.1733 of 2019 and
CMP.No.11091 of 2019

1. S.Krishnakumar
2. S.Sudhakar .. Petitioners

-vs-

1. M/s.Bank of Baroda,
AMM Charities Trust Buildings
Madras-Thiruvallur High Road,
Ambattur, Chennai- 600 053
Represented by its AGM,
No.10, C.P.Ramasamy Road,
Alwarpet, Chennai- 600 018.

2. Vibro Equipments represented by partners
(i) G.Jayaraman
(ii) K.Badrinarayanan
No.10, Thai Mugabigai Street, Janaki Street,
Alwar Thirunagar,
Chennai- 600 087.

3. G.Jayaraman
4. K.Badrinarayanan
5. Dhanapal Gounder
6. A.Sambandam Pillai
7. Muniammal
8. Muthu Munuswamy

9. Lakshmi Narasu
10. Chamundeswari
11. Bhuvaneswari
12. V.Rajeswari
13. D.Ramaswami
14. Rajeswari
15. Souriammal .. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 10.05.2019 made in I.A.No.212 of 2019 in A.I.R.No.15 of 2019 on the file of the Debts Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.B.Tilak Narayanan

For Respondents : Mr.R.Umasuthan (R1)

ORDER

(Judgment of the Court was made by *Dr.Vineet Kothari, J*)

The Petitioners have filed this Writ Petition, aggrieved by the order dated 10.04.2019 passed by the learned Debts Recovery Appellate Tribunal, Chennai, directing the petitioner to make the Pre-Deposit of Rs.4 crores under Section 18 of the Recovery of Debts and Bankruptcy Act, to register the Appeal against the Debts Recovery

Tribunal. The reasons given by the learned Debts Recovery Appellate Tribunal is quoted below for ready reference:

> *"The counsel for the appellants submits that they are neither the borrowers nor the guarantors and are not liable for making any pre-deposit. In fact, they are the owners of one of the properties amongst 15 to 17 mortgaged properties and are having a better title.*
>
> *In view of the fact that DRAT cannot entertain any Appeal unless and until the appellants comply with the formalities on pre-deposit upto 50% of the debt amount, which can be reduced to 25%, but not less than 25%, in any case and the bank has filed OA for recovery of Rs.11.17 crores since 2007, the amount has increased manifold and in view of the peculiar facts and circumstances of the case and on the basis of OA amount, I hereby direct the appellant to make pre-deposit of Rs.4 crores with the Registrar of this Tribunal within a period of four weeks from today."*

2. The learned counsel for the petitioners Mr.B.Thilak Narayanan, urged before this Court that the petitioners are neither borrowers nor the guarantors and they have purchased the property viz., land in question from the borrowers which were amongst 15 to 17 mortgaged

properties with the Respondent Bank. He therefore submitted that the direction to make the Pre-Deposit is onerous and prays for waiver of the same by this Court.

2.Per contra, the learned counsel for the Respondent-Bank Mr.R.Umasuthan would submit that the petitioners purchased the properties in question after the same was mortgaged with the Respondent Bank and therefore such purchase would remain subject to charge of the Respondent Bank as mortgagee. He further submitted that the properties are not owned by the petitioners. The Respondents 9 to 11 executed Power of Attorney in favour of the third respondent in respect of the property, who in turn mortgaged the property with the first respondent Bank and later sold the property to the petitioner on 25.04.2004. It is submitted that the Pre-Deposit amount cannot be reduced below the statutory minimum in order to maintain the Appeal.

3. Having heard the learned counsel for the parties, we are of the opinion that the Impugned Order passed by the learned Debts Recovery Appellate Tribunal directing the petitioner to deposit the sum of Rs. 4 crores to maintain the Appeal does not call for interference by

this court under Article 227 of the Constitution of India. The petitioner obviously purchased the property which was subject to the charge of Respondent-Bank as the Mortgagee and he is therefore a stranger to the Respondent Bank. To challenge an order passed by the learned Debts Recovery Tribunal, before the learned Debts Recovery Appellate Tribunal, the petitioner is required to make Pre-Deposit of minimum 25% and or a maximum 50% of the debt due from the borrower, as per the provisions of Section 18 of the Act. The debt due as per the adjudication of the Debts Recovery Tribunal in O.A. is Rs.11.17 crores since 2007 and therefore learned Debts Recovery Appellate Tribunal has only directed Pre-Deposit of a sum of Rs.4 crores which is below 50% of the amount shown as due from the 3rd Respondent/borrower.

4. In such circumstances, we direct that if the petitioners deposit a sum of **Rs.3 crores** as against **Rs.4 crores** as directed by the Debts Recovery Appellate Tribunal, within a period of four weeks from today, the learned Debts Recovery Appellate Tribunal may register and take up the Appeal of the petitioner and decide the same on merits and in accordance with law. It is made clear that no further extension of time or reduction of said amount shall be granted.

5. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous petition is closed.

(V.K.,J.) (C.S.N.,J.)
20.11.2019

Index : Yes/No
arr

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DR.Vineet Kothari, J
and
C.Saravanan, J.

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