IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.14916 of 2019 and
W.M.P.No.14890 of 2019

S.Arunachalamoorthy @ S.Arunachalam .. Petitioner

Vs.

1. The Debt Recovery Appellate Tribunal,
   rep by its Registrar,
   55, Wellington Estate,
   IV Floor, Ethiraj Salai, Chennai - 600 105.

2. The Authorized Officer,
   Bank of Baroda, SME Branch, NP Complex,
   No.323, Avinashi Road,
   Tiruppur - 641 602. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorari to call for the records relating to the order dated 05.04.2019 in I.A.No.321 of 2019 in AIR.No.98 of 2019 and consequent order dated 03.05.2019 on the file of the Debt Recovery Appellate Tribunal, Chennai, 1st respondent herein and quash the same and also direct the 1st respondent to entertain the appeal in AIR No.98 of 2019 without pre-deposit amount.

For Petitioner : Mr.L.Thiyagaiya

For Respondents : R1 - Tribunal
Mr.E.Vijayaraghavan (R2)



O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAISWAMY, J.)

The above Writ Petition has been filed by the petitioner to issue a Writ of certiorari to call for the records relating to the order dated 05.04.2019 in I.A.No.321 of 2019 in AIR.No.98 of 2019 and consequential order dated 03.05.2019 on the file of the Debt Recovery Appellate Tribunal, Chennai and to quash the same and also direct the 1st respondent to entertain the appeal in AIR No.98 of 2019 without insisting on the pre-deposit.

2.The petitioner challenged the SARFAESI proceedings initiated by the respondent - Bank in S.A.No.24 of 2019 before the Debts Recovery Tribunal, Coimbatore. In the said SARFAESI Application, the petitioner filed an Interlocutory Application in I.A.No.185 of 2019 to stay all further proceedings in pursuant to the sale notice dated 30.12.2018. The Debts Recovery Tribunal, by order dated 22.01.2019, granted an order of interim injunction restraining the respondent from confirming the sale, on condition the petitioner paying a sum of Rs.2 crores 34 lakhs in two equal installments. The 1st installment of Rs.1 crore 17 lakhs was to be paid on or before 22.02.2019 and the 2nd installment of Rs.1 crore 17 lakhs was to be paid on or before 22.03.2019. Thereafter, the petitioner filed an application in I.A.No.572 of 2019 seeking for extension of ten days time for payment of the 1st installment. The Debts Recovery Tribunal, by order dated 21.02.2019, extended the time till 05.03.2019. Challenging the order passed in I.A.No.572 of 2019 in I.A.No.185 of 2019 in S.A.No.24 of 2019, the petitioner preferred an appeal in AIR No.98 of 2019 before the Debt Recovery Appellate Tribunal, Chennai. In the said appeal, the petitioner also filed an application in I.A.No.321 of 2019 for waiver of pre-deposit. The Appellate Tribunal, by order dated 05.04.2019, directed the petitioner to make a pre-deposit of Rs.1.40 crores on the basis of the claim made by the respondent - Bank for a sum of Rs.2.85 crores.

3.Admittedly, the petitioner is the borrower and therefore, he is liable to make the pre-deposit under Section 18 of the SARFAESI Act. As per Section 18 of the SARFAESI Act, the Tribunal can reduce the pre-deposit amount upto 25% of the amount claimed by the respondent - Bank. Though the appeal has been filed by the petitioner challenging the interim order passed by the Debts Recovery Tribunal, the Tribunal passed the conditional order directing the petitioner to make a pre-deposit of Rs.2 crores 34 lakhs in two equal installments. Challenging this order, the petitioner has filed the appeal before the Debt Recovery Appellate Tribunal. Therefore, when the Debts Recovery Tribunal has quantified the amount to be paid as a condition precedent for the grant of interim order, necessarily, the petitioner has to make the pre-deposit. Only in case where the Debts Recovery Tribunal has not quantified the amount, the petitioner is not liable to make the pre-deposit as per the ratio laid down in the judgment reported in 2019 (3) CTC 497 [Sree Jeya Soundharam Textile Mills Pvt. Ltd., rep by its Managing Director, Perungudi Village, Sivagangai Vs. 1.Canara Bank, rep by its Manager, P.N.Road Branch, Tirupur and 6 others].

4.Since the pre-deposit amount can be reduced upto 25% of the amount claimed, we are of the view that in the interest of justice, the petitioner can be directed to make a pre-deposit of 25% of Rs.2.85 crores (i.e.) Rs.71,25,000/-. Accordingly, we modify the order passed by the Appellate Tribunal by directing the petitioner to make the pre-deposit of Rs.71,25,000/- within three weeks from the date of receipt of a copy of this order. On compliance, the Appellate Tribunal shall entertain the appeal in AIR.No.98 of 2019 and decide the same in accordance with law. If the petitioner fails to make the pre-deposit within the stipulated time, the appeal filed by him in AIR No.98 of 2019 shall be rejected.

5.With this modification, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Joint Registrar (Judicial)

//True Copy//

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Sub Assistant Registrar

To

1. The Registrar,
   Debt Recovery Appellate Tribunal,
   55, Wellington Estate,
   IV Floor, Ethiraj Salai,
   Chennai - 600 105.

2. The Authorized Officer,
   Bank of Baroda,
   SME Branch, NP Complex,
   No.323, Avinashi Road,
   Tiruppur - 641 602.

+1 cc to Mr.L.Thiyagaiya, Advocate, **S.R.No.65780(01/08/19)**

+2 ccs to Mr.E.Vijayaraghavan, Advocate, **S.R.No.65812(09/08/19)**



W.P.No.14916 of 2019 and
W.M.P.No.14890 of 2019

GMR(CO)
SSM(31/07/2019)
**SSM(01/08/2019)**
**SSM(09/08/2019).**