

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.10186 of 2014 and
M.P.No.1 of 2014

1. M/s.Sri Kannabiran Modern Rice Mill,
Rep. By its Partner K.Kannan,
No.23, Thayarkulam Street,
Pillaiarpalayam,
Kancheepuram.
 2. K.Jayagandhi
 3. K.Kannan
 4. A.Kannivel
 5. K.Muruganandam
- .. Petitioners

v.

1. Indian Overseas Bank,
Kancheepuram Branch,
No.61, Gandhi Road,
Kancheepuram.
- 2 Recovery Officer,
Debt Recovery Tribunal III,
3rd Floor, Spencer Towers,
770A, Anna Salai,
Chennai - 600 002

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue of Writ of Certiorari, calling for records comprised in R.A.No.241 of 2010 on the file of DRAT at Chennai, dated 15.10.2013 in confirming and modifying the order made in O.A.345 of 2007 on the file of DRT-III at Chennai, dated 30.05.2008, which was followed by passing of an order in DRC 8 of 2014 on the file of DRT-III at Chennai dated 16.01.2014, based on which, the 2nd respondent (Recovery Officer, DRT-III) issued demand notice in DRC No.8 of 2014, dated 10.02.2014 and quash the same.

For Petitioner : Mr. V. Ayyadurai, Senior Counsel
for Mr.Durai Eswar

For Respondents : Mr.F.B. Benjamin George - for R1
R2 - Tribunal

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

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records pertaining to R.A.No.241 of 2010 on the file of the Debt Recovery Appellate Tribunal, Chennai, dated 15.10.2013, modifying the order made in O.A.345 of 2007 on the file of the Debts Recovery Tribunal-III, Chennai, dated 30.05.2008, which was followed by passing of an order in D.R.C. No.8 of 2014 on the file of the Debts Recovery Tribunal-III, Chennai, dated 16.01.2014, based on which, the 2nd respondent (Recovery Officer, D.R.T.-III) issued demand notice in D.R.C, No.8 of 2014, dated 10.02.2014 and to quash the same.

2. It is the case of the petitioner that the respondent-bank filed O.A.No.345 of 2007 for recovery of a sum of Rs.21,91,025/- together with interest @ 17.34% per annum.

3. The Debts Recovery Tribunal-III, Chennai, by order dated 30.05.2008, decreed the O.A.No.345 of 2007, by directing the petitioner to pay the outstanding amount together with future interest @ 10% per annum from the date of claim till the date of realisation.

4. Challenging the order passed by the Debts Recovery Tribunal, the petitioner preferred an appeal in R.A.No.241 of 2010 before the Debt Recovery Appellate Tribunal, Chennai.

5. The Debt Recovery Appellate Tribunal, by order dated 20.09.2011, modified the order passed by the Debts Recovery Tribunal by directing the petitioner to pay the interest @ 17.34 % per annum. Challenging this order, the petitioner has filed the above Writ Petition.

6. When the Writ Petition is taken up for hearing, Mr.V.Ayyadurai, learned Senior Counsel appearing for the petitioner, submitted that the only contention of the petitioner is with regard to the rate of interest awarded by the Appellate Tribunal. The learned Senior Counsel submitted that though the respondent-bank has not filed any appeal as against the award of interest by the Debts Recovery Tribunal, the Appellate Tribunal, on its own, enhanced the rate of interest from 10% per annum to

17.34% per annum.

7. Mr.F.B. Benjamin George, learned Counsel appearing for the respondent-Bank, fairly submitted that the order passed by the Appellate Tribunal may be set aside and the order passed by the Debts Recovery Tribunal may be confirmed.

8. In view of the submissions made by the learned Counsel on either side, since the Debt Recovery Appellate Tribunal has enhanced the rate of interest from 10% per annum to 17.34% per annum, in the appeal filed by the petitioner and when the respondent-bank has not challenged the award of interest by the Debts Recovery Tribunal, the order passed by the Appellate Tribunal is liable to be set aside.

9. Accordingly, we set aside the order passed by the Debt Recovery Appellate Tribunal enhancing the rate of interest from 10% per annum to 17.34% per annum. The interest payable shall remain at 10% per annum, as ordered by the Debts Recovery Tribunal III, Chennai. The order passed by the Debts Recovery Tribunal is restored. The Debts Recovery Tribunal shall proceed against the borrowers/ guarantors and others on the basis of the order passed in O.A.No. 345 of 2007 giving due regard to the payments made by borrowers and guarantors and others.

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

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Rj

To

1. Indian Overseas Bank,
Kancheepuram Branch,
No.61, Gandhi Road,
Kancheepuram.

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- 2 Recovery Officer,
Debt Recovery Tribunal III,
3rd Floor, Spencer Towers,
770A, Anna Salai,
Chennai - 600 002
3. The Debts Recovery
Appellate Tribunal, Chennai.

+lcc to Mr.V.B.Perumalraj, Advocate, S.R.No.74556

W.P.No.10186 of 2014 and
M.P.No.1 of 2014

RK(CO)
CS/09/10/2019



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