IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM :

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

AND

THE HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.9386 of 2014 and
M.P.No.1 of 2014

M.V.Thampi .. Petitioner

v..

1.The Registrar,
Debt Recovery Appellate Tribunal, Chennai,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008.

2.The Presiding Officer,
Debts Recovery Tribunal - II, Chennai,
4th Floor, Spencer Tower,
770-A, Anna Salai,
Chennai - 600 002.

3.UCO Bank,
Earlier known as United Commercial Bank,
Rep by its Chief Manager,
Madras Main Branch, 169,
Thambu Chetty Street,
Chennai - 600 001.

4.M/s.Easy Track India Private Ltd.,
Regd. Office at No.44, Kamaraj Avenue,
Adayar, Chennai - 600 020
Currently at No.25 & 26,
SDF Block IV, Madras Export Processing Zone,
Chennai - 600 005.

5.M.V.Achuthan
6.Ajith C.Patel
7.Bakum M.Patel
8.S.Chinni Doraisamy
9.M.V.Gondan Warrior

10.M.V.Hariharam
11.M.V.Siddarthan
12.Dr. M.V.Joseph
13.M.V.Das Mankidy
14.Boby Varghese
15.Doney Varghese
16.M.V.Devu .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for entire records relating to the impugned order dated 12.02.2014 passed by the 1st respondent, Debt Recovery Appellate Tribunal, Chennai in I.A.No.165 of 2011 of Appeal A.I.R. No.708 of 2009 (directing the petitioner to pre-deposit a sum of 50% of Rs.4,37,80,622/- i.e., Rs.2,18,90,311/-) and quash the same and consequently direct the 1st respondent to decide the appeal on merits without insisting the payment of pre-deposit.

For Petitioner : Mr.Kaushik N.Sharma

For Respondents: R1 & R2 - Tribunal
Mr.Arun Kumar
for M/s.Sampath Kumar Associates - for R3

R4 to R9, R11 to R15 - Not Ready in Notice
R10 - No Appearance

O R D E R
(ORDER OF THE COURT WAS MADE BY M.DURAISWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 12.02.2014 passed by the Debt Recovery Appellate Tribunal, Chennai in I.A.No.165 of 2011 in A.I.R. No.708 of 2009, to quash the same and consequently to direct the 1st respondent to decide the appeal on merits, without insisting the payment of pre-deposit.

2. Challenging the order passed in T.A.No.109 of 2001 on the file the Debts Recovery Tribunal-II, Chennai, the defendants 11 to 16, who are the legal representatives of the deceased 7th defendant, filed an appeal before the Debt Recovery Appellate Tribunal,

Chennai. In the said appeal, the appellants filed an application in I.A.No.165 of 2011 for waiver of pre-deposit.

3. It is pertinent to note that originally, the respondent-bank filed a Civil Suit in C.S.No. 885 of 1991 on the file of this Court and subsequently, it was transferred to Debts Recovery Tribunal-I, Chennai and it was re-numbered an T.A.No. 66 of 1997. On bifurcation of jurisdiction, this Transferred Application was again transferred to the file of Debts Recovery Tribunal-II, Chennai and was re-numbered as T.A.No.109 of 2001. The respondent-bank had filed the said T.A. for recovery of a sum of Rs.1,61,95,065.90 together with interest @ 18% per annum.

4. The Debts Recovery Tribunal-II, Chennai, by order dated 10.06.2009, decreed the T.A. and also held that the defendants 11 to 16, who are the legal heirs of the 7th defendant, are liable to the extent of the assets devolved on them from the deceased defendant.

5. Contending that the petitioners are not liable to pay any amount to the respondent-bank, they have filed the appeal in A.I.R.No.708 of 2009 before the Debt Recovery Appellate Tribunal, Chennai.

6. The Appellate Tribunal, by order dated 12.12.2014 in I.A.No.165 of 2011, directed the petitioners to make a pre-deposit a sum of Rs.2,18,90,311/-, which is 50% of the amount due, i.e., Rs.4,37,80,622/-. Challenging this order, the petitioner, who is the 15th defendant in T.A.No.109 of 2001, has filed the above Writ Petition.

7. The learned counsel appearing for the petitioner submitted that the petitioner should be exempted from making pre-deposit.

8. Since a decree was passed against the petitioners, they cannot be exempted from making pre-deposit. However, under section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act,1993, pre-deposit can be reduced to 25% of the amount due.

9. In these circumstances, we are of the view that the petitioner can be shown indulgence by directing him to make a pre-deposit of 25% of the amount due instead of 50% ordered by the Appellate Tribunal.

10. The learned counsel appearing for the respondent-bank also has no objection for reducing the pre-deposit amount of 25% of the amount due.

11. In such view of the matter, we direct the petitioner to make a pre-deposit of 25% of the amount due within a period of three weeks from the date of receipt of a copy of this order. In other aspects, the order passed by the Appellate Tribunal remain unaltered.

12. With this modification, the Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Rj
To

1.The Registrar,
Debt Recovery Appellate Tribunal, Chennai,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008.

2.The Presiding Officer,
Debts Recovery Tribunal - II, Chennai,
4th Floor, Spencer Tower,
770-A, Anna Salai,
Chennai - 600 002.

+1cc to Mr.Kaushik N.Sharma , Advocate SR.No. 67985
+1cc to Mr.Sampath kumar associates , Advocate SR.No. 67954

W.P.No.9386 of 2014 and
M.P.No.1 of 2014

rji (CO)
A.SK(05/09/2019)