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.DURAISWAMY

W.P. Nos.9757 and 9758 of 2014 and
M.P.Nos. 1 & 2 of 2014 (4 MPs)

M/s. Ennore Cargo Terminal Services
Represented by its Sole Proprietor,
Mr.Rajesh Bajaj
No.4-A, Stringers Road, Vepery,
Chennai - 600 003. .. Petitioner in both WPs

v.

1. M/s. Ennore Cargo Terminal Services
Represented by its Partner,
Mrs. L.S.Nuzath Jabin,
No.3-A, Flat No.2-G, Stringers Road, Vepery,
Chennai - 600 003.

2. State Bank of India,
Rep. By its Branch Manager,
Overseas Branch,
Chennai - 600 001 .. Respondents in both WPs

Writ Petition No.9757 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records connected with M.A.No.198 of 2008 pending on the file of Debt Recovery Appellate Tribunal, Chennai and quash the order dated 28.02.2014 passed in M.A.No. 198 of 2008 in Appeal No.16/2007 in MA.No. 66-68/2007 in DRC 139/2006 in TA.260/2001 and consequently directing the Debt Recovery Appellate Tribunal, Chennai or such other Appellate Tribunal to dispose of M.A.No.198 of 2008 along with pending I.A.Nos. 569 and 570 of 2011 in M.A.No. 198 of 2008 on merits.

Writ Petition No.9758 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing Tranfer of proceedings in M.A.No.198 of 2008 pending on the file of Debt Recovery Appellate Tribunal, Chennai to any other Debt Recovery Appellate Tribunal.

For Petitioners : Mr. H.Karthik Seshadri
(in both WPs)

For Respondents :No Appearance - for R1
(in both WPs)

Mr.A.Thayaparan
for Mr.P.Sukumar - for R2

COMMON ORDER

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

Writ Petition No.9757 of 2014 has been filed by the petitioner to issue a Writ of Certiorarified Mandamus to call for records pertaining to M.A.No.198 of 2008 pending on the file of the Debt Recovery Appellate Tribunal, Chennai, to quash the order dated 28.02.2014 passed in M.A.No. 198 of 2008 in Appeal No.16/2007 in M.A.No.66-68/2007 in D.R.C. 139 of 2006 in T.A. No.260/2001 and consequently directing the Debt Recovery Appellate Tribunal, Chennai to dispose of M.A.No.198 of 2008 along with pending I.A.Nos. 569 and 570 of 2011 in M.A. No. 198 of 2008 on merits.

2. Writ Petition No.9758 of 2014 has been filed by the petitioner to issue a Writ of Mandamus, directing transfer of proceedings in M.A.No.198 of 2008 pending on the file of the Debt Recovery Appellate Tribunal, Chennai to any other Debt Recovery Appellate Tribunal.

3. In Writ Petition No.9757 of 2014, by order dated 28.02.2014, the petitioner was directed to file a Waiver Application. Challenging this order, the petitioner has filed this Writ Petition.

4. The learned counsel appearing for the petitioner submitted that the petitioner is neither a borrower nor a guarantor, therefore, he is not liable to make any pre-deposit.

5. In the judgment reported in 2019(2) LW 961 [Sree Jeya Soundharam Textile Mills Pvt. Ltd. v. Canara Bank, Rep. By its Manager, Tirupur and others] in para 22, we have held as follows:-

" ... 22. For the reasons stated above, we decide the issue with regard to making of pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal as follows:

(i) The borrowers and guarantors are liable to make pre-deposit as per the provisions of Section 18 of the SARFAESI Act or under Section

21 of the Recovery of Debts and Bankruptcy Act, 1993 for preferring an appeal before the Debt Recovery Appellate Tribunal.

(ii) The 3rd parties, who had purchased the property prior to the date of mortgage or derived/accrued title or right or tenancy right over the property prior to the date of mortgage, are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal, provided that they establish before the Debt Recovery Appellate Tribunal that they derived/accrued title or right or tenancy right over the property prior to the date of mortgage and that the property was mortgaged with the Bank without their knowledge. If such 3rd parties file applications for waiver and if they establish that they have purchased the property or that they derived/accrued title, right or tenancy right prior to the date of mortgage and the property was mortgaged with the Bank without their knowledge, the Debt Recovery Appellate Tribunal shall give a finding with regard to the same and give exemption to such 3rd parties from making pre-deposit.

(iii) The 3rd parties who had purchased the property either after the date of mortgage or derived/accrued title or right or tenancy right in respect of the property in question or after the initiation of SARFAESI proceedings are liable to make the pre-deposit and they should be treated on par with the borrower and the guarantor as per the provisions of both the Acts for the purpose of making pre-deposit.

(iv) The Debt Recovery Appellate Tribunal shall consider the waiver applications filed by the 3rd parties, on merits and in accordance with law, following the principles laid down in this judgment and pass appropriate speaking orders giving findings with regard to the rights of the 3rd parties.

(v) The secured creditors viz., the Banks and Financial Institutions or a Consortium or Group of Banks and Financial Institutions are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal.

(vi) The auction purchaser is not liable to make any pre-deposit while preferring an appeal to the Debt Recovery Appellate Tribunal as against the order passed by the Debts Recovery Tribunal.

(vii) The appellant who has filed an appeal before the Debt Recovery Appellate Tribunal as against the Interlocutory order passed by the Debts Recovery Tribunal, is not liable to make the pre-deposit if the liability is not determined by the Debts Recovery Tribunal in the interlocutory order.

(viii) In any other category other than the categories mentioned above, the Debt Recovery Appellate Tribunal shall decide the waiver application as per the principles laid down in this judgment.

5. Following the ratio, we are of the view that the petitioner should file an application for waiver of pre-deposit and on filing the same, the Debt Recovery Appellate Tribunal should consider and pass orders, in accordance with law, as directed in the said judgment.

6. The learned counsel appearing for the petitioner in W.P.No.9757 of 2014 submitted that the petitioner would file Waiver Application within a period of two weeks, from the date of receipt of a copy of this order.

7. In view of the submission made by the learned counsel appearing for the petitioner, we grant two weeks' time to the petitioner in W.P.No.9757 of 2014 to file an application for waiver of pre-deposit before the Debt Recovery Appellate Tribunal and on receipt of the same, the Debt Recovery Appellate Tribunal shall decide the same, on merits and in accordance with law, within a period of four weeks, from the date of filing of the application.

6. So far as the prayer sought for in W.P.No.9758 of 2014 is concerned, the petitioner has not made out a case for transferring the appeal to some other Appellate Tribunal. In these circumstances, we are not entertaining the Writ Petition.

7. In the result, W.P.No.19757 of 2014 is disposed of with the above observations and the W.P.No.9758 of 2014 stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Debt Recovery Appellate Tribunal,
Chennai.

2.The Branch Manager,
State Bank of India,
Overseas Branch,
Chennai - 600 001.

+1cc to M/s.P.Sukumar, Advocate Sr.75030

W.P. Nos.9757 and 9758 of 2014 and
M.P.Nos. 1 & 2 of 2014 (4 MPs)

cp[co]
srg 27/09/2019