

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM

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

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.18816 of 2019

K.K.Polycolor India Ltd.  
Rep. by its Managing Director  
Dr.K.K.Kankani  
K.K.Villa, No.32-Olympic Colony  
Mogappair, Chennai - 600 050. .. Petitioner

Vs

- 1 The Registrar  
Debt Recovery Appellate Tribunal  
4<sup>th</sup> Floor, Indian Bank Circle Office  
55, Ethiraj Salai  
Chennai - 600 008.
- 2 The Authorized Officer  
Assets Care and Reconstructions Enterprise Ltd.  
6<sup>th</sup> Floor, IFCI Tower  
No.61, Nehru Place  
New Delhi - 110 019. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the records pertaining to the order dated 4.6.2019 passed by the first respondent in I.A.No.1778 of 2018 in AIR (SA) 621/2018 and quash the same and consequently direct the first respondent to take up the Appeal filed by the writ petitioner in AIR (SA) 621/2018 and decide the same on merits.

For Petitioner : Ms.P.V.Rajeswari

For Respondents : Mr.Sethuraman  
for 2<sup>nd</sup> respondent

## COMMON ORDER

(Order of the Court was made by M.DURAISWAMY,J.)

Challenging the order dated 4.6.2019 passed by the Debt Recovery Appellate Tribunal in I.A.No.1778 of 2018 in AIR (SA) 621 of 2018, the borrower has filed the above writ petition.

2. The petitioner filed an application in M.A.No.151 of 2013 in SA SR No.4207 of 2013 to condone the delay of 71 days in filing an application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 challenging the possession notice dated 2.5.2013. The Debts Recovery Tribunal-III, Chennai, by order dated 4.2.2014, dismissed the said application. Aggrieved over the same, the petitioner preferred an appeal before the Debt Recovery Appellate Tribunal in AIR (SA) 621 of 2018. In the said appeal, the petitioner has also filed an application in I.A.No.1778 of 2018 for waiver of pre-deposit. The Appellate Tribunal, by order dated 4.6.2019, directed the petitioner to make a pre-deposit of Rs.5 crores taking into consideration the claim made by the respondent/bank in the notice dated 3.10.2012 issued under Section 13(2) of the SARFAESI Act to the tune of Rs.11.39 crores. Assailing the said order, the petitioner has filed the above writ petition.

3. The learned counsel for the petitioner submitted that since the petitioner has only challenged the interlocutory order passed in M.A.No.151 of 2013 in SA SR No.4207 of 2013, the Appellate Tribunal ought not to have directed the petitioner to make a pre-deposit of Rs.5 crores. In support of her contention, the learned counsel relied upon a judgment of this Court in Sree Jeya Soundharam Textile Mills Pvt. Ltd. v. Canara Bank and others, reported in 2019 (3) CTC 497, wherein in paragraph 22(vii), we have categorically held that 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 pre-deposit, if the liability is not determined by the Debts Recovery Tribunal in the interlocutory order.

4. In the case on hand, the appeal has been preferred by the petitioner challenging the interlocutory order passed by the Debts Recovery Tribunal-III, Chennai. Further, the learned counsel on either side admitted that liability was not determined in the order passed in M.A.No.151 of 2013 in SA SR No.4207 of 2013. Such being the case, the ratio laid down in

Sree Jeya Soundharam Textile Mills Pvt. Ltd. case, cited supra, squarely applies to the facts and circumstances of the present case.

5. In such view of the matter, following the ratio laid down in Sree Jeya Soundharam Textile Mills Pvt. Ltd. case, cited supra, the impugned order dated 4.6.2019 is liable to be set aside and, accordingly, the same is set aside. The Debt Recovery Appellate Tribunal is directed to take up the appeal in AIR (SA) 621 of 2018 and decide the same on merits and in accordance with law.

With the above observations, the writ petition is allowed. No costs. Consequently, W.M.P.No.18163 of 2019 is closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To:

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

+1cc to M/s.P.V.Rajeswari, Advocate Sr.56019  
+1cc to Mr.S.Sethuraman, Advocate Sr.55665

सत्यमेव जयते

W.P.No.18816 of 2019

ssd[co]  
srg 29/07/2019

WEB COPY