IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.22981 of 2019

1.M/s.Ashok Wood Works,
A Partnership Firm
rep. by its Partners,
Door No.46/4A, Bye Pass Road,
Ariyamangalam,
Trichy-620 010.

2.M/s.Ashok Saw Mill,
A Partnership Firm,
rep. by its Partners,
Door No.14, SIDCO Industrial Estate,
Tiruverumbur,
Trichy-620 010. .. Petitioners

-vs-

Indian Overseas Bank,
Trichy Main Branch,
144, West Bouleward Road,
Trichy, Trichy District,
rep. by its Manager. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 03.04.2019 in AIR No.563 of 2018 passed y the Debt Recovery Appellate Tribunal, Chennai and consequently, quash the same as illegal, arbitrary and as against the principles laid down by the Hon'ble Court and further direct the Debt Recovery Appellate Tribunal, Chennai to take up the appeal without demanding the pre-deposit.



For Petitioners : Mr.R.R.Pradheep

For Respondent : Mr.F.B.Benjamin George

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

The petitioners/borrowers, M/s.Ashok Wood Works and M/s.Ashok Saw Mill, Trichy, have preferred the present writ petition against the respondent/Indian Overseas Bank, Trichy, aggrieved by the order dated 06.03.2019 passed by the Debt Recovery Appellate Tribunal, Chennai and consequential order of dismissal of the appeal passed by the said Tribunal on 03.04.2019 in AIR No.563 of 2018, as the petitioners/borrowers have failed to make a pre-deposit of Rs.1.82 Crores for entertaining their appeal against the order dated 04.09.2018 passed by the Debts Recovery Tribunal, Madurai in I.A.No.93 of 2014 in I.A.No.30 of 2007 in T.A.No.688 of 2007.

2. The learned counsel for the petitioners, Mr.R.R.Pradheep, submitted that the Debts Recovery Tribunal, Madurai, is yet to decide the Original Application filed by the respondent Bank and determine the amount of debt due from the borrowers, whereas by the present interlocutory application, the borrowers wanted their counter-claim to be entertained by the Debts Recovery Tribunal, which was dismissed by the Debts Recovery Tribunal. He submitted that the petitioners have filed their counter-claim in terms of Section 19(6) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for brevity "RDDBFI Act"). An appeal was preferred before the Debt Recovery Appellate Tribunal by the petitioners, which was dismissed for want of pre-deposit of Rs.1.82 Crores, as already indicated above. The learned counsel for the petitioners has relied upon the decision of a Division Bench of this Court in the case of Sree Jeya Soundharam Textile Mills Pvt. Ltd. and others v. Canara Bank and others, reported in 2019 (3) CTC 497 : MANU/TN/1681/2019, in which in paragraph 22, the Division Bench of this Court has issued the following directions:

> "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 right 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."

3. The said judgment was rendered by the Division Bench by dealing with the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act"). But, we find the relevant provision of Section 18(1) of the SARFAESI Act is in pari materia with Section 21 of the RDDBFI Act.

4. The said provision of Section 18 of SARFAESI Act is quoted below for reference:

"18. Appeal to Appellate Tribunal

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

PROVIDED that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

PROVIDED FURTHER that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

PROVIDED ALSO that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial

Institutions Act, 1993 (51 of 1993) and rules made thereunder."

5. The provision of Section 21 of RDDBFI Act is also quoted below for ready reference:

> "21. Deposit of amount of debt due, on filing appeal.— Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal under section 19:
>
> Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section."

6. A bare perusal of Section 21 of the RDDBFI Act would go to show that such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 50% of the debt so due from him as determined by the Tribunal under Section 19 of the RDDBFI Act. The words "debt so due from him" is a contingency which has not even happened in the present case. Admittedly, in the Original Application, the amount has not been determined and the proceedings were at the stage of determination of such amount due in favour of the Bank/Financial Institution where the borrowers also wanted to lodge their counter-claim in the matter. Since admittedly the present order of the Debts Recovery Tribunal which was challenged before the Appellate Tribunal was only on the interlocutory application seeking to lodge the counter-claim by the borrowers, such an order would not require any pre-deposit since the position of law has been clarified by the Co-ordinate Bench of this Court, with which we respectfully agree.



7. We are of the view that the impugned order cannot be sustained. We, however, find that the order was passed on 06.03.2019 and the rejection of the appeal by the Appellate Tribunal was on 03.04.2019, whereas the Division Bench judgment in the case of Sree Jeya Soundharam Textile Mills Pvt. Ltd. (supra) was dated 11.04.2019, after the impugned order passed by the Appellate Tribunal. Therefore, we allow the present writ petition and set aside the impugned order passed by the Debt

Recovery Appellate Tribunal dated 06.03.2019 and the consequential order dated 03.04.2019 passed by the said Tribunal and remand the matter back to the Debt Recovery Appellate Tribunal to hear and decide the question of pre-deposit again in accordance with law in the light of the judgment of the Division Bench of this Court in the Case of Sree Jeya Soundharam Textile Mills Pvt. Ltd. (supra). The Debt Recovery Appellate Tribunal, Chennai, is directed to decide the matter as expeditiously as possible, preferably within a period of three months from today. No costs. Consequently, W.M.P.No.22634 of 2019 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bbr
To:

The Manager,
Indian Overseas Bank,
Trichy Main Branch,
144, West Bouleward Road,
Trichy, Trichy District.

+1 CC to Mr.G. Senthil Kumar, Advocate sr 84187.

W.P.No.22981 of 2019

VGII(CO)
SP(04/11/2019)