

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.9001 of 2017 & 33434 of 2018 and
W.M.P.Nos.9910 of 2017 & 38803 of 2018

B.Pappa Mudaliar

.. Petitioner in
W.P.No.9001/2017

and 1st respondent in W.P.No.33434/2018

Vs.

1. Bank of Baroda,
Ambattur Branch,
A.M.M. Charities Building,
MTH Road, Ambattur,
Chennai - 600 053.

.. 1st respondent in
W.P.No.9001/2017
and Petitioner in
W.P.No.33434/2018

2.N.Anand Sai

3.P.Mani

4.S.Murugesh

5.V.Loganathan

6.P.Rajalakshmi

7.T.Saraswathi

8.State Bank of India,

Siru Thozhil Branch,

Nungambakkam,

Chennai - 600 034.

rep by its Manager

.. Respondents in both W.Ps

9.The Registrar,
Debt Recovery Appellate Tribunal,
Ethiraj Salai,
Chennai - 600 008.

.. 9th respondent in
W.P.No.33434/2018

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus/certiorari to call for the entire records of the order dated 03.03.2017 in R.A.No.48 of 2005 passed by the Debt

Recovery Appellate Tribunal, Chennai and to quash the same and subsequently, confirm the earlier order dated 03.01.2006.

For Petitioner in W.P.No.9001/2017

For R1 in W.P.No.33434/2018 : Mr.T.Karunakaran

For R1 in W.P.No.9001/2017

For Petitioner in W.P.No.33434/2018 : Mr.S.Mohan

(W.P.No.9001/2017) - R2 to R8 - given up
vide order dated 25.10.2018

(W.P.No.33434/2018) - R2 to R7 not ready in notice

(W.P.No.33434/2018) - R9 - Tribunal

(W.P.No.33434/2018) - R8 - No Appearance

C O M M O N O R D E R

(Order of the Court made by the Hon'ble Chief Justice
and M.Duraiswamy, J.)

The guarantor and the Bank had challenged the order dated 03.03.2017 passed by the Debt Recovery Appellate Tribunal in R.A.No.48 of 2005 in the above Writ Petitions and they are taken up together and disposed of by this common order.

2.W.P.No.9001 of 2017 has been filed by the guarantor challenging the order passed in R.A.No.48 of 2005 and to confirm the earlier dated 03.01.2006. Similarly, the Bank has also challenged the order passed in R.A.No.48 of 2005 in W.P.No.33434 of 2018.

3.One N.Anand Sai, Proprietor of Maruthi Electronics availed loan from the respondent - Bank in the year 1992 and the petitioner and six others stood as guarantors for the loan availed by him. Since the borrower failed to repay the loan, the Bank filed an application in O.A.No.41 of 1997 before the Debts Recovery Tribunal - I, Chennai for recovery of a sum of Rs.64,46,601.66p together with interest. The Debts Recovery Tribunal, by order dated 31.12.2004, decreed the O.A. and declared that the applicant - Bank is entitled for Recovery Certificate against the defendants 1, 2, 6 & 7 for recovery of a sum of Rs.55,55,830.66p together with interest. The 7th defendant in O.A.No.41 of 1997 is the petitioner. The Debts Recovery Tribunal discharged the defendants 3 to 5 from their loan liabilities as they have paid the OA claim amount of Rs.9,10,771/- during the course of the proceedings. As per the decree, the defendants 1, 2, 6 & 7 (the Writ Petitioner) are jointly and severally liable to pay the amount.

4.Challenging the order passed by the Debts Recovery Tribunal, the Writ Petitioner filed an appeal in Appeal No.48 of 2005 before the Debt Recovery Appellate Tribunal, Chennai and the Appellate Tribunal, by order dated 03.01.2006, allowed the appeal by modifying the order passed by the Debts Recovery Tribunal - I, Chennai directing the respondent - Bank to file a revised statement of accounts before the Debts Recovery Tribunal calculating interest at the contractual rate on Rs.2 lakhs from the date of borrowing upto the date of filing of the OA and at the rate of 12% per annum simple from the date of filing of the OA till 03.01.2006, after giving credit to the amounts paid by the Writ Petitioner (i.e.) Rs.4.78 lakhs.

5.Challenging the order dated 03.01.2006, the respondent - Bank filed a Writ Petition in W.P.No.11358 of 2006 before this Court and this Court, by order dated 18.12.2009, allowed the Writ Petition and remitted the matter back to the Debt Recovery Appellate Tribunal for fresh consideration, after impleading the defendants 1 to 6 & 8 as parties in R.A.No.48 of 2005. After remand, the Debt Recovery Appellate Tribunal, by order dated 03.03.2007, partly allowed the appeal by directing the petitioner herein (7th defendant) and the defendants 1 & 2 to make re-payment of 50% of the Term Loan - II amount (i.e.) Rs.55,55,830/- together with interest, etc. Challenging this order, the Bank has filed the Writ Petition in W.P.No.33434 of 2018 and the guarantor has filed the Writ Petition in W.P.No.9001 of 2017.

6.The learned counsel for the petitioner - Guarantor submitted that the Debt Recovery Appellate Tribunal had rightly allowed the appeal in R.A.No.48 of 2005 by order dated 03.01.2006 and therefore, the said order should be restored.

7.It is pertinent to note that the order dated 03.01.2006 passed by the Debt Recovery Appellate Tribunal in R.A.No.48 of 2005 was challenged by the respondent - Bank in W.P.No.11358 of 2006 and the Writ Petition was allowed by order dated 18.12.2009 and the matter was remitted back to the Debt Recovery Appellate Tribunal for fresh consideration.

8.When the Writ Petition was allowed and the matter was remitted back to the Debt Recovery Appellate Tribunal for fresh consideration, it is clear that the order passed by the Debt Recovery Appellate Tribunal on 03.01.2006 has been set aside. Once the order passed by the Debt Recovery Appellate Tribunal has been set aside by this Court in the Writ Petition, the petitioner cannot now seek for restoring that order.

9. We are not sitting on appeal over the order passed by the Division Bench of this Court in the W.P.No.11358 of 2006. The petitioner has not challenged the order passed in W.P.No.11358 of 2006 before the Apex Court. The Debts Recovery Tribunal, by order dated 31.12.2004 declared that the Bank is entitled to Recovery Certificate for a sum of Rs.55,55,830.66p against the defendants 1, 2, 6 & 7. It is pertinent to note that the petitioner has not even cross examined the Bank's witness. The Debts Recovery Tribunal has considered the case of all the parties and rightly decreed the OA.

10. The learned counsel for the respondent - Bank submitted that the order passed by the Debt Recovery Appellate Tribunal limiting the liability of the petitioner to 50% is without any basis and therefore, the order passed by the Debt Recovery Appellate Tribunal fastening the liability to an extent of 50% on the petitioner should be set aside.

11. On a perusal of the order passed by the Debt Recovery Appellate Tribunal, it is clear that except in para - 9 of the order where it is stated that the impugned order deserves to be modified to the extent that the Bank shall make a recovery of 50% of the Term Loan - II amount (i.e.) Rs.55,55,830/-, meaning thereby the appellant and respondents 2, 3 & 7 shall be liable to pay a sum of Rs.28.78 lakhs to the Bank and remaining 50% of the amount shall be recovered by the Bank from the erring officers, after making due enquiry or after getting result of criminal case against the Bank Officer, for reducing the liability of the Writ Petitioner and the defendants 1 & 2 to 50%, the Debt Recovery Appellate Tribunal has not given any acceptable finding. In the absence of any finding to that effect, the Appellate Tribunal should not have reduced the liability of the petitioner and the defendants 1 & 2 to 50%.

12. The learned counsel for the petitioner is also not in a position to point out any finding of the Appellate Tribunal in support of the petitioner for reducing the liability to 50%.

13. The Appellate Tribunal, without any reason, whatsoever, has reduced the liability of the Writ Petitioner to Rs.28.78 lakhs. In these circumstances, the order passed by the Debt Recovery Appellate Tribunal is liable to be set aside. Accordingly, the same is set aside. The order passed by the Debts Recovery Tribunal in O.A.No.41 of 1997 dated 31.12.2004 is restored.

14.For the reasons stated above, the Writ Petition in W.P.No.33434 of 2018 is allowed. The Writ Petition in W.P.No.9001 of 2017 stands dismissed. No costs. consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. Bank of Baroda,
Ambattur Branch,
A.M.M. Charities Building,
MTH Road, Ambattur,
Chennai - 600 053.
2. The Manager
State Bank of India,
Siru Thozhil Branch,
Nungambakkam,
Chennai - 600 034.
3. The Registrar,
Debt Recovery Appellate Tribunal,
Ethiraj Salai,
Chennai - 600 008.

+2cc to Mr.S.Mohan, Advocate, S.R.No.13657, 13658

+4cc to Mr.T.Karunakaran, Advocate, S.R.No.13884, 13885

W.P.Nos.9001 of 2017 & 33434 of 2018 and
W.M.P.Nos.9910 of 2017 & 38803 of 2018

AK(CO)
CS/06/03/2019

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