IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM:

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

CRP (NPD) NO.3394 OF 2019
AND
CMP NO.22255 OF 2019

1.K.Senthilnathan
2.Meena Senthilnathan .. Petitioners

Vs.

Indian Overseas Bank
Arumbakkam Branch
Chennai - 600 106. .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed by the Debts Recovery Appellate Tribunal at Chennai in I.A.No.252 of 2019 in AIR No.48 of 2019 by its order dated 16.07.2019 against the order passed in M.A.No.43 of 2019 in O.A.No.289 of 2017 by DRT-I, Chennai, by its order dated 08.01.2019.

For Petitioners : Mr.S.Sundaresan

O R D E R

[Order of the Court was made by **Dr.VINEET KOTHARI, J.]**

The only prayer made in this Civil Revision Petition is that the learned Debts Recovery Appellate Tribunal, Chennai, has erred in directing the pre-deposit in terms of Section 18 of the SARFAESI Act, 2002, even though the impugned order of the Debts Recovery Tribunal-I was only on the Interlocutory Application filed by the petitioners / borrowers for setting aside the *exparte* order passed against them.

2. The controversy involved in the present case is no longer *res integra* and is covered by the judgments of the Division Bench of this Court ***MARDIA CHEMICALS LIMITED VS. UNION OF INDIA [2004 (4) SCC 311]*** and ***SREE JEYA SOUNDHARAM TEXTILE MILLS PVT. LTD VS. CANARA BANK AND OTHERS [CRP (NPD) NO.1492 OF 2017, DECIDED ON 11.04.2019]*** which has been followed by this Bench in the case of ***M/S.ASHOK WOOD WORKS AND ANOTHER VS. INDIAN OVERSEAS BANK (W.P.NO.22981 OF 2019 DECIDED ON 30.09.2019***) wherein it is held that no pre-deposit was required to be made by the Petitioner, being

neither the Borrower nor the Guarantor but, being a third party to the proceedings viz., the auction purchaser and therefore, appeal against the order passed on the Interlocutory Application filed by the Petitioner before the DRAT does not require any pre-deposit, as per aforesaid judgments.

3. We reiterate below the ratio of the two judgments rendered by the Division Bench and this Bench:-

In the case of Sree Jeya Soundharam Textile Mills

"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."

In the case of M/s.Ashok Wood Works

"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 twentyfive 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 seventyfive 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."*

4. In view of the aforesaid judgments of the Division Benches of this Court, the Civil Revision Petition is disposed of, by setting aside the order dated 16.07.2019, passed in I.A.No.252 of 2019 by the Debt Recovery Appellate Tribunal, Chennai and the matter is remitted 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 judgments of the Division Benches of this Court. 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, connected Civil Miscellaneous Petition is closed.

(V.K., J.,) **(C.S.N., J.)**

18.11.2019

Speaking Order/Non-Speaking Order
Index : Yes/No
Internet: Yes/No
TK

Note to Office:

Registry is directed to send a copy of this order to the respondent as well as to the Debt Recovery Appellate Tribunal at Chennai.

To

1.Indian Overseas Bank
Arumbakkam Branch
Chennai - 600 106.

2.The Debt Recovery Appellate Tribunal
Chennai.

DR. VINEET KOTHARI, J.
AND
C.SARAVANAN, J.
TK

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