

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

W.P.NO.16112 OF 2017
AND WMP NO.17401 OF 2017

M/s.T.J.Reals Ltd.,
Rep. by its Director Mr.R.Thiyagarajan
No.3, Chokkalingam Nagar Main Road,
V.Thenampet,
Chennai - 600 086.

.. Petitioner

Vs.

1.The Union Bank of India
Plot No.1209, 1st Avenue,
Ashok Nagar,
Chennai - 600 083.

2.M/s.Venkateshwara Import & Export Co.
No.3, Arya Gowda Extension Road,
West Mambalam,
Chennai - 600 033.

3.M.A.B.S.Vinayaham
4.T.M.Avudaiyappan

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India with a prayer to issue a Writ of Certiorarified Mandamus to call for the records of the proceedings in M.A.No.44 of 2013 on the file of learned Debt Recovery Appellate Tribunal, Chennai and quash the impugned order passed by the learned Debt Recovery Appellate Tribunal, Chennai dated 02.06.2017 in I.A.No.477 of 2017 in M.A.No.44 of 2013 and consequently direct the learned Debt Recovery Appellate Tribunal, Chennai to restore the main Appeal filed by the Petitioner in M.A.No.44 of 2013 before the learned Debt Recovery Appellate Tribunal, Chennai without insisting the pre-deposit required under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and hear the appeal on merits.

For Petitioner : Mr.G.Sundaram
For Respondent-1 : Mr.Srinath Sridevan
For Respondent R2 to R4:NOT Ready in Notice

O R D E R

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

The petitioner, M/s.T.J.Reals Ltd., represented by its Director Mr.R.Thiyagarajan, Chennai, is aggrieved by the order dated 02.06.2017 passed by the Debt Recovery Appellate Tribunal, Chennai, directing the petitioner to make a pre-deposit of Rs.3 Crores (Rupees Three Crores Only) as against the debt due against the borrower of Rs.7.21 Crores, by the impugned order. The reasons assigned in the relevant portion of the order of the learned Debt Recovery Appellate Tribunal, Chennai, are quoted below for ready reference:

"Placing reliance on Sutapa Chatterjee and Another Vs. UCO Bank and Others (High Court of Calcutta) Ld. Counsel for the Appellant submitted that until and unless debt amount has not be crystallised and determined, condition of pre-deposit cannot be imposed. Similarly, placing reliance on Almania Foods and Others Vs. Catholic Syrian Bank (Judgment of DRAT, Delhi) Ld. Counsel submitted that if amount has not been prescribed, then, hardship cannot be passed to bonafide Appellant who has a good case on merits.

Per contra, placing reliance on Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another of the Hon'ble Apex Court, Ld. Counsel for Respondent Bank submits that in this case, Appellant has not produced any valid proof of transfer of the interest in the property, rather it is based only on general Power of Attorney, hence, his position cannot be presumed to be better than and other than debtor.

Without entering into the merits of the case, at this stage, for the purpose of recovery, I presume the debt amount to be Rs.7.21 Crores. DRAT cannot entertain any Appeal without ensuring the pre-deposit. Prima facie, it appears that Appellant has stepped into the shoes of borrower. Hence, I hereby direct the Appellant to make a pre-deposit of Rs.3 Crores (Rupees Three Crores Only). Out of this, first instalment of Rs.1.50 Crores shall be deposited with the Registrar of this Tribunal within four weeks from today and second instalment of

Rs.1.50 Crores shall be deposited in next four weeks thereof. It is made clear that in case of failure to deposit the first instalment within the stipulated period, the Appeal shall stand dismissed automatically without reference to this Tribunal.

List for confirmation of first instalment of Rs.1.50 Crores on 30.6.2017."

2. The learned counsel for the petitioner Mr.G.Sundaram submits that the petitioner M/s.T.J.Reals Ltd., is neither borrower nor guarantor qua the first respondent - M/s.Union Bank of India and therefore, seeks no adjudication on the debt due which has been made by the Debt Recovery Appellate Tribunal against the present petitioner M/s.T.J.Reals Ltd. Therefore, for filing and maintaining the appeal against the order passed by the learned Debt Recovery Appellate Tribunal, on 02.07.2012, in A.No.10 of 2012 in I.A.No.47 of 2012 in D.R.C.No.191 of 2011 in O.A.No.No.179 of 2007, the petitioner / company is not required to make any pre-deposit and the learned Debt Recovery Appellate Tribunal has erred in holding that the petitioner has stepped into the shoes of the borrower and therefore, they were required to make such pre-deposit and hence, the present Writ Petition has been filed by the petitioner.

3. The learned counsel for the petitioner, Mr.G.Sundaram has relied on two judgments of the Division Benches of this Court in M/S.ST.MARY'S KALMANE & AREKAL ESTATES VS. DEBT RECOVERY APPELLATE TRIBUNAL AND OTHERS [2016 AIR (MADRAS) 47] and SREE JEYA SOUNDHARAM TEXTILE MILLS PVT. LTD., AND OTHERS VS. CANARA BANK AND OTHERS [2019 (5) MLJ 385].

4. On the other hand, the learned counsel for the first respondent Bank submitted that the borrower Mr.M.A.B.S.Vinayagam had given a General Power of Attorney to the present petitioner M/s.T.J.Reals Ltd., on 03.11.2006 and the present petitioner M/s.T.J.Reals Ltd., had filed an Interlocutory Application in I.A.No.47 of 2012 before the Debts Recovery Tribunal-II, Chennai, which was dismissed vide order dated 09.02.2012, against which, an appeal was filed by the petitioner in Appeal No.10 of 2012 in I.A.No.47 of 2012 in D.R.C.No.191 of 2011 in O.A.No.179 of 2007 and the same was disposed of on 02.07.2012. The relationship of the present petitioner / appellant company with the borrower, as admitted by the appellant itself before the Debts Recovery Tribunal- II, is quoted below for ready reference:

"13.As already pointed out, the appellant is only an agent of R3 in view of the GPA dt.3.11.06. By virtue of Rule 11(4) of Schedule

to Income Tax Act, an agent representing his principal cannot sustain an application under rule 11. Hence, it goes without saying that the appellant herein has no locus standi to file the present Appeal."

5. The learned counsel for the first respondent Bank, therefore, urged that since the present petitioner, being the Power of Attorney, has stepped into the shoes of the borrower, as per the provisions of Section 18 of the SARFAESI Act, 2002, the learned Debt Recovery Appellate Tribunal has rightly directed the petitioner/appellant to make a pre-deposit of Rs.3 Crores (Rupees Three Crores Only) to maintain the appeal filed by them.

6. Having heard the learned counsel for the parties, we are of the opinion that there is no error in the order passed by the Debt Recovery Appellate Tribunal and the reasons assigned by the Debt Recovery Appellate Tribunal are genuine, germane and sufficient to hold that the petitioner has stepped into the shoes of the borrower and therefore, for maintaining the appeal, the petitioner can be rightly directed to make the pre-deposit. For filing and maintaining the appeal, the Debt Recovery Appellate Tribunal is not expected to hold an enquiry and give detailed findings about the interse contractual relationship of the parties at this stage as stated by the petitioner. The petitioner company cannot claim to be a total stranger to the loan transaction in question between the borrower and the first respondent Bank, by admitting that he is the General Power of Attorney of the borrower for purchase of the property in question, of which, some of them may be secured assets of the first respondent Bank. The petitioner may be simply espousing the cause of the borrower as a disguise. If the appeal is entertained by the Debt Recovery Appellate Tribunal, the petitioner has to comply with the conditions for maintaining the said appeal. In view of this, we do not find any error in the impugned order.

7. In fine, the writ petition is devoid of merit and liable to be dismissed and accordingly, the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

TK

To

The Union Bank of India
Plot No.1209, 1st Avenue,
Ashok Nagar,
Chennai - 600 083.

+1cc to Mr.Srinath Sridevan , Advocate SR.No. 96706
+2ccs to Mr.G.Sundaram , Advocate SR.No. 95421

W.P.NO.16112 OF 2017

A.SK(20/12/2019)