

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M. SATHYANARAYANAN  
AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.No.2467 of 2020  
and WMP.No.2865 of 2020

1.M/s.Hindustan Home Needs Partnership Firm  
rep.by its Parner Smt.Sarabai, Sri.D.Moses Dhanraj  
Sri Charles D.Miller, No.23G, Anderson Street,  
Ayyanavaram, Chennai 600 023.  
2.Smt.Sara Bai  
3.Sri D.Moses Dhanraj  
4.Sri.Charles D.Miller  
5.Sri John Joseph  
6.Smt Beula Joseph ... Petitioners

Versus

1.The Debts Recovery Appellate Tribunal  
rep.by its Registrar,  
24/2, Ethiraj Salai, IV Floor  
Egmore, Chennai 600 008.  
2.The Debts Recovery Tribunal II  
rep. By its Registrar,  
DEWA Towers VI Floor  
No.770-A, Anna Salai, Chennai 600 002.  
3.Allahabad Bank rep.by the Chief Manager  
Assets Recovery Management Branch  
Vairam Complex, No.112, Sri Thyagaraya Road,  
T.Nagar. Chennai 600 017. ..Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of certiorarified mandamus calling for the records of the 1<sup>st</sup> respondent pertaining to the order dated 06.08.2019 passed in AIR No.17/2019 and confirming the order of the 2<sup>nd</sup> respondent dated 12.12.2018 in OA.No.222/2017 and quash the said order as illegal, arbitrary and as against the law and consequently, direct the 2<sup>nd</sup> respondent to hear the appeal bearing AIR No.17/2019 on merits without directing the petitioner to make pre-deposit.

For Petitioners : Mr.S.Chandrasekharan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

- (1) The present writ petition is filed seeking to quash the order of the 1<sup>st</sup> respondent/Appellate Tribunal dated 06.08.2019 made in AIR.No.17/2019 and to direct the 2<sup>nd</sup> respondent to dispose of the appeal on merits without directing the petitioners to make the pre-deposit.
- (2) The 3<sup>rd</sup> respondent/Bank had initiated recovery proceedings under the provisions of the Recovery of Debts and Bankruptcy Act, 1993 [Amended] by filing an Original Application in OA.No.222/2017 on the file of the Debts Recovery Tribunal-II at Chennai against the petitioners herein for recovery of a sum of Rs.80,84,747/- due as on 11.04.2017 with interest at the rate of 14.20% per annum with monthly interest and the said application was opposed and contested by the respondents therein/petitioners herein, by filing a Written Statement.
- (3) During the course of enquiry, on behalf of the 3<sup>rd</sup> respondent/Bank, Mr.D.Sivakumar, Chief Manager, was examined as P.W.1 and Exs.A1 to A27 were marked. The petitioners herein who were arrayed as respondents, did not examine any witnesses and not marked any documents. The Tribunal [DRT], after taking note of the materials and evidences, had found that the claim made by the 3<sup>rd</sup> respondent/Bank is sustainable and accordingly, passed an order on 12.12.2018 for recovery of the said sum from the petitioners herein/respondents 1 to 6 therein, jointly and severally together with 12% per annum from the date of Original Application till the date of realisation together with cost by sale of the scheduled mentioned properties.
- (4) The petitioners herein/respondents 1 to 6 in OA.No.222/2017, aggrieved by the said order, filed an appeal before the Debts Recovery Appellate Tribunal [DRAT] at Chennai and the Appellate Tribunal, vide order dated 05.07.2019, directed the petitioners / appellants, to make a pre-deposit of Rs.30 Lakhs, with the Registrar of the Debts Recovery Appellate Tribunal within a period of four weeks and during the course of arguments, the learned counsel for the appellants before DRAT had fairly conceded that the appellants are not in a position to make the pre-deposit. The DRAT, has taken into consideration of the fact that DRAT cannot entertain the appeal filed by the aggrieved person, unless and until they comply with the formality of pre-deposit, and had dismissed the appeal for want of compliance and challenging the legality of the order, the present writ petition is filed.

(5)The learned counsel for the petitioners has made an attempt to advance arguments on the merits of the main appeal itself which admittedly, came to be dismissed for want of compliance and took a stand that the 4<sup>th</sup> petitioner is not at all a partner of the 1<sup>st</sup> petitioner/Firm as he retired from the Partnership on 04.04.2014 and signed the Challan in his personal capacity and it will not bind and that apart, there was a discrepancy in the Statement of Accounts as well as calculation of unapplied interest between 03.12.2014 and 09.12.2014 and despite not relief has been claimed against the 6<sup>th</sup> petitioner, joint and several liability is also foisted upon him and hence, prays for interference.

(6)This Court has carefully considered the arguments advanced by the learned counsel for the petitioners and also perused the materials placed before it.

(7)It is relevant to extract Section 30-A of the Recovery of Debts and Bankruptcy Act, 1993:-

'Section 30-A:- Power of Adjudicating Authority to impose penalty:-

(1)Where any asset reconstruction company or any person fails to comply with any direction issued by the Reserve Bank under this Act, the Adjudicating Authority may, by any order, impose on such company or person in default, a penalty not exceeding One Crores Rupees or twice the amount involved in such failure where such amount is quantifiable, whichever is more, and where such failure is a continuing one, a further penalty which may extend two One lakh rupees for every day, after the first, during which such failure continues.

(2)For the purpose of imposing penalty under sub-section [1], the Adjudicating Authority shall serve a notice on the asset reconstruction company or the person in default requiring such company or person to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall be given to such person.

(4)Any penalty imposed under this section shall be payable within a period of thirty days

from the date of issue of notice under sub-section [2].

- (5) Where the asset reconstruction company fails to pay the penalty within the specified period under sub-section [3], the Adjudicating Authority shall, by any order, cancel its registration :

Provided that an opportunity of being heard shall be given to such asset reconstruction company before cancellation of registration.

- (7) No complaint shall be filed against any person in default in any Court pertaining to any failure under sub-section [1] in respect of which any penalty has been imposed and recovered by the Reserve Bank under this section.

- (8) Where any complaint has been filed against a person in default in the Court having jurisdiction no proceedings for imposition of penalty against that person shall be taken under this section.

Explanation:- For the purpose of this Section and sections 30-B, 30-C and 30-D -

[1] 'Adjudicating Authority' means such officer or a committee of officers of Reserve Bank, designated as such from time to time, by notification, by the Central Board of Reserve Bank ;

[2] 'person in default' means the asset reconstruction company or any person which has committed any failure contravention or default under this Act and any person incharge of such company or such other person, as the case may be, shall be liable to be proceeded against and punished under section 33 for such failure or contravention or default committed by such company or person. '

- (8) In the light of the above said provision, the DRAT has not been vested with any jurisdiction or discretionary power to reduce the pre-deposit.

- (9) It is to be noted at this juncture that the Original Application by the 3<sup>rd</sup> respondent/Bank was ordered for recovery of a sum of Rs.80 Lakhs and odd and the DRAT has indicated that the petitioners herein / appellants have to make a pre-deposit of Rs.30 Lakhs and during the course of arguments, it was

fairly conceded by the learned counsel appearing for the appellants therein that the appellants are not in a position to make a pre-deposit and taking note of the same, the DRAT has dismissed the appeal for want of said compliance.

(10) In the considered opinion of the Court, the impugned order passed by the DRAT is in compliance with the above said statutory provision and therefore, it cannot be said that the DRAT has committed a grave error while passing the impugned order.

(11) If the petitioners/appellants are so advised and if it is available to them under law, they are always at liberty to file necessary application seeking extension of time for making the pre-deposit and for restoration of the appeal.

(12) In the result, the writ petition is dismissed subject to the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.S.II)

/True Copy/

Sub Assistant Registrar

To

1. The Registrar,  
Debts Recovery Appellate Tribunal  
24/2, Ethiraj Salai, IV Floor, Egmore, Chennai 600 008.
2. The Registrar,  
Debts Recovery Tribunal II, DEWA Towers VI Floor  
No.770-A, Anna Salai, Chennai 600 002.
3. The Chief Manager, Allahabad Bank  
Assets Recovery Management Branch  
Vairam Complex, No.112, Sri Thyagaraya Road,  
T.Nagar. Chennai 600 017.

+1 cc to M/s.S.Chandrasekharan, Advocate Sr.No. 8370

AKM/07.02.2020/5P- 5c /

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