

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.34387 of 2019
and WMP.No.35070 of 2019

1. M/s.Veena Textiles Ltd.,
Rep. by its Managing Director,
K.S.Elavarashen,
11-F, Gandhipuram,
Komarapalayam - 638 183,
Salem District.
 2. K.S.Elavarashen/M/70,
No.175, Kalaimagal Street,
Kumarapalayam - 638 183,
Salem District.
- ... Petitioners

-Vs-

1. The Presiding Officer,
Debt Recovery Tribunal-II,
770-A, Spencer Plaza, 4th floor,
Anna Salai, Chennai - 600 002.
2. The Registrar,
Debt Recovery Appellate Tribunal,
Indian Bank Circle Officer, 4th Floor,
55 Ethiraj Salai,
Chennai - 600 008.
3. IFCI Ltd., Rep. by its Authorised signatory,
No.142, Nungambakkam High Road,
Chennai - 600 034.
4. ICICI Ltd.,
ICICI Tower,
Bandra Kurla Complex,
Bandra East, Mumbai - 400 051.

5. State Bank of India,
No.342, Mettur Road,
Kumarapalayam - 638 183,
Salem District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned Order passed in OA.No.165/2015 dated 07.12.2018 on the file of the Hon'ble DRT-II, Chennai and Order passed in AIR.No.174/2019 dated 21.08.2019 on the file of the Hon'ble DRAT, Chennai, respectively, and to quash the same and also for a direction directing the 3rd respondent to refund the sum of Rs.19.85 lakhs paid in excess.

For Petitioners .. Mr.S.Radhakrishnan

For Respondents .. Mr.Sriram for
M/s Kailasam and Associates
for R3

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This writ petition has been filed by the petitioner being aggrieved over the precondition deposit directed to be made when a challenge is made as against the final judgement and decree rendered by the Debt Recovery Tribunal-II, Chennai.

2. The learned counsel for the petitioner seeks to predicate the order impugned before us on the premise that the assignment deed and the communication sent by the assigner themselves would indicate the amount due. This has to be taken into consideration amount already paid by the petitioner.

3. Per contra, the learned counsel for the third respondent submitted that such a plea has never been taken before the Debts Recovery Tribunal-II, Chennai. Therefore, the same cannot be adjudicated before this court, that too, when a challenge is made before the Debts Recovery Appellate Tribunal, Chennai against the judgement and decree rendered by the Debts Recovery Tribunal-II, Chennai. Under the provisions of the Act, the minimum is 25%. Therefore, the Debts Recovery Appellate Tribunal has fixed only 25%. The question sought to be raised can only be decided both on issue of fact and law before the Debts Recovery Appellate Tribunal alone. Hence, no interference can be made that too by way of filing writ petition before this court.

4. Considering the submissions made, we are of the view that there is a contentious issue involved in this appeal. The issues are with respect to the fact and law. On the legal issue, the question for consideration is as to whether the issue which has not been raised before the court of first instance can be raised before the court of second instance. We do not wish to say anything in this regard. The Debts Recovery Appellate Tribunal is competent to consider this. The incidental issue as to whether the petitioner has, in fact, paid the amount which has been given credit to or not and if so what is the amount to be paid for maintaining the appeal also cannot be gone into by us at this stage. This is for the reason that the decree amount might involve the interest component also. The proceedings are pending from 1999 onwards. However, considering the fact of the case, especially, the fact that the petitioner did make some payment during the interregnum and there exists an assignment deed which indicate the amount due, we are inclined to modify the pre-deposit of Rupees Fifty Lakhs to Rupees Thirty Five Lakhs without prejudice to the contentions of the parties before the Debts Recovery Appellate Tribunal. We believe, this might constitute 25%. After all the petitioner seeks only an adjudication on merits.

5. In such view of the matter, the impugned order can be modified with respect to the quantum of pre-deposit from Rupees Fifty Lakhs to Rupees Thirty Five Lakhs. The petitioner shall make the payment within a period of four weeks from the date of receipt of a copy of this order. On such payment, the petition will have to be numbered and thereafter decided on merits. Taking into consideration of the fact that the proceedings are pending from 1999 onwards, the Debts Recovery Appellate Tribunal, Chennai is directed to dispose of the appeal after numbering the same within a period of three months thereafter.

6. This writ petition stands disposed of accordingly. No costs. Consequently, connected WMPs are closed.

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Sd/-
Assistant Registrar
//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer,
Debt Recovery Tribunal-II,
770-A, Spencer Plaza, 4th floor,
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2. The Registrar,
Debt Recovery Appellate Tribunal,
Indian Bank Circle Officer, 4th Floor,
55 Ethiraj Salai,
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3. State Bank of India,
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+lcc to Government Pleader Sr.No.29517

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