

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P. (NPD) No.794 of 2021

Punjab National Bank
Asset Recovery Management Branch
rep. by its Chief Manager
No.48-49, Royapettah High Road
Chennai 14.

.. Petitioner

Vs.

1. Shivakeshav Pillai
2. Sheerin Douloth
3. M/s. 99 Chills
rep. by its Proprietor
Shivakeshav Pillai
No.32, Alapakkam Main Road
Maduravoyal
Chennai 600 095.
4. M/s. ATM 360
rep. by its Partners
Shivakeshav Pillai and Sheerin Douloth
New No.10, Murugan Nagar
2nd Main Road, Kolathur
Chennai 600 099.

5. K.S.Doulath Thameen

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 16.12.2020 passed in OA Diary No.114 of 2020 on the file of the Debts Recovery Tribunal-I, Chennai.

For Petitioner : Mr.M.L.Ganesh

ORDER

(Made by The Hon'ble Chief Justice)

Though the matter has been put up by the Registry to consider the maintainability, it is desirable that the Registry merely puts up a note at the time of admission and not expresses any view as to the maintainability of any matter, since that is an exercise of judicial authority. However, that does not imply that any doubts need not be expressed; only that a note may be appended for the Bench to take notice of, if it appeals to the relevant Bench.

2. In the present case, since Article 227 of the Constitution of India has been invoked, which gives plenary authority to this Court to exercise superintendence over the discharge of judicial functions within

the territory of the State, any order passed by any Court or Tribunal within the territory is amenable to challenge in this jurisdiction and the question of maintainability does not arise. It is, however, an entirely different matter that the Court may not entertain certain kinds of petitions because they are at the initial stage of the proceedings or the like. However, any order or action of any Court or Tribunal within the territory of the State is amenable to challenge under Article 227 of the Constitution and the question of maintainability does not arise.

3. In the instant case, the order impugned is dated December 16, 2020 and it requires the petitioning bank to pay a sum in excess of Rs.1.50 lakh by way of court-fees in receiving the petitioner's application under Section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993.

4. Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993 sets out a chart under Sub-rule (2) thereof. The three columns in such chart display the serial numbers of the items, the nature of the application in each case and the quantum of fees payable.

5. Rule 7(2) of the said Rules covers six situations: an application made under Section 19(1) or 19(2) of the Act of 1993; an application to counter-claim under Section 19(8) of the Act; an application for review; an application for interlocutory order; an appeal against an order of the Recovery Officer; and, for filing vakalatnama. Within the relevant classes of action described under the second column, different situations are indicated based on the value of the claim or the nature of the order and the varying amounts of court-fees payable are indicated in the third column.

6. There is no doubt that in the present case, the petitioning bank had carried an application for recovery of debts due under Section 19(1) of the Act of 1993. In respect of such applications, there are two situations which may arise in terms of the chart at Rule 7(2) of the said Rules of 1993: where the amount of debt claimed is Rs.10 lakh or less; or where the amount of debt claimed is above Rs.10 lakh. If the debt due is said to be up to Rs.10 lakh, ad hoc court-fees of Rs.12,000/- would be payable. If the debt due as claimed is in excess of Rs.10 lakh, in addition to Rs.12,000/- to be paid on account of court-fees for the first claim of Rs.10 lakh, Rs.1,000/- for every

additional Rs.1 lakh or part thereof claimed would be payable, subject to a maximum of Rs.1,50,000/-.

7. In other words, for a claim of Rs.10 crore or Rs.100 crore, it would be the same maximum ad valorem court-fees which would be payable, since the additional court-fees are not calculated once the quantum of court-fees reaches the highest benchmark level of Rs.1.50 lakh. There is no mandate for claiming or receiving any amount more than Rs.1.50 lakh on an application under Section 19(1) of the Act of 1993, irrespective of whether the quantum of claim under one or several heads is Rs.10 crore or Rs.10,000 crore.

8. By the order impugned dated December 16, 2020, the Debts Recovery Tribunal has erroneously sought to make a distinction between that part of the claim which is covered by an equitable mortgage and the other which may not be relatable to such mortgage. There is no distinction made in Rule 7(2) of the said Rules and the chart appearing thereunder. It is the total quantum of claim which has to be considered for assessing the court-fees; and no more than Rs.1.50 lakh can be claimed as court-fees in respect of a solitary

application.

9. Accordingly, the order dated December 16, 2020 passed by the Debts Recovery Tribunal-I, Chennai is set aside. The petitioner will be obliged only to tender Rs.1.50 lakh by way of court-fees for the entirety of the petitioner's claim and for the petitioner's application under Section 19(1) of the said Act to be entertained by the Tribunal and proceeded with in accordance with law.

10. The respondents herein are proper parties, since such respondents may have been the persons proceeded against by the petitioner bank in the application under Section 19(1) of the said Act. However, no prior notice was required to be furnished to the respondents, since the matter involves an issue between the petitioner and the Debts Recovery Tribunal and even the Debts Recovery Tribunal had passed the order impugned without reference to the respondents herein. However, the respondents must be forwarded copies of the petition and this order for their information.

11. C.R.P.No.794 of 2021 is disposed of. There will be no order as to costs. Consequently, C.M.P.No.6651 of 2021 is closed.

(S.B., CJ.) (S.K.R., J.)
29.03.2021

Index : Yes

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THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

(kpl)



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