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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11957 of 2021

1.M/s.Veena Textiles Limited,
rep. by its Managing Director K.S.Elavarashen,
11-F, Gandhipuram,
Komarapalayam - 638 183,
Namakkal District.

2.K.S.Elavarashen

.. Petitioners

vs.

1. The Registrar
Debt Recovery Appellate Tribunal
Indian Bank Circle Officer 4th Floor
55, Ethiraj Salai
Chennai - 600 008.

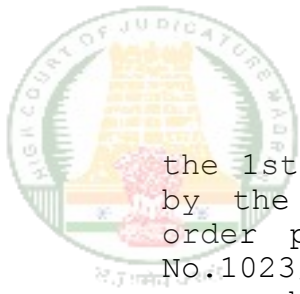
2. The Presiding Officer
Debt Recovery Tribunal-II
770-A, Spencer Plaza
4th Floor, Anna Salai
Chennai - 600 002.

3. IFCI Limited,
rep. by its Authorised Signatory,
No.142, Nungambakkam High Road,
Chennai - 600 034.

.. Respondents

(Respondents 1 and 2 deleted
vide order dated 02.06.2021)

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in R.A.No.34/2020 and to quash the order dated 26.03.2021 passed by



the 1st respondent in R.A.No.34/2020, modifying the order passed by the 2nd respondent in O.A.No.165/2015 and also quash the order passed by the 2nd respondent in O.A.No.165/2015 (old No.1023/1999) dated 7.12.2018 besides ordering the 1st respondent to refund the pre-deposit of Rs.35 lakhs deposited with the DRAT, Chennai and also for a direction directing the 3rd respondent, as a consequential relief, to refund the sum of Rs.19.85 lakhs which was paid in excess.

For Petitioners : Mr.S.Radhakrishnan

For 3rd Respondent : Mr.A.K.Sriram
for M/s.A.S.Kailasam and
Associates

ORDER

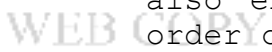
(Order of the Court was made by the Hon'ble Chief Justice)

The petitioners seek to assert the imaginary fundamental right of every Indian borrower to not repay.

2. There is no doubt that the petitioners obtained credit facilities from a bank or a financial institution within the meaning of that description in the Recovery of Debts and Bankruptcy Act, 1993. The original bank or financial institution assigned the debt to the third respondent herein. In proceedings instituted under Section 19 of the Act of 1993, a certificate was issued for a sum of about Rs.1.99 crore.

3. The writ petitioners were dissatisfied with the quantum of the certificate and carried the matter to the Debt Recovery Appellate Tribunal complaining that certain other payments made by the writ petitioners to the creditor had not been adjusted. The appellate tribunal disposed of the matter by the order impugned dated March 26, 2021.

4. The relevant order of the appellate tribunal records that the third respondent herein chose to remain absent despite service. In the light of the third respondent's absence, the appellate tribunal went on to allow the further adjustment as sought by the writ petitioners herein. The relevant order found that the petitioners were entitled to an adjustment of Rs.78 lakh rather than an adjustment of Rs.33 lakh that the petitioners had been given credit for by the Debts Recovery Tribunal. The net impact of the order dated March 26, 2021 is



also entitled to the interest as provided for in the relevant order of the Debts Recovery Tribunal.

6. This Court, in exercise of the extraordinary jurisdiction under Article 226 of the Constitution, does not sit in appeal over the order impugned passed by the Debt Recovery Appellate Tribunal. It is evident from the relevant order that the extent of the petitioners' claim before such tribunal was the failure of the Debts Recovery Tribunal to give credit to the further sums paid by the petitioners to the creditor. The appellate tribunal reckoned the further sum for which credit was due to the petitioners to be Rs.45 lakh. The appellate tribunal modified the Debts Recovery Tribunal's certificate accordingly by reducing the quantum by Rs.45 lakh.

8. The petitioners seek to assert that the extent of the petitioners liability is confined to the consideration indicated in the deed of assignment. Such contention is absurd. A party may consider the risk of realisability and let go of the debt due at a lower value; but that does not imply that the assignee of the debt is restricted to claim only to the extent of the value of the assignment and not as per the full complement of the debt due to the assignor.

<https://hcservices.ecourts.gov.in/hcservices/>



W.P.No.11957 of 2021 is dismissed. W.M.P.Nos.12719 and 12720 of 2021 are closed. There will be no order as to costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sasi/bbr

TO:

IFCI Ltd
Rep by its authorised signators,
No.142, Nungambakkam High Road,
Chennai-600034.

+3cc to Mr.S.Radhakrishnan, Advocate, S.R.No.30981

W.P.No.11957 of 2021

KV(CO)
SB(14/07/2021)