IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.20414 of 2021
and W.M.P.No.21675 of 2021

1.M/s.Gangrihtech India Pvt Ltd.,
Rep.by its Managing Director
T.Srinivasan, Plot No.11 and 12
Industrial Estate, Venkatesa Nagar
Main Road, Perungudi, Chennai-600 096.

2.T.Srinivasan

3.Jothi .. Petitioners

Vs.

1. Indian Bank (Previously Allahabad Bank)
Thousand Lights Branch
Rep.by its Chief Manager
700, Anna Salai, Chennai-600006.
Presently at Indian Bank
Stressed Assets Management Branch
No.55, Ethiraj Salai, 2nd Floor
Chennai – 600 008.

2. K.Karuppaiah .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of Debt Recovery Appellate Tribunal, Chennai in its proceeding dated 24.08.2021 in AIR 75/2021 and quash the same and direct the DRAT Chennai to hear the appeal on merits without insisting for pre-deposit.

For the Petitioners : Mr.S.Ranjith Kumar

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

The petitioners question the propriety of an order dated August 24, 2021 passed by the Debt Recovery Appellate Tribunal at Chennai at the receiving stage of an appeal against an order passed by the Debts Recovery Tribunal-III, Chennai.

2. The proposed appeal of the petitioners was directed against an order dated January 29, 2021 in M.A.No.67 of 2019 arising out of O.A.No.197 of 2010. As is evident from the order impugned, M.A.No.67 of 2019 was an application for setting aside an ex parte order. Such application was dismissed.

3. The appellate tribunal noticed that O.A.No.197 of 2010 had been filed for recovery of a sum in excess of Rs.1.26 crore. O.A.No.197 of 2010 was disposed of by an order dated January 29, 2019. The DRT found the borrowers liable in a sum in excess of Rs.79.58 lakh in respect of the cash credit account, a sum in excess of Rs.27.46 lakh in respect of Term Loan-I and a further sum in excess of Rs.19.05 lakh in respect of Term Loan-II. Interest at the rate of 8 per cent per annum was also awarded from the date of the filing of the petition under Section 19 of the then Recovery of Debts due to Banks and Financial Institutions Act, 1993 till the date of realisation.

4. Thus, the principal amount due in terms of the relevant order of the DRT amounted to a sum in excess of Rs.1.26 crore, without considering the interest component. The interest would amount to a sizable quantum since the petition under Section 19 had been filed in 2010.

5. Section 21 of the Act of 1993 mandates that an appeal preferred by a person from whom any amount of debt is due to a bank or a financial institution or the like shall not be entertained unless such person has deposited with the appellate tribunal 50 per cent of the debt as determined to be due by the DRT under Section 19 of the Act. However, the appellate tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited to not less than 25 per cent of the amount of such debt due.

6. It is true that the appeal in this case was not directed against the main order but only against the rejection of the application to set aside the original order which was apparently passed ex parte. While Section 20 of the Act of 1993 is wide as regards the scope of the appeal that may be carried to the appellate tribunal, the mandate for deposit is without exception, particularly in a situation where the debt due from the appellant to the bank or financial institution has already been determined.

7. Since an amount of debt is due from the petitioners to a bank and the amount of debt has been determined by the DRT, the appellate tribunal had no choice but to require the deposit to be made. Indeed, the appellate tribunal was charitable in referring to only the principal amount adjudged to be due since the interest component, would have almost matched the principal component as interest over a period of eleven years would come to 88 per cent of the principal amount.

8. In the circumstances, the order dated August 24, 2021 that permitted the petitioner to make a total deposit of Rs.60 lakh in two tranches of Rs.30 lakh each, cannot be seen to be harsh or otherwise irregular or without authority.

9. Indeed, upon the petitioners failing to pay the first instalment within four weeks of August 24, 2021, the appeal has been dismissed, as the petitioners inform, on September 22, 2021.

10. In view of the mandatory requirement for the making of the pre-deposit and the order impugned herein being within such mandate, there is no merit in the petitioners' grievance. However, this order will not prevent the petitioners from assailing the final order passed in O.A.No.197 of 2010 in accordance with law, subject to complying with the pre-conditions in such regard.

W.P.No.20414 of 2021 is disposed of without adding any further misery to the petitioners by imposing costs. W.M.P.No.21675 of 2021 is closed.

Sd/-
Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

sra/kst

To:

1. The Chief Manager,
Indian Bank (Previously Allahabad Bank)
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Presently at Indian Bank
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W.P.No.20414 of 2021

GJ(CO)
B.VC (28/09/2021)