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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.11.2021

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P (MD) NO.10315 OF 2017

and

W.M.P (MD) No.7892 of 2017

Jeyarathinam @ Siriyapushpam

:Petitioner

.vs.

1.The Presiding Officer,
Debts Recovery Appellate Tribunal,
Chennai.

2.The Presiding Officer,
Debts Recovery Tribunal,
Madurai.

3.The Authorised Officer,
Canara Bank,
Sankarankovil,
Tirunelveli District.

4.The Branch Manager,
Canara Bank,
Sankarankovil,
Tirunelveli District.

5.M/s.Roja Biscuits,
represented by its Partners S.Kannan,
8/160, Main Road,
Sankarankovil-1,
Tirunelveli District.

6.M/s.Roja Blue Metals,
represented by its Partners P.Antony Rajamani,
116, Ramasamayapuram,
Sankarankovil,
Tirunelveli District.

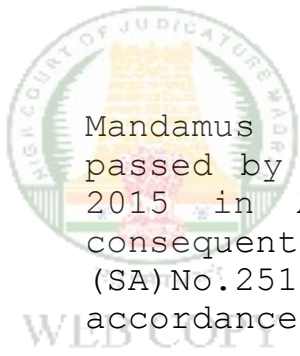
7.S.Kannan

8.P.Antony Rajamani

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified

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Mandamus calling for the records pertaining to the impugned order passed by the first respondent dated 09.05.2017 in I.A.No.274 of 2015 in AIR(SA)No.251 of 2015 and to quash the same and consequently direct the first respondent to take the appeal in AIR (SA)No.251 of 2015 on file and decide the same on merits and in accordance with law, within the time frame fixed by this Court.

For Petitioner : Mr.G.Mohankumar
For Respondents : Mr.C.Karthik
3 and 4

O R D E R

(Order of the Court was made by PUSHPA SATHYNARAYANA,J)

The borrower whose property was brought to sale in the Debts Recovery Proceedings, has preferred the above Writ Petition challenging the direction to pre-deposit a sum of Rs.10.10 Lakhs with the Registrar of the Debts Recovery Appellate Tribunal at Chennai.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.When the property in dispute was brought to sale, the same was sold to one Murugan on 30.03.2015 for Rs.40,30,000/- (Rupees fourty lakhs and thirty thousand only). The said sale was challenged by the Petitioner in S.A.SR.No.3505 of 2015. The applicant was permitted to deposit Rs.40,30,000/- (Rupees fourty lakhs and thirty thousand only) which was the sale amount, which was complied with by the Petitioner. Though the said amount has been deposited, she was asked to deposit a sum of Rs.10.10 Lakhs (Rupees ten lakhs and ten thousand only) as a pre-condition for entertaining the appeal by the Debts Recovery Appellate Tribunal. The said condition of pre-deposit is now under challenge in the present Writ Petition.

4.The question as to whether the pre-deposit is necessary or not, is no more res-integra, in view of the Division Bench Judgment Judgement in the case of **Sree Jeya Soundharam Textile Mills Private Limited , represented by its Managing Director, Perungudi Village, Sivagangai .vs. The Canara Bank, represented by its Manager, P.N.Road Branch, Tirupur and others** reported in 2019 (3) CTC 497, dated 11.04.2019. It would be appropriate to advert to the relevant portion in Paragraph 22(vii) and(viii), which is extracted hereunder:

22.For the reasons stated above, we decide the issue with regard to making of pre-deposit for



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preferring an Appeal before the Debts Recovery Appellate Tribunal as follows:

(i) to (vi).....

(vii) The Appellant who has filed an Appeal before the Debt Recovery Appellate Tribunal as against the Interlocutory Order passed by the Debts Recovery Tribunal, is not liable to make the pre-deposit if the liability is not determined by the Debts Recovery Tribunal in the Interlocutory Order.

(viii) In any other category other than the categories mentioned above, the Debts Recovery Appellate Tribunal shall decide the waiver Application as per the principles laid down in this judgment.

5. In view of the above, there is no necessity for the Writ Petitioner to make pre-deposit of Rs.10.10 Lakhs (Rupees ten lakhs and ten thousand only) with the Debts Recovery Appellate Tribunal, as the Challenge is only to an order made in an interlocutory application. Therefore, the Debts Recovery Appellate Tribunal is directed to hear the appeal filed by the Petitioner without insisting on the pre-deposit and dispose of the same, after affording an opportunity of hearing to the parties concerned, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

6. With the above direction, the Writ Petition stands allowed and the impugned order is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

vsn

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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+1 CC to M/s.J.C.RATHINAVEL PANDIAN, Advocate (SR-34429[F] dated
15/11/2021)

**W.P (MD) NO.10315 OF 2017
and**

**W.M.P (MD) No.7892 of 2017
12.11.2021**

TP (CO)

SB (01.12.2021) 4P 6C