BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

C.R.P.(MD)No.1431 of 2022

Canara Bank,
Grand Central Branch,
118, West Perumal Maistry Street, Madurai. ... Petitioner

Vs.

1.The Registrar,
Debts Recovery Tribunal,
3rd and 4th Floor, Kalyani Tower,
4/162, Melur Road, Madurai.

2.M/s.I-Systems,
a partnership Firm, represented by its Partners,
Madurai-625 001.

3.P.K.Dinesh
4.N.D.Yagna Priya
5.S.S.Premchander ... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Return Endorsement order of the first respondent, dated 05.04.2022, 30.04.2022 and 25.05.2022 made in O.A.Sr.No.958 of 2022 and to direct the first respondent to number the application filed under Section 19 of the RDDBFI Act, 1993 and hear the same on merits and in accordance with law.

For Petitioner :Mr.P.Madhan Alexander

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ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

Challenging the endorsement of the Registrar-in-charge of the Debts Recovery Tribunal while returning the application filed by the Bank, the above Civil Revision Petition is filed.

2.Heard Mr.P.Madhan Alexander, learned Counsel for the petitioner.

3.The petitioner, which is a Bank, has filed an original application before the Debts Recovery Tribunal, Madurai, under Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, for recovery of a sum of Rs.26,15,192.90/- and for other consequential reliefs. The petitioner has also filed interlocutory application for grant of interim injunction against the defendants from alienating the property and for other reliefs.

4.When the said original application was submitted before the Debts Recovery Tribunal, the Registrar (in-charge) has returned the application by making the following endorsement:

"Note:-

OA may be returned for this following reasons

1.While D4 has already retired from the partnership firm vide retirement deed dt.16.03.19, Counsel may state how the Pronotes signed by D1 subsequent to 16.03.19 are binding on D4 and also how D4 has been made equally liable for the Debts of D1.

2.Prayers under para 6 to be modified according to the liability of defendants.

3.Loan applicant sanction ticket for each of the facilities availed by the borrowers, are not produced.

4.Account number of the facilities not mentioned in the pleading prayer."

5.The petitioner has re-presented the original application with the following explanations:-

"Note 2

Re-presentation for 1 and 2:

Though one of the partner retired from the partnership firm is also liable against the claim made upon him upto till date of his retirement.

2.Further the loan granted in this case covered under CGTMSME claim, apart from personal guarantee there is no third party guarantee or collateral security to this loan. So, partners are personally liable for the bank's claim.

3.The liability of the partners cannot be split % fixed, because non-availability of securities &3rd party guarantee, the partners might have swindle the funds and tactically retired from the firm with the future plan to windup the partnership firm.

4.Unless, the retired partners are added as a party in the suit, mere getting a decree will not make the bank to realize recoverable dues.

Re-presentation for 3

1.Loan application & sanction tickets are not available. So it was not produced.

2.Further, the loan application & sanction ticket are being an offer & acceptance before entering into contract. On completion of the contract, an agreement to that effect, such as DPN, Cash credit agreement, hypothecation deed etc., have already been produced. So, the same may be considered for numbering.

3.Further, to till date, I have filed the OA's without loan application & the sanction ticket and those OA's was numbered and decreed. So, this may also be considered.

Re-presentation for 4.

The prayer was sought on different types of loan basis. Further pleadings in the application and the list of documents are produced as per the different types of loan. So, it may be sufficient to identify the prayer, while perusing the loan documents along with the pleadings in the original application.

2.Further to till date I have filed the OA's without mentioning of Account number in the prayer column and the same was also numbered & decreed. So, this may also be considered.

3.If the registry wants to mention the number in the prayer column, we will mention it.

4.Humble request- whenever, a new official taking charge of DRT, Madurai incorporating new rules. The said rule may be implemented with prospective effect and not in a retrospective effect."

6.Again the Tribunal has returned the original application on the following lines:

"Note 3

Counsel for the applicant represented the OA with clarification

Submitted for order please

OA return 1, 2 counsel on record has not clarified as to how a particular persons, who was not the partners of a firm from a particular date can be made accountable for the borrowers/dealings of the firm when he has already ceased to be a partner. The liability of each partner needs to be clarify spelt in the prayer column based on the documents available. An ambiguous prayer that "all the defendants are jointly and securely liable" is not maintainable when defendant was not party to the dealings of the firm for the period when he was not functioning as partners of the firm.

The Applicant being a nationalised bank ought to be possession of the loan application/sanctioned ticket based on which the defendants would have enclosed pronote (Return-3)

Account Number of Different facilities was sought to be incorporated for easier reference and by incorporating the details, the counsel duly assisting the tribunal in disposal of OA.

Clarification on the lines that earlier, OA's were filed without much details and they were numbered, is not acceptable."

7.The petitioner has re-presented the original application with the following explanations:-

> *"Note 4*
> *For Representation*
> *The loan granted was covered under GTMS Claims. In this claim, apart from personal guaranteed. There is no 3rd part guarantee, collateral security. So, partners are personally liable for bank's claim.*
> *The bank does not have loan application & sanction ticket once the same has found, we undertake to produced it.*
> *All those may be considered & OA may be numbered."*

8.Finally, the original application was returned with an endorsement that the first point above in Note-4, is incomplete and clarification may be given with supportive documents. Secondly, the clarification that sanction letter is not available with the bank is not satisfactory.

9.The bank has given all the particulars in the plaint and as far as possible produced all the records, which are available with the petitioner bank. However, the first respondent has returned the application on every occasions pointing out that the bank has not produced the sanction ticket for each of the loan availed by the borrowers and other details, which are not required to be filed along with the applications. One of the reasons for returning is that one of the partner, who retired from the firm after loan is impleaded. The liability of a retired partner may be gone into while passing final order, as this requires facts and evidence.

10.The bank has made a claim against a third party. One of the returns still maintained by the first respondent is that the petitioner has not filed supportive documents to prove its claim. Proof of claim will be gone into at the time of enquiry and not before numbering the application. The further ground for returning the application is that the account number of different facilities are not given by incorporating the details. It is not necessary that the petitioner bank should file all the documents, which may have relevance to prove the claim of the petitioner.

11.This Court is unable to sustain the order of the first respondent, while returning the application. It is also to be noted that the first respondent has given reasons, which are slightly different from the one in the earlier return. The application, which was filed in April 2022 is yet to be numbered. This Court is unable to sustain the reasons assigned by the first respondent for returning application. Hence, this Civil Revision Petition is allowed. The Registrar, Debts Recovery Tribunal is directed to number the original application without further delay within a period of one week from the date of re-presenting the application. It is open to the respondents 2 to 5 to raise any objection regarding maintainability with reference to rules and such objection may be considered by the Tribunal to pass appropriate orders. No costs.

[S.S.S.R., J.] **[S.S.Y., J.]**
18.07.2022

Index : Yes / No
cmr

To

The Registrar,
Debts Recovery Tribunal,
3rd and 4th Floor, Kalyani Tower,
4/162, Melur Road, Madurai.

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

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