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C.R.P.No.3337 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

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

C.R.P.No.3337 of 2019

1.Minor Hari Adarsh
2.Minor Geetha Sri
(rep. by their maternal grandmother
and next friend Gandhimathi)

.. Petitioners

Vs

1.The District Collector,
Namakkal,
Namakkal District.

2.The Authorised Officer,
I.D.B.I. Bank Limited,
Salem Branch,
K.T. Towers, Ground Floor,
No.111, Omalur Road,
Four Road, Salem.

3.M/s.Venkatrayar Sago Factory,
rep. by its Partner,
S.F.No.272/4A, Velampalayam Road,
Kakkaveri, Rasipuram Taluk,
Namakkal District.



C.R.P.No.3337 of 2019

4.M/s.K.Venkatraman & Co.,
rep. by its Partners,
1/169, K.K.Thottam,
Velampalayam Road,
Kakkaveri, Rasipuram Taluk,
Namakkal District.

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 6.8.2019 made in AIR (SA) No.182 of 2019 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For the Petitioner : Mr.N.Suresh

For the Respondents : Mr.M.R.Gokulkrishnan
Addl. Government Pleader
for respondent No.1

: Mr.Suresh
for M/s.Shivakumar & Suresh
for respondent No.2

ORDER

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

We have heard Mr.N.Suresh, learned counsel for the petitioners; Mr.M.R.Gokulkrishnan, learned Additional Government Pleader for the first respondent; and, Mr.Suresh, learned counsel for the second respondent.



C.R.P.No.3337 of 2019

WEB COPY

2. The petitioners assail the order passed by the Presiding Officer of the Debt Recovery Appellate Tribunal, Chennai, dismissing the appeal on the ground of non-compliance of the office objections viz., production of demand notice, possession notice, deficit court fees and pre-deposit.

3. Learned counsel for the petitioners submits that the petitioners would comply all other requirements, however, are not required to make a pre-deposit, as they are neither borrowers nor guarantors. Reliance is placed on the judgment of a Division Bench of this Court in the case of *Sree Jeya Soundharam Textile Mills Pvt. Ltd. v. Canara Bank*, reported in 2019 (3) CTC 497.

4. Learned counsel for the respondent bank submits that even for that purpose, the petitioners have to make an application for waiver as per the judgment in the case of *Sree Jeya Soundharam Textile Mills Pvt. Ltd.* (supra).



C.R.P.No.3337 of 2019

WEB COPY

5. We have considered the submissions.

6. No doubt, if the petitioners demonstrate that they are neither borrowers nor guarantors and have right over the property in question prior to the creation of mortgage, they may not be required to make the pre-deposit. However, for that purpose, an application for waiver has to be filed, wherein all these aspects will have to be decided.

7. The petitioners may make an application for waiver before the authority concerned and may produce all the documents as noted in the impugned order. If all the documents are produced by the petitioners within fifteen (15) days from today along with an application for waiver, then the Debt Recovery Appellate Tribunal shall consider the application for waiver and take a decision afresh with regard to the registration of the appeal on its own merits. While doing so, the impugned order would not be an impediment.



C.R.P.No.3337 of 2019

WEB COPY

8. The civil revision petition is, accordingly, disposed of. There will be no order as to costs.

(S.V.G., CJ.)

(P.D.A., J.)

13.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The District Collector,
Namakkal,
Namakkal District.

Copy to:

The Debt Recovery Appellate Tribunal,
Chennai.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU, J.

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