WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.4206 of 2024

1.Renuga Devi
2.Ravindran
3.Sridharan
4.Ahalya Naidu
5.Sudharson
6.Lord Prabhasan
7.B.V.Rangaraj .. Petitioners

Vs

Tamilnadu Mercantile Bank Ltd.,
Having its registered office at Thoothukudi
and Branch among other places at Pannaipuram,
Uthamapalayam,
Theni, Tamil Nadu. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records that culminated in impugned order in R.A.No.42 of 2018 dated 7.12.2023 passed by the Debt Recovery Appellate Tribunal, Chennai confirming the order in O.A.No.441 of 2013 on the file of the Debts Recovery Tribunal-I, Ernakulam, dated 17.8.2017 and quash the same.

WEB COPY

For the Petitioners	:	Mr.A.K.Sriram Senior Counsel for Mr.S.Sukumar
For the Respondent	:	Mr.V.Chandrasekaran

ORDER

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

Heard Mr.A.K.Sriram, learned Senior Counsel for Mr.S.Sukumar, learned counsel for the petitioners; and, Mr.V.Chandrasekaran, learned counsel for the respondent.

2. The order passed by the Debt Recovery Appellate Tribunal, Chennai, confirming the order passed by the Debts Recovery Tribunal-I, Ernakulam, is assailed in the present writ petition.

3. The prima donna contention of learned Senior Counsel for the petitioners is that a decree was passed by the civil court in a suit filed by the respondent on 30.6.2010. The suit was filed in the year 2006 bearing O.S.No.72 of 2006. Subsequently, a recovery certificate is issued by the Debts Recovery Tribunal. It is the

https://www.mhc.tn.gov.in/judis

WEB COPY

contention of the petitioners that once decree has been passed by the civil court after the introduction of the Recovery of Debts and Bankruptcy Act, 1993, the recovery certificate can be issued only upon an application under Section 19 of the Act. The present respondent did not file application under Section 19 of the said Act. As such, the recovery certificate issued by the Debts Recovery Tribunal and confirmed by the Debt Recovery Appellate Tribunal is null and void.

4. Learned Senior Counsel further submits that granting interest at the rate of 15% per annum with quarterly rest from the date of filing of the suit is erroneous. The loan in question is an agricultural loan.

5. Learned counsel for the respondent submits that till the date of decree the interest is awarded at a contractual rate and from the date of decree, a discretion has been exercised in awarding lesser rate of interest i.e. 6% per annum. No illegality has been committed in that regard.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. The petitioners have deposited an amount of Rs.4,40,960/- before the Debt Recovery Appellate Tribunal. This Court, while issuing notice, directed the petitioners to deposit an amount of Rs.10,00,000/- (Rupees Ten Lakh). The petitioners have complied with the said order.

7. It is an admitted fact that the loan in question is an agricultural loan. The same is not a commercial loan.

8. Considering the fact that the loan in question is agricultural loan and not commercial one, awarding of interest at the rate of 15% per annum with quarterly rest from the date of filing of the suit is too exorbitant and unreasonable.

9. Under Section 34 of the Code of Civil Procedure, 1908, the Court has discretion to grant future rate of interest from the date of filing of the suit on the principal sum adjudged.

10. Since the petitioners have deposited substantial amount as per the direction of this Court, we are not inclined to go into the

https://www.mhc.tn.gov.in/judis

WEB COPY

merits of the contention of the petitioners as to whether application under Section 19 of the Act was required to be filed independently. We are inclined to exercise our discretion under Section 34 of CPC and, accordingly, we modify the order of the recovery certificate that the interest is payable at 15% per annum with quarterly rest. We direct that the interest payable by the petitioners to the respondent bank is at the rate of 7% per annum from the date of filing of the suit till the date of realisation.

11. It is not disputed that the petitioners have totally deposited Rs.14,40,960/- (Rupees Fourteen Lakh Forty Thousand Nine Hundred and Sixty only). If we calculate the interest at the rate of 7% per annum, the amount payable would be about Rs.14.00 lakh. The balance amount of Rs.40,960/- can be adjusted towards other expenses.

12. In the light of that, we pass the following orders:

(1) The respondent bank has already withdrawn Rs.4,40,960/- deposited with the Debt Recovery Appellate Tribunal. The respondent bank shall

https://www.mhc.tn.gov.in/judis

WEB COPY

withdraw Rs.10,00,000/- (Rupees Ten Lakh only) deposited by the petitioners in this Court.

(2) Upon withdrawal of Rs.10.00 lakh, the same shall be treated as full and final settlement of the loan account and full satisfaction of the decree/Recovery Certificate.

(3) The respondent bank shall return all the documents of the property mortgaged by the petitioners.

13. The writ petition, accordingly, stands disposed of. There shall be no order as to costs. Consequently, W.M.P.Nos.4518 and 4519 of 2024 are closed. W.M.P.No.4517 of 2024 filed by the petitioners to permit them to file a single writ petition is allowed and disposed of, inasmuch as the petitioners have paid separate court-fee.

(S.V.G., CJ.) (J.S.N.P., J.)
16.04.2024

Index : Yes/No
Neutral Citation : Yes/No
bbr

https://www.mhc.tn.gov.in/judis

WEB COPY

https://www.mhc.tn.gov.in/judis

WEB COPY

THE HON'BLE CHIEF JUSTICE
AND
J.SATHYA NARAYANA PRASAD,J.

bbr

W.P.No.4206 of 2024

16.04.2024

https://www.mhc.tn.gov.in/judis