IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

<u>C.R.P.Nos.776 and 797 of 2020</u>

Rajkumari Poddar ... Petitioner in CRP.776/2020

1. Susila Poddar
2. Vijayakumar Poddar ... Petitioners in CRP.797/2020

-vs-

1. Canara Bank,
   Mint Street Branch,
   Chennai 600 003. ... 1st Respondent in both CRPs.

2. M/s.Hind Enamel Co. (Madras),
   rep. by its Partner, Anila Jalan.

3. Anila Jalan
4. Basant Kumar Poddar,
5. Sharadkumar Dlamia
6. R.K.Jalan ... Respondents 2 to 6 in CRP.776/2020

2. M/s.Maticon
   Rep. by its Partner, Mr.R.K.Jalan.

3. Sri.Rajendrakumar Jalan @ R.K.Jalan ... Respondents 2 and 3 in CRP. 797/2020

Prayer : Petitions filed under Article 227 of the Constitution of India against the common order dated 05.01.2017 in R.A.Nos.270 and 271 of 2010 passed by the Debts Recovery Appellate Tribunal, Chennai.

For Petitioners in both CRPs.	:	Mr.K.A.Ramakrishnan
For Respondents in both CRPs.	:	Mr.K.M.Anand for R-1
in CRP.776/2020	:	RR 2 to 5 - No such person
	:	No appearance for r-6
in CRP.797/2020	:	R-2 No such person
	:	No appearance for R-3

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COMMON ORDER

(Order of the Court was made by Senthilkumar Ramamoorthy, J.)

Credit facilities were availed of by the partners of two unregistered parnership firms, namely, Hind Enamel Co. (Madras) and M/s.Maticon.

Upon default in repayment of amounts borrowed by these partnership firms, the lender, Canara Bank, initiated proceedings before the Debts Recovery Tribunal-II, Chennai. While these proceedings were pending, a Memorandum of Compromise was executed by and between two of the partners, namely, R.K.Jalan and Anila Jalan, on the one hand and Canara Bank, on the other. The Memorandum of Compromise provided as under:

"MEMO OF COMPROMISE

The Applicant and the Defendants above named agree as follows:-

1. *The Defendants above named shall pay a sum of Rs.40,42,000/- towards the liability of both the Companies namely M/s.Maticon and M/s.Hind Enamel Co. (Madras).*
2. *The above said sum of Rs.40,42,000/- shall be paid as hereunder:*
   a) a sum of Rs.42,000/- has been paid jointly by the Defendants mentioned above by Cheque bearing No.835707 dated 18.03.2003 drawn on Indus Ind Bank, Nungambakkam.
   b) a sum of Rs.10 lakhs has been paid jointly and severally by the Defendants above named on 30-03-2004.
   c) The balance amount of Rs.30 lakhs shall be paid jointly and severally by the defendants above named before 15th June, 2004.
3. *On receipt of the entire sum of Rs.40,42,000/- as set out in Para 2, the above said defendants shall stand relieved from all the claims made in the above cases and this Hon'ble Debts Recovery Tribunal shall dismiss the above cases against the said defendants.*

4. *The defendants shall take delivery of the machineries of M/s.Hind Enamel Co. (Madras) lying at the premises of M/s.Fenner India Ltd with the right of disposal.*
5. *In case, the above said defendants above named fail to carry out any of the terms mentioned in Para 2, the said defendants hereby agree that there shall be an Order for the entire amount as prayed for in the above T.A.Nos.618/2001 and 31/2001.*

It is therefore, prayed that this Hon'ble Tribunal may be pleased to pass an Order in the above T.A.Nos.618/2001 and 31/2001 in terms of Compromise Memo in so far as the 4th defendant in T.A.No.618/2001 and the defendants 2 and 6 in T.A.No.31/2001 are concerned and thus render justice."

2. The Debts Recovery Tribunal-II took note of the Memorandum of Compromise and construed the same as one-time settlement. The operative portion of the order of Debts Recovery Tribunal-II is as under:

"11. In these circumstances, this Tribunal has no other alternative but to come to the conclusion that, by accepting the one-time settlement for a sum of Rs.40.42 lakhs in both the TAs by applicant bank, there is nothing to proceed further in the matter. Accordingly, liability cannot be fastened on other defendants when the one-time settlement was accepted and complied with in toto. Defendants 2 and 6 in TA 31/2001 and 4th defendant in TA 618/2001 have already been relieved from the suits accepting the one-time settlement in respect of the loans availed by 1st defendant in both the TAs. In the result, TA 31/2001 is dismissed as against defendants 3, 4 and 5 and TA 618/2001 is dismissed as against defendants 2 and 3. No order as to costs."

3. Being aggrieved by the other partners having been relieved of the liability, Canara Bank carried the matter in appeal before the Debts Recovery Appellate Tribunal, Chennai. By order dated 05.01.2017, the appeal was allowed by concluding that the amounts due and payable to the bank is public money and that the bank is duty bound to recover the same. These civil revision petitions are directed against the said order and have been filed by Susila Poddar, Vijayakumar Poddar and Rajakumari Poddar.

4. The primary contention of learned counsel for the petitioners is that the petitioners were not involved in availing of credit facilities, and therefore, liability cannot be foisted on them. On examining the partnership deed pertaining to Hind Enamel Co. (Madras), it is clear that Rajakumari Poddar was a partner of the said firm. Likewise, on examining the partnership deed pertaining to the partnership under the name and style, M/s.Maticon, Susila Poddar and Vijayakumar Poddar are shown as partners therein. The other contention, in this regard, is that the partners of an unregistered firm are not liable in terms of Section 69 of the Indian

Partnership Act, 1932. Section 69 provides that an unregistered partnership firm can neither sue nor be sued against. It does not follow from the said prescription that the partners of a partnership firm are not liable in respect of the amounts borrowed by them or that the partners cannot be sued. Therefore, the said contention is rejected.

5. The only question that remains to be considered is whether the impugned order calls for interference for any other reason. In the impugned order, the Debts Recovery Appellate Tribunal examined the order of the Debts Recovery Tribunal-II and concluded that the order of the Debts Recovery Tribunal-II was wrong in holding that the Memorandum of Compromise was in the nature of OTS. The operative portion of the order of Debts Recovery Appellate Tribunal is as under:

> *"9. Considering the aforesaid, I have no hesitation to hold that the Memo of Compromise was not OTS. After all, money advanced by the bank is not personal money of somebody. In fact, it is public money and the Bank is bound to recover the amount in judicial manner. It is not the option left open with the Bank that they can give up any person according to their choice. The impugned order was not correct to the extent that it absolved the Respondents 2 and 6 from recovery. In fact, all the Respondents are jointly and severally liable for repayments. The impugned Order is set aside to that extent. The Appeal is allowed."*

6. On examining the documents on record, especially the Memo of Compromise, we find no infirmity in the conclusion reached by the Debts Recovery Appellate Tribunal. In addition, we note that the petitioners have approached this Court belatedly by applying for a copy of the impugned order more than two years after the said order was pronounced.

7. For all these reasons, we are not inclined to interfere. The civil revision petitions are dismissed with costs of Rs.1,00,000/- (Rupees one lakh only) to be paid to the respondent bank, within two weeks from the date of receipt of a copy of this order. If not paid, the bank may add this amount also to the outstanding amount and recover the same together with interest thereon at the rate applicable to the loan.

(K.R.SHRIRAM., CJ.) **(SENTHILKUMARRAMAMOORTHY, J.)**

03.01.2025

Index : Yes/No
NC : Yes/No

sra

THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY,J.

(sra)

To:

1. The Debts Recovery Appellate Tribunal,
   Chennai.

2. The Debts Recovery Tribunal-II,
   Chennai.

C.R.P.Nos.776 and 797 of 2020

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