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W.P.No.38113 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SENTHIL KUMAR RAMAMOORTHY

W.P.No.38113 of 2024

and W.M.P.No.41245 of 2024

Punjab National Bank
Rep. by its Chief Manager,
Asset Recovery Management Branch (ARMB),
presently Circle Sastra, Spencer Plaza,
Anna Salai, Chennai 600 002.

.. Petitioner

Vs

1. V.Shaji
2. Dinesh Kumar Sarawagi
3. M/s.Sulaiman Steels Pvt. Ltd.
Rep. by its Director, Mr.A.Feroz Khan.

4. A.Feroz Khan
5. A.Fayaz Khan
6. B.Ahamed Khan
7. A.Mumtaz

.. Respondents



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Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of writ of certiorarified mandamus to call for the records of R.A.No.35 of 2023 on the file of DRAT, Chennai, culminated in passing an impugned proceeding dated 12.11.2024 and quash the same as contrary to Section 21 of Recovery of Debts and Bankruptcy Act, 1993 and consequently, direct the first and second respondents to comply with mandatory deposit in terms of Section 21 of Recovery of Debts and Bankruptcy Act, 1993.

For Petitioner : Mr.M.L.Ganesh

* * * * *

ORDER

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

Petitioner has challenged an order dated 12.11.2024 passed by the Debts Recovery Appellate Tribunal by way of this writ petition. The brief order reads as under:

" Heard Learned Counsel for both sides.

Learned counsel for 1st Respondent Bank submitted that this Appeal had been numbered without insisting on pre deposit as required under Section 21 of RDB Act, 1993. He submitted that in para 16 of the order passed in OA 191/2017, there is specific findings that Applicant Bank proved its claim beyond any doubt against D1 to D7. It is also reiterated in the final result that D6 and D7 are liable only in respect of their



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mortgaged properties. If the Bank is not able to recovery amount from D1 to D5, the Bank can proceed against the mortgaged properties of D6 and D7, for the amount determined, therefore, pre deposit is mandatory.

In response, Learned Counsel for Appellants submitted that the Tribunal had determined a sum of Rs.8,02,06,439.68p as amount due to be recovered specifically from D1 to D5, jointly and severally together with interest at 12% p.a. (simple). There is no specific determination of amount due from D6 and D7. In the absence of specific determination of amount due from D6 and D7, the pre deposit is not required.

Considered the rival submissions and perused the record.

This Appeal had already been numbered without payment of pre deposit. If 1st Respondent Bank is aggrieved against taking the Appeal on record without pre deposit, it is open to file appropriate Application against the order taking this Appeal on file without pre deposit or move appropriate forum for appropriate relief.

List the case on 09.12.2024, for final hearing.

In the meantime, call for original record from DRT-II, Chennai."

2. Sri.Ganesh submitted that the order is perverse because Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, as it was then called, requires pre-deposit of 50% of the amount due, if an appeal has to be entertained.



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3. Mr.Ganesh is not entirely correct. We say this because even in the order passed by the Debts Recovery Tribunal on 14.02.2019, which was challenged in appeal by appellants in that appeal, who are respondents 1 and 2 in this petition, there is no finding of any amount due from them to the bank. Respondents 1 and 2 in this petition were inducted by way of a Board Resolution dated 30.01.2015 as Directors of the borrower company, Sulaiman Steels Pvt. Ltd. As per the Board Resolution, they took over the day-to-day affairs of the said company and admittedly, even operated the bank account. The said respondents 1 and 2, by a letter dated 23.09.2015, proposed to deposit fresh collaterals in addition to the existing collaterals available with the bank and also deposited the original title deeds of their properties. The erstwhile directors who are defendants 2 to 5 in the Original Application and respondents 4 to 7 in this petition, were personal guarantors for the loan availed by the company. Admittedly, respondents 1 and 2 to this petition are not personal guarantors for the loan that was availed by the company. We make this observation of respondents 1 and 2 admittedly not personal guarantors or that respondents 1 and 2 only



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proposed to deposit fresh collaterals, etc., in view of the bank having accepted the findings of the Debts Recovery Tribunal in the order dated 14.02.2019. Paragraphs 11, 12 and 16 of the order of the Debts Recovery Tribunal dated 14.02.2019 read as under:

"11. On perusal of the Applicant Bank's documents Exhs.A37, Board Resolution of D1 company dt.30.01.2015 reveals that the Directors of D1 company have inducted D6 and D7 as Directors in D1 company by Board Resolution. Both are permitted to operate the account of D1 with Applicant Bank. Therefore it is clear that D6 and D7 were acted as per the Board Resolution as Directors and they have done the day today affairs of D1 company and withdrawn the money from D1's account in the Applicant Bank which is evidenced from the statement of account and Exh.A39, D1's letter to Applicant Bank. D1 sent a letter to Applicant Bank on 23.09.2015 in which the new management (i.e.) D6 and D7 proposed to deposit fresh collaterals in addition to the existing Collaterals available with Applicant Bank. The properties of D6 and D7 were also mentioned in that letter which is evidenced from Exh.A40 confirmation of Deposit of Title by D6 and D7. As per this letter, D6 and D7 have deposited their original title deeds, Exhs.A58 and A59 with the Applicant Bank. Therefore it is clearly found that the Applicant Bank is not a party to the Business arrangement of the defendants. As per D1's request the Applicant Bank permitted to operate the account of D1 with the Applicant Bank by D6 and D7. But the Applicant Bank does not willing to relinquish personal guarantees of D2 to D5 and release of title deeds of D2 to D5 from the security. The properties of D6 and D7 were given as a collateral security in addition to the mortgage created by D1 to D5. Therefore D1 to D5's properties cannot be released from mortgage. The Applicant Bank has right/interest over D1 to D5's propertyes as mortgagee. D2 to D5 are liable as personal guarantors for the



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loan availed by D1. Hence, I find the submissions of D2 to D5 are not acceptable.

12. As per the Board Resolution dt.30.01.2015, D6 and D7 were inducted as Directors and they were permitted to operate the account of D1 as Directors instead of D2 and D3. D6 and D7 had also acted upon. Further as per letter given by D1 company dt.23.09.2015, D6 and D7 have deposited their respective title deeds of their properties with the Applicant Bank with intention. It is true that D6 and D7 had not created any MOD and also they have not given any confirmation letter. But on perusal of Exh.A38 letter dt.30.01.2015 given by D7, Exh.A39 letter dt.06.02.2015 given by D1, Exh.A.40 letter dt.23.09.2015 give by D7 and Exhs.A58 and A58 sale deeds of D6 and D7 shows that D6 and D7 have deposited their title deeds with an intention to create mortgage and they engaged in a day today affairs of D1 company and withdraw the amount of D1 from Applicant Bank. Their properties were also deposited as collateral securities. Therefore even though, MOD was not executed by D6 and D7, they have created equitable mortgage by deposit of Title Deed. Therefore, the schedule mentioned D6 and D7 properties are mortgaged properties. The Applicant Bank has interest over the properties as mortgagee.

...

16. On going through the evidence of PW1 and the clinching documents Exhs.A1 to A65, I find that the Applicant Bank proved its claim beyond any doubt against D1 to D7. D1 to D5 are jointly and severally liable to pay the claim amount of Applicant Bank. D6 and D7 are liable only in respect of their mortgaged properties."

4. Therefore, respondents 1 and 2 in the present petition, who were Defendants 6 and 7 in the Original Application, are not personally liable,



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but liable only to the extent of their mortgaged properties. Therefore, there is no finding that there was any amount of debt due by those respondents to the bank. Of course, respondents 1 and 2 have impugned the order of Debts Recovery Tribunal to the extent of a finding that they are liable in respect of their mortgaged properties. We are not going into the merits of that issue. We are only considering whether the Tribunal was justified in numbering the appeal without insisting on a pre-deposit. In our view, the Tribunal was correct in numbering the appeal without insisting on a pre-deposit because there is no finding against respondents 1 and 2 that they are personally liable. In other words, there is no specific determination of amount due from respondents 1 and 2.

Petition is, therefore, dismissed. There shall be no order as to costs. Consequently, interim applications also stand dismissed.

(K.R.SHRIRAM., C.J.)

(SENTHILKUMARRAMAMOORTHY, J.)

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Index : Yes/No
NC : Yes/No



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

(sra)

To:

1. The Debt Recovery Appellate Tribunal at Chennai,
Chennai.

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