
(2014) 02 MAD CK 0246

In the Madras High Court

Case No : Writ Petition No. 19690 of 2013 and M.P. No. 1 of 2013

Hamosons Apparels Pvt. Ltd.

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 18, 18(1)

Citation : (2014) 5 MLJ 240

Hon'ble Judges : M. Jaichandren, J;K. Kalyanasundaram, J

Bench : Division Bench

Judgement

1. Heard the learned counsel appearing for the petitioners, as well as the learned counsels appearing on behalf of the respondents concerned. The present writ petition has been filed by the petitioners stating that the order passed by the Debts Recovery Appellate Tribunal, Chennai, dated 21.6.2013, in IA No. 1614/2010, in AIR (SA) No. 942/2010 (SA SR No. 7110/2009), the fourth respondent herein, is arbitrary, illegal and void.

2. The Debts Recovery Appellate Tribunal had passed the order, dated 21.6.2013, directing the petitioners to deposit a sum of Rs. 2,26,72,500/-, on or before 20.7.2013, as the pre-deposit for the hearing of the appeal filed by the petitioners. It had also been stated that, in the event of the petitioners failing to deposit the said amount within the time limit prescribed by the Tribunal, the petition would stand dismissed, automatically.

3. The learned counsel appearing on behalf of the petitioners had submitted, inter alia, that the order passed by the fourth respondent Appellate Tribunal is contrary to law and the facts of the case. The Tribunal had passed the impugned order, dated 21.6.2013, directing the petitioners to make a pre-deposit of a sum of Rs. 2,26,72,500/-, without taking into account a number of issues raised before it and without considering the claim of the petitioners that they are not liable to pay the amount said to be due from them.

4. It had been further submitted that the petitioners had already paid a sum of Rs. 2,35,00,000/- in the earlier appeal, as pre-deposit, out of the total sum of Rs. 9,23,45,000/- mentioned in the notice issued by the respondent Bank, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dated 27.1.2004.

5. The learned counsel had further submitted that the amount of Rs. 2,35,00,000/-, paid by the petitioners, ought to have been taken into account, by the fourth respondent Appellate Tribunal, while passing the impugned order, dated 21.6.2013. The fourth respondent Appellate Tribunal ought to have held that the amount already paid by the petitioners, as pre-deposit, would be sufficient for hearing the appeal filed by the petitioners, on merits.

6. It had been further submitted that, even though the fourth respondent Appellate Tribunal had considered the fact that the petitioners had made a pre-deposit of Rs. 2,35,00,000/-, in respect of the appeal filed by them, at an earlier stage, the Tribunal had further directed the pre-deposit of 2,26,72,500/-, for the hearing of the appeal filed by the petitioners subsequently. The onerous condition imposed by the fourth respondent Appellate Tribunal would have the effect of defeating the rights of the petitioners to make their claims.

7. It had been further submitted that the secured assets belonging to the petitioners had been brought for sale. The amount paid by the purchaser, as the sale price, had been appropriated by the respondent Bank. As such, no amount was due to be paid, by the petitioners, to the respondent Bank. Therefore, the order of the fourth respondent Appellate Tribunal, dated 21.6.2013, directing the petitioners to make a pre-deposit of Rs. 2,26,72,500/-, is arbitrary and illegal. As the entire liability of the petitioners had been set off, by the payment made by the purchaser of the secured assets, the question of making a pre-deposit, by the petitioners would not arise.

8. The learned counsel appearing on behalf of the petitioners had further submitted that the petitioners had already made a pre-deposit of 25 percent of the amount said to be due from them, as per the notice issued by the respondent Bank, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and hence, there would be no obligation on the part of the petitioners to make the pre-deposit for every appeal filed by them, thereafter. In such circumstances, it is clear that the impugned order passed by the fourth respondent Appellate Tribunal is invalid in the eye of law and therefore, it is liable to be set aside.

9. The learned counsel appearing on behalf of the petitioners had relied on the following decisions in support of his contentions:

1) Chandi Prasad and Others Vs. Jagdish Prasad and Others,

2) M. Ramakrishnan v. Dena Bank, Chennai, LNIND 2008 MAD 2495 : (2009) 3 MLJ 344

3) Poonam Manshani and Another v. J&K Bank Ltd and Another, Order of the Delhi High Court, dated 10.11.2009, in W.P. No. 13042 of 2009.

10. The learned counsel appearing on behalf of the petitioners had further submitted that, even though the petitioners had raised a number of grounds before the fourth respondent Appellate Tribunal, in I.A. No. 1614/2010 in AIR (SA) 942/2010, for the waiver of the pre-deposit to be made by them, under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Appellate Tribunal had not considered the same, while passing the impugned order, dated 21.6.2013. The fourth respondent Appellate Tribunal had only made certain general observations, with regard to the Indian economy, stating that the amount due to be paid by the petitioners is public money and therefore, they were under an obligation to make a pre-deposit of Rs. 2,26,72,500/-.

It has also been submitted that this court would have an option of setting aside the order passed by the fourth respondent Appellate Tribunal, dated 21.6.2013, and to remit the matter back to the fourth respondent Appellate Tribunal, for reconsideration of the grounds raised by the petitioners, based on the facts and circumstances of the case and in view of the relevant provisions of law applicable to the case.

11. Per contra, the learned counsels appearing on behalf of the respondents concerned had submitted that the petitioners ought to make the pre-deposit, as directed by the fourth respondent Appellate Tribunal, by its order, dated 21.6.2013. The pre-deposit made by the petitioners, during an earlier appeal, arising in respect of a different cause of action, cannot be taken into account for the present appeal, filed by the petitioners, before the fourth respondent Appellate Tribunal. A reading of the second proviso to Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, would show that the pre-deposit has to be made on every appeal filed before the Tribunal. A statutory minimum of 25 percent of the amount claimed by the respondent Bank, in the notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ought to be paid by the petitioners as directed by the Tribunal. Even though they had paid an amount of 2,35,00,000/- in an earlier appeal filed by them, as the appeals arise out of two different causes of action, the pre-deposits should be made, by the petitioners, on every appeal filed by them before the fourth respondent Appellate Tribunal. The amount paid by the petitioners, as the pre-deposit amount, in an earlier appeal, cannot be taken into consideration for the filing of the subsequent appeal, by the petitioners. Even otherwise, no reasons have been stated by the petitioners, in their petition, for the waiver of the pre-deposit. While so, it would not be open to them to raise the same, before this court, at this stage.

12. The learned counsels appearing on behalf of the respondents had relied on the following decisions in support of their contentions.

- 1) Philip Jeyasingh Vs. The Joint Registrar of Co-operative Societies and Others,
- 2) Babu Premarajan Vs. Superintendent of Police, Kasaragode and Others,
C. Dharmalingam v. District Registrar, 2010 (3) CTC 390 : LNIND 2010 BMM 1569
- 2) E.I.D. Parry (India) Limited, Chennai v. New Horizon Sugar Mills Ltd, Puducherry, Order of the Madras High Court, dated 8.10.2013, in C.R.P. No. 5171 of 2011
- 3) Narayana Chandra Ghosh Vs. UCO Bank and Others,
- 4) Parsn Medicinal Plant P. Ltd v. Indian Bank and Others, Order of the Supreme Court in Civil Appeal Nos. 2074-2078 of 2011, dated 25.2.2011.
- 5) Indian Bank Vs. Blue Jaggers Estates Ltd. and Others,
- 6) Indian Bank v. Parsn Medicinal Plant (P) Ltd, (2010) 5 CTC 25
- 7) Indian Bank v. New Horizon Sugar Mills Ltd and Others, Order of the Madras High Court, in W.P. Nos. 21486 and 22218 of 2009, dated 1.12.2009.

13. It has been further stated that the reason behind the enactment of the provision of law relating to the pre-deposit is to dissuade the filing of frivolous litigations. The fourth respondent Appellate Tribunal had passed the impugned order, dated 21.6.2013, rightly directing the petitioners to make the pre-deposit of Rs. 2,26,72,500/-, taking into account the pre-deposit made by the petitioners during the earlier appeal filed by them. Even the said calculation made by the fourth respondent Appellate Tribunal is invalid in the eye of law, for the reason that the Appellate Tribunal ought to have calculated the amount including the interest and the expenses and costs relating to the sale of the secured assets. However, the fourth respondent Tribunal had passed the order, dated 21.6.2013, erroneously, taking into consideration the amount already paid by the petitioners, as pre-deposit, in the earlier appeal filed by them. In fact, the amount due to be paid by the petitioners could be much more than the sum of Rs. 9,23,45,000/- said to be the amount due from the petitioners.

14. It had been further submitted that the amount paid by the purchaser of the secured assets cannot be taken into consideration for issuing a direction to the petitioners, to make the pre-deposit. Even though the sale proceeds relating to the properties in question had been appropriated to the credit of the respondent Bank, the petitioners ought to make the pre-deposit, as directed by the Appellate Tribunal, dated 21.6.2013. The fourth respondent Appellate Tribunal had passed the impugned order after considering all the claims made by the petitioner. Therefore, the present writ petition, filed by the petitioners, is liable to be dismissed, as it is devoid of merits.

15. We have heard the submissions made by the learned counsels appearing for the parties concerned. On a perusal of the records available and in view of the decisions cited supra, we are persuaded to hold that the fourth respondent

Tribunal had not applied its mind to the facts and circumstances of the case and to the claims made by the petitioners, before deciding to direct the petitioners to make a pre-deposit of Rs. 2,26,72,500/-, for the hearing of the appeal, pending on its file. We are of the considered view that the fourth respondent Tribunal had not considered the various grounds raised by the petitioners, in the appeal filed by them, before the said Tribunal. The fourth respondent Appellate Tribunal has passed a cryptic order, without giving sufficient reasons for arriving at its conclusions. No proper reasons have been given by the fourth respondent Appellate Tribunal, for directing the petitioners to deposit a sum of Rs. 2,26,72,500/-, within the time limit specified, in its order, dated 21.6.2013. Further, the fourth respondent Appellate Tribunal had passed the impugned order, dated 21.6.2013, without considering the merits of the case. The fourth respondent Appellate Tribunal ought to have arrived at its conclusions by showing proper reasons to reject the claims made by the petitioners. The impugned order of the fourth respondent Appellate Tribunal, dated 21.6.2013, is bereft of reasons. The issues raised by the petitioners, in the appeal filed by them, had not been considered by the fourth respondent Appellate Tribunal, while passing the impugned order, dated 21.6.2013. Therefore, without going into the merits of the case, we find it appropriate to set aside the impugned order, dated 21.6.2013 and to remit the matter back to the fourth respondent Tribunal, directing the said Tribunal to consider the issues raised by the parties concerned, afresh, and to pass appropriate orders thereon, on merits and in accordance with law. Accordingly, the order of the fourth respondent Tribunal, dated 21.6.2013, is set aside and the matter is remitted back to the said Tribunal. for being considered afresh. The fourth respondent Appellate Tribunal shall pass orders as directed by this court, as expeditiously as possible, not later than eight weeks from the date of receipt of a copy of this order. The writ petition stands allowed. Consequently, connected miscellaneous petition is closed.