

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2009

CORAM:

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA  
AND  
THE HONOURABLE MR.JUSICE M.DURAIWAMY

WRIT PETITION NO.9267 OF 2009

1. P.Hemanth Kumar
  2. P.Vasanthara
  3. P.Padmanabhan
- .. Petitioners

Vs.

1. The Debts Recovery Appellate Tribunal  
at Chennai, represented by its Registrar,  
4<sup>th</sup> Floor, Indian Bank Circle Office,  
55, Ethiraj Salai, Chennai-600 008.
  2. The Debts Recovery Tribunal-III at Chennai,  
represented by its Registrar,  
5<sup>th</sup> Floor, Spencer Tower,  
770-A, Anna Salai, Chennai-600 002.
  3. Indian Bank,  
rep. by its Senior Manager,  
A-14, Senthuran Colony,  
Madipakkam, Chennai-600 091.
- .. Respondents

Writ Petition under Article 226 of the Constitution of India,  
praying for issuance of a Writ of Certiorari, to call for the records  
of the first respondent (Debts Recovery Appellate Tribunal at  
Chennai) in R.A.No.66 of 2008 and quash the order dated 25.3.2009  
made therein.

For petitioners: Mr.R.Muthukumarasamy, Senior Counsel  
for M/s.P.D.Audikesavalu

For respondents: RR-1 & 2 Tribunal  
Mr.V.Ramesh for R-3

ORDER

(The Order of the Court was made by S.J.Mukhopadhaya,J)

The petitioners-borrower and guarantors, have jointly preferred  
this Writ Petition against the common order dated 25.3.2009 passed by  
the Debts Recovery Appellate Tribunal, Chennai in R.A.No.66 of 2008

and I.N.No.603 of 2008. By the said order dated 25.3.2009, the DRAT modified the order passed by the DRT-III, Chennai so far as it relates to interest.

2. We have heard the learned counsel appearing for the parties and perused the records.

3. As the case can be disposed of on a short point, it is not necessary to discuss all the facts except the relevant one.

4. The first petitioner obtained loan from the third respondent-Indian Bank and the second and third petitioners are the guarantors. They, having failed to pay the dues, the Bank preferred application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, before the Debts Recovery Tribunal-III, Chennai, which by the order dated 30.5.2008 in O.A.No.449 of 2007 declared as follows:

"8. In the result, it is declared that:-

(a) The applicant bank is entitled to a Recovery Certificate for a sum of Rs.19,75,322/- with future interest @ 10% p.a. simple on the claim amount from the date of this application till the date of realisation of the amount, along with costs, which includes the advocate fees as per rules, in the following manner:

(i) For a sum of Rs.3,44,154/- from D-1 and D-3 being the amount due under MTL-I account.

(ii) For a sum of Rs.14,54,608/- from D-2 to D-4 being the amount due under MTL-II account.

(iii) For a sum of Rs.1,76,560/- from D-2 being the amount due under Temporary OD facility.

(b) It is further ordered that in case of default of payment by the said defendants, the applicant bank is at liberty to sell the OA schedule properties and to adjust the sale proceeds thereof towards the amounts due in this claim.

(c) If the sale proceeds are not found sufficient, after defraying the expenses of such sale for the payment of all such amount, the defendants 1 to 4 are personally liable for the amount of such deficiency with interest and costs mentioned above until realisation.

(d) It is further ordered that any amount remitted during the course of the proceedings, shall be given due credit to the loan account of the defendants."

5. The Bank was not happy with the future interest, which was allowed @ 10% p.a. simple, and hence, preferred the appeal in question, wherein the impugned order was passed by the DRAT, Chennai on 25.3.2009.

6. Learned Senior Counsel appearing on behalf of the petitioners submitted that the DRT has jurisdiction to award interest pendente-lite and post-decree interest at a reasonable rate, taking into consideration the facts of each case. The DRAT cannot alter the same on the basis of its own opinion. It is also submitted that the DRAT, by the impugned order, has awarded contractual rate of interest @ 18.5 p.a. with monthly rests, which is error on record, as no such agreement was reached between the parties for payment of interest with monthly rests. Learned Senior Counsel for the petitioners further submits that in terms of the DRT order, the petitioners have deposited the amount. Further, it is stated that with a view to compromise the matter, the petitioners have deposited further sum of Rs.2 lakhs with the Bank.

7. Learned counsel appearing on behalf of the third respondent-Indian Bank submitted that the DRAT rightly allowed the contractual rate of interest, there being a contract signed between the parties.

8. It will be evident from the DRAT's order that it has noticed the decision of the Supreme Court in the case of "Central Bank of India Vs. Ravindra and others" reported in AIR 2001 SC 3095 and the decision of the Supreme Court in the case of "State Bank of India Vs. M/s.Sarathi Textiles and others" in S.L.P.No.7146 of 2000, wherein, the Supreme Court held that the DRT has got jurisdiction to award pendente-lite and post-decree interest at a reasonable rate depending on the facts and circumstances of each case.

9. It is accepted by the learned counsel for the parties that the DRAT has noticed the aforesaid ratio laid down by the Supreme Court that the DRT has got jurisdiction to fix such pendente-lite rate of interest in a judicious manner, but no reason has been given by the DRAT to alter the decision of the DRT and the DRAT passed the following order dated 25.3.2009 in R.A.No.66 of 2008 & IN.603 of 2008:

"8. Considering the impugned Order wherein 10% p.a. simple interest on the claim amount is awarded from the date of the OA filed in November, 2002, till the date of realisation, this Tribunal finds that the same appears to be meagre in view of the contractual rate of interest at 18.5% p.a. with monthly rests from the date of Application till the date of realisation. Considering the rival submissions made by both sides and the facts and circumstances of the case, in the light of the ratio of the decisions cited supra, this Tribunal holds that it is reasonable to award contractual rate of interest from the date of the OA till the date of the impugned Order and thereafter at 15% p.a. simple from the date of the Order in the O.A. i.e. 30.5.2008, till the date of realisation."

10. From the aforesaid facts, it would be evident that the DRAT has simply imposed its own opinion, without discussing as to what was

wrong with the order passed by the DRT, which allowed 10% p.a. simple interest on the claim amount of the third respondent-Bank.

11. For the reasons aforesaid, we set aside the impugned order dated 25.3.2009 passed by the DRAT. The Writ Petition is allowed. No costs. The petitioners will not ask for refund of Rs.2 lakhs already stated to have been deposited with the Bank.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Debts Recovery Appellate Tribunal  
at Chennai, represented by its Registrar,  
4<sup>th</sup> Floor, Indian Bank Circle Office,  
55, Ethiraj Salai, Chennai-600 008.

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represented by its Registrar,  
5<sup>th</sup> Floor, Spencer Tower,  
770-A, Anna Salai, Chennai-600 002.

1 cc To Mr.P.D.Adhikesavelu, Advocate, SR.64778

1 cc To Mr.V.Ramesh, Advocate, SR.65245

W.P.No.9267 of 2009

PA (CO)  
SS (16.12.2009)

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