

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 219 of 2018

(Arising out of I.A. 1382 of 2017 in O.A. 744 of 2014 in DRT, Visakhapatnam)

**THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

Bank of Baroda, Srikakulam Branch, 8-5-26, Petromax Street, Seven Road Junction, Srikakulam – 532 001, Andhra Pradesh. ... Appellant

-Versus-

1. M/s. Vagishwari Educational Society, Represented by its Secretary and Correspondent Sri Dhavala Abhishek, 2-342, Temburu Road, Near Visakha Grameena Bank, Tekkali- 532 201, District- Srikakulam;
2. Sri Killi Vikranth, Son of Sri Rammohan Rao 3-326, Kranthi Nursing Home, Tekkali- 532 201;
3. Smt. Nambala Archana, Wife of Sri Jagadish, Venkateswara Colony, Tekkali- 532 201;
4. Sri Bammidi Ravi Kumar, Son of Sri Mukhalingam, Gangadhara peta, Polavaram, Tekkali- 532 201;
5. Sri Dhavala Abhishek, Son of Sri Krishna Rao, 3-363, Temburu Road, Tekkali- 532 201;
6. Sri Bammidi Viswanadham, Son of Sri Mukhalingam, Gangadharapera, Polavaram, Tekkali- 532 201;
7. Sri Bammidi Lakshmi pathi, Son of Sri Mukhalingam Gangadharapeta, Polavaram, Tekkali- 532 201;
8. Sri Dhavala Krishna Rao, Son of Late D. Polinaidu, 3-363, Temburu Road, Tekkali- 532 201;
9. Smt. Killi Krupa Rani, Wife of Sri Rammohana Rao, 3-326, Kranthi Nursing Home, Tekkali- 532 201;
10. Sri Bammidi Mukhalingam, Son of Sri Chinna Appana Gangadharapera, Polavaram Tekkali- 532 201;
11. Smt. Dhavala Ramanamma, Wife of Sri Krishna Rao, 3-363, Temburu Road, Tekkali- 532 201.

... Respondents

Counsel for the Appellants

... Mr. Nemani Srinivas

Counsel for Respondent

... Mr. Samrat Mukherjee

JUDGMENT : 7th August, 2023

THE APPELLATE TRIBUNAL :

Instant appeal has arisen against the order dated 6th October, 2017 passed by learned DRT Visakhapatnam in I.A. 1382 of 2017 arising out of O.A. No. 744 of 2014 filed by the Defendants against the Appellant herein.

2. As far as facts of the matter are concerned, admittedly an Original Application No. 744 of 2014 was filed by the Appellant Bank for a decree of Rs.4,01,49,439.00 together with interest at the rate of 14% against the Respondent herein. Pending O.A. a proposal for OTS was submitted by the Respondent which was accepted by the Bank on 30th March, 2015. As per terms and conditions of the OTS, as regards time frame, an amount of Rs.3.25 crore was to be paid by the Respondent on or before 30th June, 2015 which was not paid. Subsequently, on various dates Rs.2.72 crore was paid by the Respondent. An amount of Rs.53.00 lac remained in balance which Respondent was ready and willing to pay, but the Bank did not accept the same. Therefore, I.A. was filed by the Respondent before DRT with a prayer for direction to pay the balance amount under the compromised sanction with nominal interest and further direction to the Bank to give NOC by cancelling the mortgage and return all original title deeds.

3. I.A. was allowed by learned DRT vide order dated 6th October, 2017 wherein Respondent herein was directed to

pay an amount of Rs.53.00 lac with 4% interest per annum from 7th April, 2017 within two months.

4. Feeling aggrieved by the rate of interest ordered by the learned DRT, Appellant Bank has preferred the appeal.

5. Heard Learned Counsel for the parties and perused records.

6. Learned Counsel for Appellant submits that only grievance of the Appellant Bank is the rate of interest ordered by learned DRT. It is submitted that the Respondent himself did not comply the terms and conditions of the OTS. It is also submitted that rate of interest should be 4% and not the contractual rate of interest which is not permissible under the law.

7. Ld. DRT fixed the rate of interest 4% of Rs. 53 lacs from 07.04.2017.

8. As far as rate of interest is concerned, same should have been fixed by the Ld. DRT keeping in view the Section 34 of Code of Civil Procedure. No doubt when the matter was settled under the O.T.S., DRT was well within its powers to fix the rate of interest which is below the contractual rate of interest. But at the same time, this rate should not be so minimum so as to prejudicial to the interest of the Bank. The O.A. was filed for recovery of the amount at the rate of 14%.

9. Having considered the submissions, I find it appropriate that the rate of interest as granted by the DRT be modified to 9% per annum. Accordingly, Appeal deserves to be allowed.

O R D E R

Appeal is allowed to an extent that the Appellant shall be entitled for an interest of 9 % per annum of Rs. 53 lacs with effect from 07.04.2017. Rest of the findings are confirmed.

No order as to costs.

File be consigned to Record room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

Copy of the Judgment/Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 7th day of August, 2023.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 7th August, 2023
Pkb/tp