HON'BLE SRI JUSTICE R. SUBHASH REDDY

And

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

<u>WRIT PETITION No.912 of 2008</u>

<u>ORDER</u> : (Per Justice R.Subhash Reddy)

This writ petition is filed challenging the order, dated 26.10.2006, passed by the 1st respondent-Debts Recovery Appellate Tribunal, Chennai, in R.A.(SARFAESI) No.42/2006 and the consequential order, dated 31.12.2007, passed by the Debts Recovery Tribunal, Hyderabad, in M.A.No.63/2007 in S.A.No.85/2004.

2. When the petitioner-Bank has issued notices under Sections 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), the same were challenged before the Debts Recovery Tribunal, Hyderabad, by way of Securitisation Application No.85/2004. The Tribunal has adjudicated the application by recording a finding that the petitioner-Bank has not complied with Rule 8(2) of the Security Interest (Enforcement) Rules, 2002, regarding publication, as such, the measures taken under Section 13(4) of the SARFAESI Act are not maintainable. The 3rd respondent further carried the matter by way of appeal before the Debts Recovery Appellate Tribunal, Chennai. The appellate Tribunal, by order, dated 26.10.2006, allowed the appeal in part by setting aside the order with regard to no costs passed by the Debts Recovery Tribunal, Hyderabad and held that the 3rd respondent-appellant is entitled to costs. Consequently, the 3rd respondent has filed M.A.No.63/2007 in S.A.No.85/2004 before the Debts Recovery Tribunal, Hyderabad, with a prayer to direct the petitioner herein to

pay an amount of Rs.1,13,500/-, or alternatively, issue recovery certificate against the petitioner-Bank for an amount of Rs.1,13,500/- with interest from the date of order till the date of realization. The Debts Recovery Tribunal, Hyderabad has ordered to pay an amount of Rs.82,900/- towards costs to the 3rd respondent within a period of 30 days from the date of passing of the order and ordered to issue recovery certificate in the event of not paying such amount within time. The order of the Appellate Tribunal, dated 26.10.2006, and the consequential order, dated 31.12.2007, passed in M.A.No.63/2007, are challenged in this writ petition.

3. Heard Sri Vedula Srinivas, learned counsel appearing for petitioner and Smt.Ch.Vedavani, learned counsel appearing for respondent No.3.

4. In this writ petition, it is contended by Sri Vedula Srinivas, learned counsel appearing for petitioner that under the scheme of the SARFAESI Act, the right of borrower to receive compensation and costs is restricted only to the cases which are falling within the scope of Section 19 of the said Act. It is contended that as the secured asset was not taken possession, the 3rd respondent is not entitled for award of costs, and hence, the order of Appellate Tribunal and the consequential order passed by the Debts Recovery Tribunal, Hyderabad, are fit to be set aside.

5. On the other hand, it is contended by the learned counsel appearing for respondent No.3 that the applications filed under Section 17 of the SARFAESI Act are to be disposed of in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and that the Debts Recovery Tribunal Regulations of Practice, 1997, empower the Tribunal to award costs.

6. From the submissions made by the learned counsel appearing on

either side, the only aspect which requires to be considered is whether the order of the Appellate Tribunal for awarding costs in favour of respondent No.3 is justified or not. It is not in dispute that when notices were issued under Sections 13(2) and 13(4) of the SARFAESI Act to respondent No.3, such notices were challenged by way of application under Section 17 of the said Act. It is apposite to refer to the provisions under Section 17(7) of the SARFAESI Act, which reads as under :

> "Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder."

Further, as per Regulation 50 of the Debts Recovery Tribunal Regulations of Practice, 1997, discretion is given to the Tribunals for award of costs of a party including the expenditure incurred by the party for filing such application towards application fee, vakalat fee, process fee, batta paid to witnesses, Advocate fee etc. Though the application filed by the 3rd respondent was allowed, as costs were not awarded, the 3rd respondent has carried the matter by way of appeal under Section 18 of the SARFAESI Act. It is settled law that the appeal is only a continuation of the original proceedings. From a perusal of the provision under Section 17(7) of the SARFAESI Act read with Section 18 and Regulation 50 of the Debts Recovery Tribunal Regulation of Practice, 1997, it is clear that the Primary Tribunals and Appellate Tribunals are having powers to award costs. When it is specifically held that the Securitisation measures taken by the petitioner-bank were not in accordance with the procedure prescribed and when the notices issued by it are set aside, it is always open to the Primary Tribunal or the Appellate Tribunal to use discretion for imposing costs. In that view of the matter, the only contention advanced by the learned counsel for petitioner that imposition of costs is restricted to the contingencies under Section 19 of the SARFAESI Act, cannot be accepted.

7. For the aforesaid reasons, we are of the view that the order, dated 26.10.2006, passed by the 1st respondent-Debts Recovery Appellate Tribunal, Chennai, in R.A.(SARFAESI) No.42/2006 and the consequential order, dated 31.12.2007, passed by the Debts Recovery Tribunal, Hyderabad, in M.A.No.63/2007 in S.A.No.85/2004, are in conformity with law and no interference is called for.

8. The writ petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

1st December 2015

ajr