

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/12/2016

C O R A M

The Honourable Mr. Justice S. Manikumar
and
The Honourable Mr. Justice M. Govindaraj

Writ Petition No. 32678 of 2014

M.G. Durai

...

Petitioner

Vs

1. M/s. Bank of India
Chennai Main Branch
rep. By its Authorised Officer
"Star House" I Floor
No. 30 Errabalu Street
Chennai 600 001.

2. The Chairperson
Debts Recovery Appellate Tribunal
Chennai 600 008.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records, pertaining to I.A.No.546 of 2011 in A.I.R.(SA) No.345/2011, on the file of the Debts Recovery Appellate Tribunal, Chennai, dated 28/12/2012 and quash the same.

For petitioner

...

Mr.G.R.Lakshmanan

For respondents

...

Mr.F.B.Benjamin George
for R.1
Tribunal - R.2

O R D E R

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

Order impugned in this writ petition in AIR (SA) No.345/2011 (S.A.No.131 of 2009 on the file of DRT - II, Chennai), dated 28/12/2012, is extracted hereunder:-

"Ld.Counsel Shri T.R.Sundaram appearing on behalf of Ld. Counsel Shri Prathapan for the petitioner prayed for time on the

ground that Id. Counsel Shri Prathapan is unable to come to Chennai from Bangalore today.

It is seen that the Hon'ble High Court of Madras has held on 28.8.2012 in W.P.Nos.13456/2012, 8381/2012 and 12970/2012 that condonation of delay does not arise in cases of appeals filed under Sec.18 of the SARFAESI Act. This tribunal being bound by the above orders of the Hon'ble High Court of Madras is therefore, driven to dismiss this I.A. Accordingly this I.A is dismissed."

2. Based on the order made in W.P.Nos.13456, 8381 and 12970 of 2012, dated 28/8/2012, by observing that condonation of delay, does not arise in case of appeals filed under Section 18 of the SARFAESI Act, AIR (SA) No.345/2011 has been dismissed, on 28/12/2012.

3. On this day, when the matter came up for hearing, placing reliance on the decision made in Baleshwar Dayal Jaiswal Vs. Bank of India and Others {(2016) 1 Supreme Court Cases 444}, Mr.G.R.Lakshman, learned counsel for the writ petitioner submitted that Appellate Tribunal under the SARFAESI Act has the power, to condone the delay in filing an appeal, by virtue of Section 18 (2) of the Act.

4. Though the aforesaid submission is duly acknowledged, by inviting the attention of this Court, to the year in which the present writ petition has been filed, i.e., 2014, Mr.F.B.Benjamin George, learned counsel appearing for the Bank submitted that the writ petitioner ought not to have entertained on the grounds of laches. We are not inclined to accept the said contentions for the reason that when the error committed by the Debts Recovery Appellate Tribunal, Chennai is substantive in nature, technical objection, as to delay in laches, on the part of the writ petitioner, should not stand in the way, to deprive him of his legitimate and legal right, to file an appeal, under the provisions of the SARFAESI Act. Accordingly, we overrule the objections.

5. In the light of the law laid down by the Hon'ble Apex Court, in Baleshwar Dayal Jaiswal Vs. Bank of India and Others {(2016) 1 Supreme Court Cases 444}, impugned order, dated 28/12/2012, made in AIR (SA) No.345 of 2011, on the file of the Debts Recovery Appellate Tribunal, is set aside.

6. Accordingly, this writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

mvs.

To

1. M/s. Bank of India
Chennai Main Branch
rep. By its Authorised Officer
"Star House" I Floor
No.30 Errabalu Street
Chennai 600 001.

2. The Chairperson
Debts Recovery Appellate Tribunal
Chennai 600 008.

1 cc to M/s.G.R. Lakshmanan, Advocate, Sr. 73501

1 cc to Mr. F.B. BENjamin Goerge, Advocate, Sr. 73055

Writ Petition No.32678 of 2014

SK (CO)
kk 10/1

सत्यमेव जयते

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