IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.01.2016

DATE OF DECISION: 02.02.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI

and

THE HON'BLE DR. JUSTICE P. DEVADASS

W.P. No.283 of 2016 and W.M.P. No.174 of 2016

1 Dr. Zubaida Begaum

2 Dr. Akthar Hussain ... Petitioners

Vs.

1 Indian Bank
represented by its Manager
Guindy Branch
Chennai

2 The Chief Manager
Asset Recovery Management Branch
Willington Estate
No.55, Ethiraj Salai
Chennai 600 008

3 S. Martin ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records pertaining to the order dated 23.11.2015 in AIR (SA) 724 of 2015 on the file of the DRAT (Debt Recovery Appellate Tribunal), Chennai and quash the same as illegal and incorrect.



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| For petitioners | Mr. N. Sivabalan for Mr. S. Sethuraman |
| For RR 1 & 2 | Mr. V. Kalyanaraman for M/s. Aiyar & Dolia |
| For R3 | Mr. S. Vasudevan |

ORDER

SATISH K. AGNIHOTRI, J.

The instant writ petition is directed against the order dated 23 November 2015 passed in AIR (SA) No.724 of 2015 on the file of the Debts Recovery Appellate Tribunal, Chennai (for short "the Appellate Tribunal"), whereby and whereunder, the petitioners were required to pay Court fee, as per the fee schedule prescribed under Rule 13(2)(1)(a) and (b) of the Security Interest (Enforcement) Rules, 2002 (for short "the Rules, 2002")

2 A vignette of facts, as posited by the petitioners is that on account of default in payment of the loan amount, a demand notice dated 22 August 2002 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") was issued by the second respondent. Thereafter, a possession notice dated 17 September 2007 under Section 13(4) of the SARFAESI Act was issued, which culminated into sale notice dated 13 December 2009. The said sale notice was assailed in S.A. No. 80 of 2009 on the file of the Debts Recovery Tribunal-I, Chennai (for short "the Tribunal"), which was disposed of on 25 January 2010. Before the disposal of the said dispute, the sale was conducted on 18 March 2009 and confirmed on 10 November 2010. Questioning the legality and validity of the confirmation of sale dated 10 November 2010 with regard to the property in question, the petitioners preferred a Securitisation Application before the Tribunal, which was numbered as S.A. Sr.No.6480 of 2013. The said application was rejected on 02 September 2015 by the Tribunal as not maintainable, being barred by limitation. Thereagainst, an appeal under the provisions of Section 18 of the SARFAESI Act was filed by the petitioners before the Appellate Tribunal in A.I.R. (SA) No.724 of 2015. The Office of the DRAT raised an objection qua payment of Court fee. According to the Office, the Court fee payable was as per the amount of debt due, as prescribed under Rule 13(2)(1)(a) and (b) of the Rules, 2002, contrary to the petitioner's case that the Court fee payable was Rs.200/-, inasmuch as the Tribunal has rejected their application on the ground of limitation and the case was not decided on merits. Thus, the instant writ petition questioning the objection of the Office of the Appellate Tribunal, which was upheld by the Appellate Tribunal by the impugned order.

3 The main plank of contention of the learned counsel for the petitioners is that since the application under Section 17 was rejected by the Tribunal on the question of maintainability,

the said rejection order was not a final order, rather, only an interim order and as such, the fee payable in appeal before the Appellate Tribunal was on Interlocutory Application and not as prescribed under Rule 13(2)(1)(a) and (b) of the Rules, 2002, as has been held by the Appellate Tribunal.

4 We have examined the pleadings and the entire case from all angles.

5 We are of the considered view that the dismissal of an application on limitation is a final order. An interim order or interlocutory order is passed in a pending matter qua certain interim direction. The dispute between the parties remains pending in the main application. Whereas, when the case is dismissed on the ground of limitation, it attains finality. Thus, the order dismissing the case as not maintainable as being barred by limitation, is a final order.

6 The contention of the learned counsel for the petitioners that the dismissal on maintainability was an interim order is noted to be rejected, as no case survives at the Tribunal when the application is dismissed on the ground of being barred by limitation and as such, the order becomes a final order. The appeal against the said order before the Appellate Tribunal under the provisions of Section 18 of the SARFAESI Act involves payment of Court fee as prescribed under Rule 13(2)(1)(a) and (b), on the basis of total amount of debt, as the petitioners are borrowers.

For the reasons mentioned hereinabove, the impugned order rendered by the Appellate Tribunal is unexceptionable, just and proper warranting no interference. Accordingly, the writ petition stands dismissed. Costs made easy. Connected W.M.P. is closed. The petitioners are granted two weeks' time to make the payment of appropriate fee, as directed by the Appellate Tribunal.



02/02/2016

After the orders were pronounced today, the learned counsel for the petitioners submitted that the petitioners may be granted time to make payment of appropriate fee, as directed by the Appellate Tribunal.

2 Acceding to the aforesaid submission, we grant two weeks' time to the petitioners to make payment of appropriate fee, as directed by the Appellate Tribunal.

Sd/-
Asst.Registrar (CS VI )

/true copy/

Sub Asst. Registrar

To

1 The Manager
Indian Bank
Guindy Branch, Chennai

2 The Chief Manager
Asset Recovery Management Branch
Willington Estate, No.55, Ethiraj Salai, Chennai 600 008

+1cc to Mr.S.Sethuraman, Advocate Sr.7081
+1cc to M/S.Aiyar & Dolia, Advocate Sr.6997
+1cc to Mr.S.Vasudevan, Advocate sr.6666

W.P. No.283 of 2016

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