IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.24371 of 2017

Rajagop Kanichat @ Rajagopal ... Petitioner

Versus

1. The Authorised Officer,
   Indian Overseas Bank,
   Thrissur Branch,
   PB.No.514, Palace Road,
   Thrissur 683 501.

2. M/s.Institute of Indian Therapies,
   Rep., by its Proprietor,
   Dr.Mahesh Menon,
   S/o.T.A.Radhakrishna Menon,
   Makaraparambil House,
   Annamanada P.O.,
   Thrissur 680 741.

3. Dr.Mahesh Menon

4. T.A.Radhakrishna Menon

5. Sindhu Mahesh

6. The Chairperson,
   Debts Recovery Appellate Tribunal,
   Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 6th respondent in AIR (SA) No.449 of 2017, on 01.09.2017, quash the same and consequently, direct the Registry of the 6th respondent to number the D.A.S.A., and decide the same on merits.

For Petitioner : Mrs.K.M.Valsala

For 1st Respondent : Mr.F.B.Benjamin George

ORDER

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

Challenge in this writ petition, is to an order made in AIR (SA) No.449 of 2017, on 01.09.2017, on the file of of the Debts Recovery Appellate Tribunal, Chennai, directing payment of deficit court fees, on the basis of a sum of Rs.8,16,50,993/-, notice amount, as per Rule 13(2)(b) of the SARFAESI Rules, 2002. Consequently, the petitioner has sought for a direction to the Registry of the Debts Recovery Appellate Tribunal, Chennai, to number the D.A.S.A., and decide the same, on merits.

2. Earlier, the petitioner has filed S.A.No.442 of 2013, challenging the proceedings initiated by the Authorised Officer, Indian Overseas Bank, Thrissur Branch, the 1st respondent herein, against the schedule property, under the SARFAESI Act, 2002, as null and void, and the Debts Recovery Tribunal-II, Kerala at Ernakulam, has dismissed T.S.A.No.517 of 2016 (S.A.No.442 of 2013). Against which, the petitioner has filed A.I.R.(S.A.)No.449 of 2017, on the file of the Debts Recovery Appellate Tribunal, Chennai, under Section 18 of the SARFAESI Act, 2002. Vide proceedings, dated 01.09.2017, DRAT, Chennai, ordered as follows:

> "Appellant filed SARFAESI Appeal as third party, but he is none less but the successor of the guarantor claiming title on the property of joint family received on the basis of settlement arrived at in Civil Court. Accordingly, for the purpose of this Appeal, he is liable to pay Court Fees, according to Section 13(2)(b) of the Security Interest (Enforcement) Rules, 2002. He has paid Court fees of Rs.50,000/- only. But he is required to pay Court fees on the basis of a sum of Rs.81650993/-, the notice amount.
>
> It is made clear that DRAT cannot entertain any Appeal without ensuring the pre-deposit of 50% of the debt amount, ie., 8.16 Crores. However, 15 days time is granted if Appellant wishes to file a Waiver petition.
>
> List on 15.09.2017 for payment of deficit Court fees and for consideration on waiver application and if it is not filed, then, for direction to be issued for pre-deposit."

3. Aggrieved by the same, instant writ petition has been filed, for the reliefs, stated supra.

4. Mrs.K.M.Valsala, learned counsel for the petitioner submitted that the Tribunal has not appreciated Rule 13(2)1(d)

and 13(2)2 of The Security Interest (Enforcement) Rules, 2002 in proper perspective. She further submitted that the Tribunal has failed to appreciate the fact that the DRT has given a categorical finding, in paragraph 8 of the Order that, "Admittedly the Applicant is a third Party to the proceedings", and therefore, the petitioner cannot be directed to pay fees under Rule 13(2)(1)(b) of the Rules.

5. Learned counsel for the petitioner further submitted that the Tribunal ought to have appreciated the fact that even before the lower Forum, the petitioner has paid the very same fees, and it is the general principle in law that whatever fees has been paid before the lowest Forum would alone be applicable, in the subsequent Appeals therefrom. Attention of Rule 13(2)(2) was invited, as follows:

Appeal to the Appellate Authority against any Order passed by the Debt Recovery Tribunal under Section 17	Same fees as provided at Clauses (a) to (e) of SI.No:1 of this Rule

6. Learned counsel for the petitioner further submitted that the Tribunal has failed to appreciate the fact that it is not the case of the Bank or anyone that the petitioner is a borrower or a guarantor. She also submitted that such being the case, the petitioner cannot be directed to pay fees under Rule 13(1)(b) of the Rules.

7. It is also her submission that when the Bank has already brought 4 of the other properties of the borrower for sale, and when it is not clear as to whether any amount is still due under the loan account, the Tribunal has erred in pre-determining the issue of pre-deposit 50% of the debt amount or filing of a Waiver Petition,

8. Learned counsel for the petitioner further submitted that the Tribunal has erred in holding that being a successor in interest of the guarantor, the Petitioner is liable to pay fees, applicable to a borrower. Such a finding is wholly erroneous, in view of the fact that the guarantor is still alive. Substantial properties offered by the borrower, would be sufficient to discharge the liabilities to the bank, if any, which this Petitioner is in no way concerned. According to her, the question of succession would not arise since the property had been transferred to the Petitioner, under a Court proceedings.

9. Learned counsel for the petitioner further submitted that the Tribunal ought to have appreciated the fact that there was no collusion between the petitioner, his brother and father, and that the same is evidenced from the Court proceedings in the

year 2012. She further submitted that the Tribunal has failed to appreciate the fact that when possession of the secured asset, is not with the borrower or the guarantor, the option available to the bank is to take recourse, by other legal proceedings and not under section 13(4) of the Act.

10. She further stated that after the receipt of the reply to the 13(2) Notice, from the borrowers, the respondent Bank was aware of the fact that the secured asset is not in the hands of the borrower and that the borrower is no longer the owner of the same, as per the Court proceedings. As per Section 13(4)(d), "require at any time by notice in writing, any person who has acquired any of the secured asset from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt". According to her, the respondent bank has not issued any Notice under Section 13(4)(d) notice to the Petitioner who is the absolute owner of the property and who alone is in absolute possession of the property and therefore, submitted that the Tribunal has failed to appreciate the provision under Section 13(4)(d) of the SARFAESI Act, 2002.

11. Rebutting the averments made in the affidavit, filed in support of the writ petition, the Authorised Officer of Indian Overseas Bank, Thrissur Branch, 1st respondent herein, has filed a detailed counter, contending inter alia that by the impugned order, the Debts Recovery Appellate Tribunal, directed the petitioner to pay Court fee, as per Rule 13(2) of the Security Interest (Enforcement) Rules, 2002 and the petitioner claims that he had paid Court fee, as calculated under Rule 13(2)(d) and therefore, he is liable to pay Court fee, under Rule 13(2).

12. The first respondent has further contended that the property measuing 24.79 acres (61.25 Cents of land) with residential building/factory in Sy.No.1025, Kallur Thekkummury Village is the property of the 3rd respondent herein, vide Settlement Deed, bearing No.1582 of 2010, dated 28.07.2010, executed by his father, 4th respondent herein. On the strength of security interest created over the said property, the 1st respondent-Bank sanctioned cash credit to the extent of 6.26 Crores, to the second respondent herein, a proprietory concern, belonging to the 3rd respondent herein, and loan was availed on 28.10.2011. Respondents 4 and 5 and one Mrs.Valsala, mother of the petitioner, are the guarantors to the said loan.

13. The first respondent has further contended that after creating a mortage, in favour of the 1st respondent-bank, the petitioner filed a pre-litigation petition before the Lok-Adalat and obtained an award on 03.08.2012, cancelling the settlement deed, dated 28.07.2010, executed in favour of the 3rd respondent

herein. Later, lok adalat award was put into execution and the settlement deed, dated 28.07.2010, was cancelled by a cancellation deed, dated 15.11.2012. However, after cancelling the said settlement deed, dated 28.07.2010, by execution of the award, dated 03.08.2012, a settlement has been executed in favour of the petitioner on 15.11.2012. Since the cancellation of the earlier settlement deed, in favour of the 3rd respondent and the subsequent execution of the settlement deed, in favour of the petitioner, were done, in execution of the award, dated 03.08.2012, according to the 1st respondent-Bank, the said award is by collusion between the parties, including the petitioner and the 3rd respondent, to defeat the interest of the Bank.

14. It is the further case of the first respondent-Bank that the petitioner has neither produced the copy of the award, dated 03.08.2012, nor the memo of compromise, agreeing to pass the award. According to them, both the cancellation deed and subsequent settlement, dated 15.11.2012, shows that the petitioner and respondents 3 to 5 have suppressed the prior mortgage, created in favour of the 1st respondent-Bank. According to them, the entire proceedings, viz., the award, dated 03.08.2012 and all subsequent actions, including the cancellation of settlement deed, dated 28.07.2010, execution of the settlement deed, dated 15.11.2012, in favour of the petitioner, etc., are viated by fraud and therefore, they are nullity.

15. The first respondent-Bank has further contended that the loan availed by the 2nd respondent became NPA and therefore, the Bank initiated proceedings, under SARFAESI Act, by issuing a demand notice, dated 15.02.2013, possession notice, dated 02.06.2013 and later, sale notice, dated 30.06.2013. In the meantime, the petitioner filed S.A.No.442 of 2013, on the file of the DRT, Ernakulam. The 2nd respondent-principal borrower, 3rd respondent- mortgagor and respondents 4 and 5-guarantors, remained exparte. The said application was dismissed on merits and later, challenging the same, the petitioner has filed AIR (SA)No.449 of 2012, in which, a direction was issued to pay the required court fees, which is impugned in this writ petition.

16. The 1st respondent-Bank has further submitted that the petitioner is claiming title over the mortgaged property, pursuant to the Lok Adalat award, obtained by him, in collusion with his family members, including his father, mother and brother, by playing fraud. Therefore, the Bank has contended that the petitioner, who had stepped into the shoes of respondents 2 to 5, cannot claim that he is a third party to get the benefit of concession of Court fee. The 1st respondent has further contended that if the petitoiner is desirous of prosecuting the appeal, he should comply with the condition laid

down under the 2nd proviso to Section 18 of the SARFAESI Act, 2002 and therefore, no direction should be given to the DRAT, Chennai, to number the appeal and decide the case on merits, without the petitioner first complying with payment of Court fee, under Rule 13(2)(b) r/w. Rule 13(2)(2) and pre-deposit, under the 2nd proviso to Section 18. For the above said reasons, the 1st respondent-Bank has prayed to dismiss the writ petition.

17. During the course of hearing of the instant writ petition, Ms.K.M.Valsala, learned counsel for the petitioner submitted that though, two memos dated 15.09.2017 and 23.10.2017, have been filed before the Debts Recovery Appellate Tribunal, Chennai, praying for an adjournment of AIR (SA) No.449/2017, the said Tribunal has failed to take note of the same and dismissed the appeal AIR (SA) No.449 of 2017.

18. Per contra Mr.F.B.Benjamin George, learned counsel for the respondent bank submitted that no such Memos were filed before the Appellate Tribunal. Learned counsel for the respondent submitted that representation was made by the petitioner that there was stay of the orders impugned before us, and sought for time. Refuting the said submission, learned counsel for the petitioner, submitted that no such submission was made, but only above said memos dated 15.09.2017 and 23.09/10.2017, were filed stating that writ petition is pending before this court.

19. Placing reliance on the decision of the Hon'ble Apex Court in S.P.Chengalvaraya Naidu (dead) by LRs v. Jagannath (Dead) by LRs and others reported in (1994) 1 SCC 1, learned counsel for the bank contended that the decree obtained from the Lok Adalat on 03.08.2012, is fraudulent, collusive, and that has no legal sanction, based on which the petitioner, who had acquired a right over the subject property mortgaged with the bank, has to pay necessary court fee and cannot escape from the mandatory provision of making pre-deposit for entertaining an appeal under Section 18 of the SARFAESI Act, 2002.

20. Heard the learned counsel appearing for the parties and perused the materials available on record.

21. Material on record discloses that M/s.Institute of Indian Therapies, represented by Dr.K.Mahesh Menon, Thrissur, has availed Cash Credit (hypothecation) of Rs.6,26,00,000/- and Cash Credit of Rs.1,00,00,000/- under SME Insta Plus, from Indian Overseas Bank, Thrissur Branch. Besides hypothecation of stocks of Ayurvedic Medicines, Book Debts, Plant and Machinery, the following properties have been mortgaged:

(i) 61-1/4 cents of land with residential bldg./factory building in Sy. No.1025, Kallur

Thekkummury Village, Mukundapuram Taluk, Thrissur Dist. in the name of Dr.Mahesh Menon with all rights therein as per Settlement Deed No.1582/1/2010 dated 28.07.2010 of Sub Registry Office, Annamada;

(ii) 11.333 cents of land with residential bldg. in Sy. No.1009/22 & 1041, Kallur Thekkummury Village, Mukundapuram Taluk, Thrissur Dist. in the name of Radhakrishna Menon with all rights therein as per Sale Deed No.1526/1/2010 dated 22.07.2010 of Sub Registry Office, Annamanada;

(iii) 5 cents of land with residential bldg. in Sy. No.1024, Kallur Thekkummury village, Mukundapuam Taluk, Thrissur Dist, in the name of Mrs.Sindhu Mahesh with all rights therein as per Sale Deed No.486/1/2010 dated 02.03.2010 of Sub Registry Office, Annamanada; and

(iv) 13 cents of land with residential bldg. in Sy. No.1028/2, Kallur Thekkummury Village, Mukundapuram Taluk, Thrissur District in the name of Mrs.Sindhu Mahesh with all rights therein as per Sale Deed No.1403/I/2010 dated 07.07.2010 of Sub Registry Office, Annamanada.

22. Borrowers/guarantors, namely, Dr.Mahesh Menon, Mr.Radhakrishna Menon, Mrs.Sindhu Mahesh and Mrs.Valasala, have defaulted in making payment. Hence Indian Overseas Bank, Thrissur, has issued a Notice dated 15.02.2013 under Section 13 (2) of the SARFAESI Act, 2002, demanding a sum of Rs.8,16,50,993/- inclusive of overdue interest upto 14.02.2013 with interest, at the rate of 12.75 per annum / overdue interest @ 2% with monthly rests within 60 days from the date of notice failing which, action would be taken under Section 13(4) of the SARFAESI Act. On behalf of the borrowers/guarantors, a reply notice dated 08.04.2017 has been sent to the bank. Thereafter, bank has issued a possession notice dated 25.04.2013 under Section 13(4) of the SARFAESI Act, 2002. Contending inter alia that the petitioner has right over 61-1/4 cents of land with residential building, morefully described in the foregoing paragraphs of this order, and that the petitioner is neither a borrower or guarantor to the loan availed by M/s.Institute of Indian Therapies, Thrissur and others, petitioner has filed S.A. No.442/2013 on the file of the Debts Recovery Tribunal, Ernakulam, to set aside the entire proceedings initiated in respect of the property comprised in S.No.1025, Kallur Thekkummury Village, Mukundapuram Taluk, Thrissur Dist., as illegal.

23. In terms of Rule 13(2)1(d) and 13(2) 2 of the Security Interest (Enforcement) Rules, 2002, Debts Recovery Tribunal, Ernakulam has permitted the petitioner, as third party, to file

S.A. No.442/2013, remitting court fee of Rs.50,000/-. Before DRT, Ernakulam in S.A. No.442/3013, petitioner has also contended that the earlier settlement of the subject property, settled by Mr.T.A.Radhakrishna Menon, Thrissur, the 4th respondent herein, to and in favour of his son Dr.Mahesh Menon, the third respondent in Document No.1582/2010, registered in the office of the Sub Registrar, Annamanada, has been cancelled, by a cancellation deed No.3870/2010 on the file of office of the Sub Registrar, Annammanada and that therefore, Dr.Mahesh Menon, Thrissur, had no valid title or interest over the subject property mortgaged with Indian Overseas Bank, Thrissur Branch. S.A. No.442/2013, has been transferred and re-assigned TSA No.517/2016 on the file of the DRT-II Kerala @ Ernakulam. Though on the above said submission and materials, the petitioner has prayed that the entire proceedings initiated over 61-1/4 has to be declared as illegal and void, DRT, Ernakulam, declined to accept the said contentions and vide order dated 07.06.2017, DRT, Kerala, dismissed TSA No.517/2016 (S.A. No.442/2013).

24. Being aggrieved petitioner has filed AIR (SA) No.449 of 2017, on the file of Debts Recovery Appellate Tribunal, Chennai. Registry, DRAT, Chennai, is stated to have raised certain objections/defects to be complied with. On 24.08.2017, petitioner has filed a compliance Memo, as extracted hereunder.

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI
AIR (SA) No.449 of 2017

Rajagop Kanichat @ Rajagopal
S/o.Mallikkaparambil Radhakrishna Menon
Annamanada P.O
Kallur, Thekkummuri
Mukundapuram Taluk
Thrissur - 680 741, Kerala .. Appellant

vs.

The Authorised Officer
Indian Overseas Bank
Thrissur Branch, P.B. No.514
Palace Road, Thrissur - 683 501 & .. Respondents
4 others

COMPLIANCE MEMO FILED BY THE COUNSEL FOR APPELLANT

It is respectfully submitted that the DRAT Appeal AIR (SA) No.449 of 2017 was listed before the Hon'ble DRAT on 21.08.2017. The Hon'ble DRAT has directed the Counsel for Appellant to comply with the 4 notes given by the Registry on or before 28.08.2017 and directed the DRAT Registry to list the AIR (SA) No.449 of 2017 before the Court.

Sl.No.1

Amount mentioned in the 13(2) notice differs from 13(4) notice. Correct 13(2) notice is enclosed. Appellant may be permitted to replace the wrong 13(2) notice at Page 42 to 44.

Complied with.

Sl.No.2

The Appellant is a Third Party. He is neither the borrower nor the Guarantor. In the DRT Ernakulam itself the Bank has admitted that the appellant is a third party to the proceedings. The DRT Ernakulam was also accepted that the Appellant is a Third Party and accepted Rs.50,000/- as SA Appeal Fees.

The Appellant has paid Rs.50,000/- as Appeal fees under Rule 13(2)1(d) and 13(2) 2 of the Security Interest (Enforcement) Rules, 2002.

Complied with.

Sl.No.3

Waiver Application.

Since the Appellant is a Third Party which was admitted by the Bank and the Hon'ble DRT Ernakulam, question of waiver application does not arise.

Complied with.

Sl.No.4

DRT Ernakulam SA Cause Title shows appellant was represented by Power of Attorney.

It is true that this appellant has filed the DRT SA through his Power of Attorney. Subsequently the Power of Attorney was revoked by this Appellant and the present appeal before this Hon'ble DRAT is filed by the appellant himself. Hence it may be condoned by this Hon'ble Court.

Complied with.

Dated at Chennai this the 24th day of August 2017.

Counsel for Appellant.

25. After considering the compliance report and by observing that the petitioner is a successor to the guarantor, DRAT, Chennai, in its proceedings dated 01.09.2017, ordered as hereunder:

PROCEEDINGS DAED 01.09.2017

Ld. Counsel Mr.K.S.Kumar for Appellant Present.

In compliance of office objections, appellant has submitted copy of notice dated 15.2.2013 under

Section-13(2) of SARFAESI Act for recovery of Rs.8,16,50,993/-. Possession Notice has been issued on the basis of this notice only.

Appellant filed SARFAESI Appeal as third party, but he is none less but the successor of the guarantor claiming title on the property of joint family received on the basis of settlement arrived at in Civil Court. Accordingly, for the purpose of this Appeal, he is liable to pay Court fees according to Section -13(2)(b) of the Security Interest (Enforcement) Rules, 2002. He has paid Court fees of Rs.50,000/- only. But he is required to pay Court fees on the basis of a sum of Rs.8,16,50,993/-, the notice amount.

It is made clear that DRAT cannot entertain any appeal without ensuring the pre-deposit of 50% of the debt amount, i.e. 8.16 Crores. However, 15 days time is granted if appellantwishes to file a waiver petition.

List on 15.09.2017 for payment of deficit Court fees and for consideration on waiver application and if it is not filed, then, for direction to be issued for pre-deposit.

List the case on 15.09.2017."

The said order is impugned in this writ petition.

26. Before adverting to the rival contentions, let us have a cursory look at Rule 13 of the Security Interest (Enforcement) Rules, 2002, which deals with fees to be made for filing applications and appeals under Section 17 and 18 of the SARFAESI Act, 2002, respectively.

"13. Fees for applications and appeals under section 17 and 18 of the Act.- (1) Every application under sub section (1) of section 17 or an appeal to the Appellate Tribunal under sub-section (1) of section 18 shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated.

(2) The amount of fee payable shall be as follows:

No.	Nature of Application	Amount of fee Payable
1	Application to a Debt Recovery Tribunal under sub-section (1) of section 17 against any of the measures referred to in sub-section (4) of section 13	

No.	Nature of Application	Amount of fee Payable
	(a) Where the applicant is a borrower and the amount of debt due is less than Rs.10 lakhs	Rs. 500 for every Rs.1 lakh or part thereof
	(b) Where the applicant is a borrower and the amount of debt due is Rs. 10 lakhs and above	Rs. 5,000 + Rs. 250 for every Rs. 1 lakh or part thereof in excess of Rs. 10 lakhs subject to a maximum of Rs. 1,00,000
	(c) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is less than Rs.10 lakhs	Rs. 125 for every Rupees One lakh or part thereof
	(d) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs.10 lakhs and above	Rs. 1,250 + Rs. 125 for every Rs. 1 lakh or part thereof in excess of Rs. 10 lakhs subject to a maximum of Rs. 50,000
	(e) Any other application by any person	Rs. 200
2	Appeal to the Appellate Authority against any order passed by the Debt Recovery Tribunal under section 17	Same fees as provided at clauses (a) to (e) of serial number 1 of this rule

Earlier, when the petitioner filed an application in S.A.No.442 of 2013 on the file of Debts Recovery Tribunal-II, Kerala at Ernakulam, challenging the proceedings initiated by the Authorised Officer, Indian Overseas Bank, Thrissur Branch, the 1st respondent herein, against the schedule property, under the SARFAESI Act, 2002, as null and void, DRT-II, Kerala at Ernakulam, permitted the petitioner to remit the court fee applicable to any aggrieved party other than the borrower. As rightly contended by the learned counsel for the petitioner, when the petitioner had been treated as an aggrieved person other than the borrower, and, permitted to pay court fee as per the first proviso to Section 17, which provides for prescription of different fees for making an application by the person other than the borrower, then such person, who has lost his claim or relief prayed for in the application filed under Section 17 of the SARFAESI Act, 2002 and filed an appeal to the Appellate Tribunal under Section 18 of the Act, ought to have been permitted, to file the appeal on payment of fee, prescribed, for filing of an appeal by a person other than the borrower as done by the Debts Recovery Tribunal.

27. Yet another fact, to be taken note of is that when the Debts Recovery Appellate Tribunal, Chennai in the opening sentence of the order impugned before us, has arrived at a prima facie conclusion that the appellant has filed SARFAESI Appeal as a third party and having regard to the fact that he was also permitted to pay court fee as a third party before the DRT at Kerala, Ernakulam, in T.S.A. No.517/2016 (S.A. No.442/2013), Appellate Tribunal ought not to have deviated from the procedure, by coming to the conclusion that the petitioner is the successor of the guarantor claiming title of the property of joint family received, on the basis of settlement arrived at in court.

28. Material on record does not disclose that the petitioner, was granted any financial assistance by the bank or financial institution or who was given any guarantee or created any mortgage over the property for the financial assistance by the bank or financial institution. Fact remains that the subject property mortgaged is stated to have been settled in favour of Dr.Mahesh Menon by his father T.A.Radhakrishna Menon by a Document No.1582/2010, registered in the office of the Sub Registrar, Annamanada, which has been subsequently cancelled.

29. When the petitioner did not stand as a guarantor either person or either mortgaging his property, by any act, and in the light of the opening sentence of the order impugned, "that admittedly the petitioner is a third party", finding of the Debts Recovery Appellate Tribunal, Chennai that the petitioner is a successor of the guarantor, is not tenable, at this stage. Such a finding, can at best, be recorded only after hearing both parties, in the main appeal. Question as to whether Lok Adalat decree has been obtained by fraud and collusion suppressing the SARFAESI action, cannot be gone into, in the the proceedings before this court.

30. Prima facie, petitioner has been treated as a third party/person other than the borrower, both by the Debts Recovery Appellate Tribunal, Chennai and the Debts Recovery Tribunal-II at Kerala, Ernakulam and therefore, the direction of the Registrar, Debts Recovery Appellate Tribunal to pay court fee as per Section 13(2)(d) of the Security Interest (Enforcement) Rules, 2002, is liable to be set aside. Rule 13(2)(d) reads as under:

(2) The amount of fee payable shall be as follows:

(d) Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs.10 lakhs and above, the amount of fee payable is Rs.1250 + Rs.125 for every Rs.1 lakh or part thereof in excess of Rs.10 lakhs subject to a maximum of Rs.50,000/-.

31. In the light of the above discussions and decisions, impugned order of the Debts Recovery Appellate Tribunal, Chennai, directing the petitioner to remit court fee under Section 13(2)(d) is set aside. It is represented that the petitioner as a third party, has already remitted Rs.50,000/- as court fee under Rule 13(2)(d) of Security Interest (Enforcement) Rules, 2002, with the Registry of the Debts Recovery Appellate Tribunal.

32. As regards waiver of pre-deposit, by observing that DRAT, cannot entertain any appeal without ensuring pre-deposit of 50% of the debt amount i.e. 8.16 crores, DRAT, Chennai, has granted 15 days time to the writ petitioner to file a waiver application if he chooses. DRAT, Chennai, has further directed the Registrar to list A.I.R. (S.A.) No.442/2017 on 15.09.2017 for payment/deposit of court fees and consider waiver application and if not filed for direction to issue pre-deposit. We have gone through the contents of the two memos dated 15.09.2017 and 23.10.2017, stated to have been filed by the petitioner before the Debts Recovery Appellate Tribunal, Chennai. Contents of the Memos reflect that citing pendency of the institution of writ petition, adjournment has been sought for. However, on 23.10.2017, when AIR 449/2017 was listed, DRAT, Chennai, has recorded as here under:

> "Ld. Counsel Mr.K.Saravanan for Appellant present.
>
> Ld. Counsel Mr.A.Mohamed Abuthaheer for R1 Bank present.
>
> Appellant Counsel prays for a week's time to produce order of stay from High Court.
>
> Counsel for R1 Bank submits that there is no stay order by the High Court as on today.
>
> In view of the fact that High Court has not granted any stay whatsoever and Appellant has not complied the order of this Tribunal regarding Court fees and waiver petition etc. hence, the Appeal is dismissed for want of compliance of Office objections.
>
> Needless to writ that the matter may be revived either suo moto or on order of High Court, if directed by Hon'ble High Court."

33. In the foregoing paragraphs we have already set aside the portion of the order directing remittance of court fee under Section 13(2) of the Act. Inasmuch as the petitioner has remitted Rs.50,000/- as court fee under Rule 13(2)(d) of the Security Interest (Enforcement) Rules, 2002. Registry, Debts Recovery Appellate Tribunal, Chennai, is directed to process the appeal papers.

34. Though Ms.K.M.Valsala, learned counsel for the petitioner prayed to set aside the portion of the order, relating to pre-deposit also or leave it open to the Tribunal to decide as to whether any application is required to be filed by the writ petitioner, we are not inclined to accept the above, except to delete the observation of the Tribunal regarding pre-deposit and grant time to the petitioner to file an application for waiver and if any such application is filed, Tribunal, is directed to consider the facts in entirety, and pass suitable orders.

With the above direction, writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

skm/asr

To

The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

+1cc to Mr.K.S.Kumar, Advocate, S.R.No.75464
+1cc to Mr.F.B.Benjamin George, Advocate, S.R.No.75663

W.P.No.24371 of 2017

AR V
CA(15/11/2017)