

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6/1/2017

C O R A M

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

Writ Petition No.8988 of 2016

1.Dr. Khalid Hussain

2.Dr. Sajjad Hussain

.... Petitioners

Vs

The Authorised Officer
Chief Manager
Indian Bank
Asset Recovery Management Branch - II
Chennai 600 008.

.... Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records pertaining to the proceeding dated 20/1/2016 in A.I.R.(SA) No.883 of 2015 on the file of D.R.A.T, Chennai and quash the same as illegal.

For petitioners

For respondent

.... Mr.N.Sivabalan

.... Mr.V.Kalyanaraman

for

Aiyar & Dolia.

O R D E R

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

Property has been settled in favour of the writ petitioner by the borrower, against whom action has been taken. Sale notice, dated 30/9/2010, issued by the Indian Bank/respondent invoking SARFAESI Act, 2002 has been challenged by the writ petitioners in S.A.No.268 of 2010, renumbered as S.A.No.104 of 2014. Vide order, dated 16/10/2015, S.A.No.104 of 2014, has been dismissed by the Debts Recovery Tribunal - II, Chennai.

2. Material on record disclose that being aggrieved by the order dated 16/10/2015, passed by the Debts Recovery Tribunal - II, Chennai, in S.A.No.104 of 2014, the petitioners have filed W.P.No.37035 of 2015. Vide order, dated 20/11/2015, writ petitioners have withdrawn the said writ petition, taking liberty from this Court, to move the Debts Recovery Appellate Tribunal, Chennai. Thereafter, they have filed an appeal in AIR (SA) No.883 of 2015, before the Debts Recovery Appellate Tribunal - Chennai, under Section 18 of the SARFAESI Act, 2002. On 27/1/2016, the Debts Recovery Appellate Tribunal, Chennai has recorded the following proceedings.

"The appellant is directed to remove the defects pointed out by the Registry. Adjourned to 29/3/2016."

3. Being aggrieved by the same, instant writ petition has been filed, on the following grounds:-

The Chairperson DRAT has failed to consider that Court fee payable before the Debts Recovery Tribunal, as per Rule 13 (2) of the Security Enforcement Rules is same as what was paid in the lower Tribunal. Debts Recovery Appellate Tribunal, without considering the submission, passed an order in a routine and mechanical manner, without application of mind.

4. Considering the facts and circumstances of the case, we are of the view that once the writ petitioners/appellants have been directed to remove the defects, pointed out by the Registry, the same have to be rectified. Without doing so, they have approached this Court. If there was no necessity for the writ petitioners to comply with any of the defects pointed out by the Registry, it is always open to request the Registry to post the matter before the Debts Recovery Appellate Tribunal, Chennai and make submissions. Return of papers to the writ petitioners/appellants for rectification of defects would not give rise to a cause for filing a writ petition.

5. In view of the above, instant writ petition is not maintainable and accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

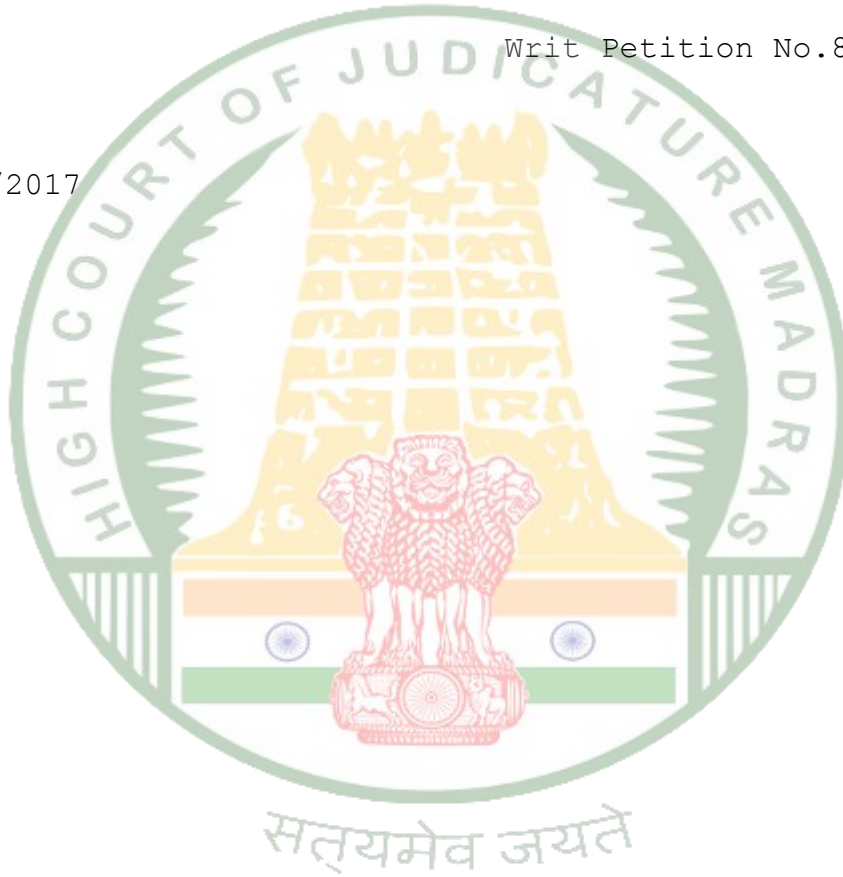
To

The Authorised Officer
Chief Manager
Indian Bank
Asset Recovery Management Branch - II
Chennai 600 008.

+lcc to M/S.S.Sethuraman, Advocate Sr.1819
+lcc to M/S.Aiyar & Dolia, Advocate Sr.1951

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srg 10/02/2017



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