

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE S. MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.14341 of 2017
W.M.P.No.15558 of 2017

P.Murugan

... Petitioner

v.

1. The Debts Recovery Appellate Tribunal,
Rep., by its Registrar,
55, Wellington Estate,
IV Floor, Ethiraj Salai,
Chennai 600 105.

2. The Debts Recovery Tribunal-III,
Rep., by its Registrar,
Deva Towers, V Floor, सत्यमेव जयते
No.770-A, Anna Salai,
Chennai 600 002.

3. The Authorised Officer,
Indian Bank,
Asset Recovery Management Branch,
4-F, 55, Wellington Estate,
Ethiraj Salai, Chennai 600 105.

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4. S.R.Raja,
No.17, Reddy Street,
West Tambaram, Chennai-45.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the record relating to the order, dated 27.03.2017 in S.A.No.49 of 2013, on the file of the Debts Recovery Appellate Tribunal, Chennai, 1st respondent herein and quash the same.

For Petitioner : Mr.A.V.Arun

For Respondents 1 & 2 : Mr.G.Rajagopalan,
Addl. Solicitor General of India

For 3rd Respondent : Mr.Jayesh B. Dolia
for M/s.Aiyar & Dolia

ORDER

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

The petitioner has challenged the order of the Debts Recovery Appellate Tribunal, Chennai, 1st respondent herein, made in S.A.No.49 of 2013, dated 27.03.2017, dismissing the appeal, on the grounds that he has not paid the deficit court fee, as per Rule 13(b) of the SARFAESI Rules, 2002.

2. Earlier, the petitioner has filed S.A.No.95 of 2009, challenging the proceedings initiated by the Authorised Officer, Indian Bank, Asset Recovery Management Branch, Chennai, the 3rd respondent herein, against the schedule property, under the SARFAESI Act, 2002, as null and void, including the sale certificate, dated 13.01.2009. Vide order, dated 14.03.2013, the Debts Recovery Tribunal-III, Chennai, dismissed S.A.No.95 of 2009. Against which, the petitioner has filed R.A.(S.A.)No.49 of 2013, on the file of the Debts Recovery Appellate Tribunal, Chennai, under Section 18 of the SARFAESI Act, 2002. Vide proceedings, dated 10.09.2014, the DRAT, Chennai, has recorded as follows:

"It is seen that deficit court fee has to be paid and also the waiver application has to be filed. Therefore time is given to the appellant to pay the deficit court fee and also the waiver application upto 03.12.2014, failing which, this RA(SA) shall stand automatically dismissed."

3. Aggrieved by the same, the petitioner has filed W.P.No.28528 of 2014, praying for a Writ of Certiorari, to quash the

abovesaid proceedings. After considering the statutory provisions and several decisions, on the aspect, as to whether, the writ petitioner has to pay the Court fee, under Section 13(b) or not, the Writ Court, vide order, dated 03.01.2017, a Division Bench of this Court, to which, one of us as party (Justice S.MANIKUMAR), at Paragraphs 53 and 54, held as follows:

"53. We have also extracted the heading, under which, the writ petitioner has pursued his further remedy, under Section 18 of the SARFAESI Act, which is an appeal. As per Rule 13 of the Rules, 2002, the amount of fee payable to an appeal to the appellate authority, against any order, passed by the DRT, the same has to be accompanied with the fees, provided at Clauses (a) to (d) to Rule 13(2)(1). In the light of the decisions and discussion, case of the writ petitioner would squarely falls under Rule 13(2)(1)(c) and (d) of the Rules, 2002. The writ petitioner is required to pay the prescribed Court fee. सत्यमेव जयते

54. According to the 3rd respondent-Bank, the writ petitioner has to pay the maximum fee of Rs.50,000/-, for entertaining the appeal, under Section 18 of the SARFAESI Act, 2002. As observed, the writ petitioner seemed to have paid deficit court fee and therefore, vide order, dated 10.09.2014, the DRAT, Chennai, has directed the writ

petitioner to pay the balance court fee. At this juncture, the reasoning of the DRAT that waiver application has not been filed, may not arise. First, the petitioner has to pay the required court fee. The question, whether he is entitled to seek for waiver, is another issue, if any application is filed. But payment of court fee cannot be avoided by the writ petitioner, who claims to be the owner of the property and aggrieved by the action, under Section 13(4) of the SARFAESI Act, 2002. In the light of the discussion and decisions, we find no force in the contention of the petitioner."

4. Taking note of the expiry of time, for payment of Court fee, at Paragraphs 56 and 57, this Court has further ordered as follows:

"56. After the dismissal of the writ petition, Mr.A.V.Arun, learned counsel for the petitioner submitted that since the time granted by the tribunal for payment of deficit Court fee had already expired and inasmuch as, the writ petitioner has tested the correctness of the order made by the Tribunal in RA(SA)No.49 of 2013, dated 10.09.2014 and filed the instant writ petition, before the expiry of the time granted by the tribunal for payment of deficit Court fee, at this juncture, even if prescribed Court fee is paid, the tribunal would not entertain the regular appeal filed under Section 18 of the SARFAESI Act, 2002, and therefore,

requested this Court to grant adequate time for payment of deficit Court fee.

57. Now that the petitioner has come forward to pay the deficit court fee, request of the writ petitioner is reasonable and therefore, we are inclined to grant two weeks time to pay the deficit Court fee required under Section 18 of the SARFAESI Act, 2002, read with rule 13(2)(1) of the Security Interest (Enforcement) Rules, 2002 and represent the appeal papers. On such payment and representation, the Tribunal shall entertain the appeal subject to other requirements to be complied with."

5. Thereafter, the petitioner has filed a memo, dated 11.01.2017, along with a Banker's Cheque, dated 10.01.2017, bearing No.341697, drawn on the State Bank of Travancore, for a sum of Rs.49,750/-, towards the deficit court fee. The petitioner has prayed to record the memo. When a Division Bench of this Court held that the case of the petitioner squarely falls under Rule 13(2)(1)(c) and (d) of the Rules, 2002 and required the petitioner to pay the prescribed fee, unfortunately, by taking note of Registry's objection, the DRAT, Chennai, has passed order in RA(SA)No.49 of 2013, dated 27.03.2017, as hereunder:

"Ld. counsel for Appellant prays that all Office objections raised should be removed because he is liable to pay the Court fees according to Rule 13(2)(1)(c) and (d) of SARFAESI Rules only. Whereas, Registry is objecting that Appellant is liable to pay Court fees, according to Rule 13(b).

On perusal of the order, dated 03.01.2017, of High Court of Madras, in W.P.No.28528/14, in Para-54 last line, even High Court has found no force in the contention of the Appellant and has directed the Appellant to pay the deficit Court fee. Admittedly, deficit Court fee as per Rule-13(b) has not been paid.

Hence, the Appeal is dismissed for want of compliance."

6. Aggrieved by the same, the instant writ petition has been filed, on the following grounds,

"(i) The learned Appellate Tribunal has not at all considered the judgment passed by this Court in W.P.No.28528 of 2014 and the findings rendered with regard to the payment of Court fees by a person other than the borrower.

(ii) When this Court categorically recorded that as per Rule 13 of the Rules, 2002, the amount of fee payable to an appeal to the appellate authority, against any order, passed

by the DRT, the same has to be accompanied with the fees, provided at Clauses (a) to (d) to Rule 13(2)(1) and in the light of the decisions and discussion, case of the writ petitioner would squarely fall under Rule 13(2)(1)(c) and (d) of the rules, 2002, and the writ petitioner is required to pay the prescribed Court fee, the finding of the learned Appellate Tribunal that the High Court has found no force in the contention of the appellant is nothing but a perverse finding.

(iii) The learned Appellate Tribunal ought to have applied the ratio decidendi of judgment of this Court strictly and ought not to have sustained the objection raised by the Registry of the Appellate Tribunal."

7. Considering the limited challenge, learned counsel for the Bank was put on notice. Reverting, Mr. Jayesh B. Dolia, learned counsel for the 3rd respondent-Bank, fairly submitted that DRAT, has erred in passing the impugned proceedings and that the same required to be set aside.

8. With due respect, the approach of the DRAT, Chennai, on the basis of Registry's objection, is erroneous. When this Court has

already held that the appellant is liable to pay Court fee, as per Rule 13(2)(1)(c) and (d) of the SARFAESI Rules, 2002, DRAT, Chennai, ought not to have taken the Registry's objection. The impugned order is set aside and DRAT, Chennai, is directed to accept the Court fee paid and restore the appeal.

9. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (V.B.S., J.)
07.08.2017

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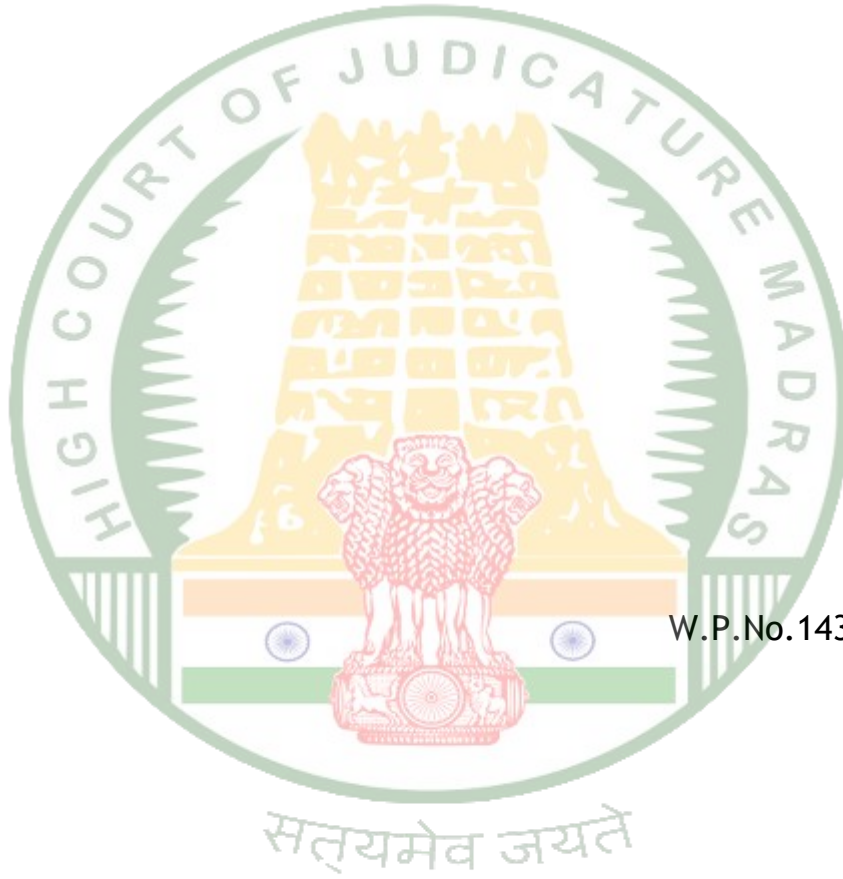
To

The Debt Recovery Appellate Tribunal,
Chennai.

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AND
V. BHAVANI SUBBAROYAN, J.

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