

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.21967 of 2013

R.Rani

.. Petitioner

Vs.

1.Union of India,  
rep. by Secretary,  
Ministry of Finance,  
North Block, New Delhi-110 001.

2.The Chairperson,  
Debt Recovery Appellate Tribunal,  
4<sup>th</sup> Floor, Indian Bank Circle Office,  
55 Ethiraj Salai,  
Chennai-600 008.

3.The Authorised Officer,  
M/s.LIC Housing Finance Limited,  
Back Office,  
"Harrington Chambers",  
No.310/1A, Block C,  
Abdul Razack 1<sup>st</sup> Street,  
Saidapet, Chennai-600 015.

4.LIC Housing Finance,  
"Harrington Chambers",  
No.310/1A, Block C,  
Abdul Razack 1<sup>st</sup> Street,  
Saidapet, Chennai-600 015.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records culminating in the impugned order dated 30.11.2012 of the 2<sup>nd</sup> respondent in AIR (SA) 119 of 2011 refusing to exercise jurisdiction in respect of the order of the 5<sup>th</sup> respondent in S.A.No.53 of 2009 dated 28.04.2010 upholding the

order issued by the 3<sup>rd</sup> respondent dated 01.12.2008 and quash the same as arbitrary, illegal, and contrary to law and consequently, direct the 3<sup>rd</sup> respondent to forthwith refund to the petitioner the sum of Rs.2,94,250/- paid as advance amount in respect of the auction of the property situated at Door No.3/2, Arjun Flats, Flat No.B, Ground Floor, Kanniyamman Koil Street, Nesapakkam, Chennai-600 078 conducted by the 3<sup>rd</sup> respondent on 13.10.2008 along with interest at the rate of 24% per annum from 13.10.2008 till the date of return. (Prayer amended as per order dated 02.9.013 in M.P.No.2 of 2013)

For Petitioner : Mr.R.Parthasarathy

For Respondent : No Appearance  
for respondents 1, 3 & 4

R2 - Tribunal

O R D E R

(Order of the Court was made by M.DURAISWAMY,J.)

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records culminating in the impugned order dated 30.11.2012 of the 2<sup>nd</sup> respondent in AIR (SA) 119 of 2011 refusing to exercise jurisdiction in respect of the order of the 5<sup>th</sup> respondent in S.A.No.53 of 2009 dated 28.04.2010 upholding the order issued by the 3<sup>rd</sup> respondent dated 01.12.2008 and to quash the same and consequently, direct the 3<sup>rd</sup> respondent to forthwith refund to the petitioner the sum of Rs.2,94,250/- paid as advance amount in respect of the property along with interest at the rate of 24% per annum from 13.10.2008 till the date of realisation.

2. The matter was listed for hearing on 22.11.2018 and there was no representation on behalf of the contesting respondents. Hence, the matter was adjourned to today i.e., 23.11.2018 and today also there is no representation on behalf of the contesting respondents. Hence, we heard the arguments of the learned counsel for the petitioner and decided the matter on merits.

3. Challenging the order passed in S.A.No.53 of 2009 on the file of Debts Recovery Tribunal-III, Chennai, the petitioner preferred an appeal in AIR (SA) No.119 of 2011 before the Debt Recovery Appellate Tribunal, Chennai with an application in I.A.No.199 of 2011 to condone the delay of 245 days in filing the appeal before the Debt Recovery Appellate Tribunal. In paragraph 4 of the affidavit filed in support of the application, the petitioner has explained the reasons for delay of 245 days in filing the appeal. However, the Debt Recovery

Appellate Tribunal, by an order dated 30.11.2012, dismissed the petition finding that the Debt Recovery Appellate Tribunal has no jurisdiction to condone the delay. While dismissing the application, the Debt Recovery Appellate Tribunal relied upon a judgment reported in 2012 (5) CTC 369 (Dr.Zubida Begum and another v. Indian Bank and others), wherein a Division Bench of this Court held that under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act'), the Debt Recovery Appellate Tribunal has no power to condone the delay in preferring the statutory appeal.

4. The learned counsel for the petitioner submitted that subsequent to the judgment of the Division Bench of this Court, the Hon'ble Supreme Court in the judgment reported in (2016) 1 SCC 444 (Baleshwar Dayal Jaiswal v. Bank of India and others) held that delay in filing an appeal under Section 18(1) of the SARFAESI Act can be condoned by the Debt Recovery Appellate Tribunal under Section 18(2) of the SARFAESI Act.

5. In the judgment reported in (2016) 1 SCC 444, the Apex Court held as follows:

"7. .... We have thus no hesitation in holding that the Appellate Tribunal under the SARFAESI Act has the power to condone the delay in filing an appeal before it by virtue of Section 18(2) of the SARFAESI Act and the proviso to Section 20(3) of the RDDB Act.

.....  
15. As a result of the above discussion, the question is answered in the affirmative by holding that delay in filing an appeal under Section 18(1) of the SARFAESI Act can be condoned by the Appellate Tribunal under proviso to Section 20(3) of the RDDB Act read with Section 18(2) of the SARFAESI Act. The contrary view taken by the Madhya Praesh High Court in Seth Bashidhar Kedia Rice Mills (P) Ltd., case (AIR 2011 MP 205) is overruled"

6. Following the ratio laid down by the Apex Court in the judgment cited supra, we are of the considered view that the order passed by the Debt Recovery Appellate Tribunal dated 30.11.2012 is liable to be set aside. Since the Debt Recovery Appellate Tribunal has got jurisdiction to condone the delay in filing the appeal, the order passed by the Debt Recovery Appellate Tribunal is set aside and the matter is remitted back to the Debt Recovery Appellate Tribunal, Chennai for fresh considerations. The Debt Recovery Appellate Tribunal is directed to decide the matter afresh on merits and in accordance

with law as expeditiously as possible.

7. With these observations, the writ petition is allowed.  
No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

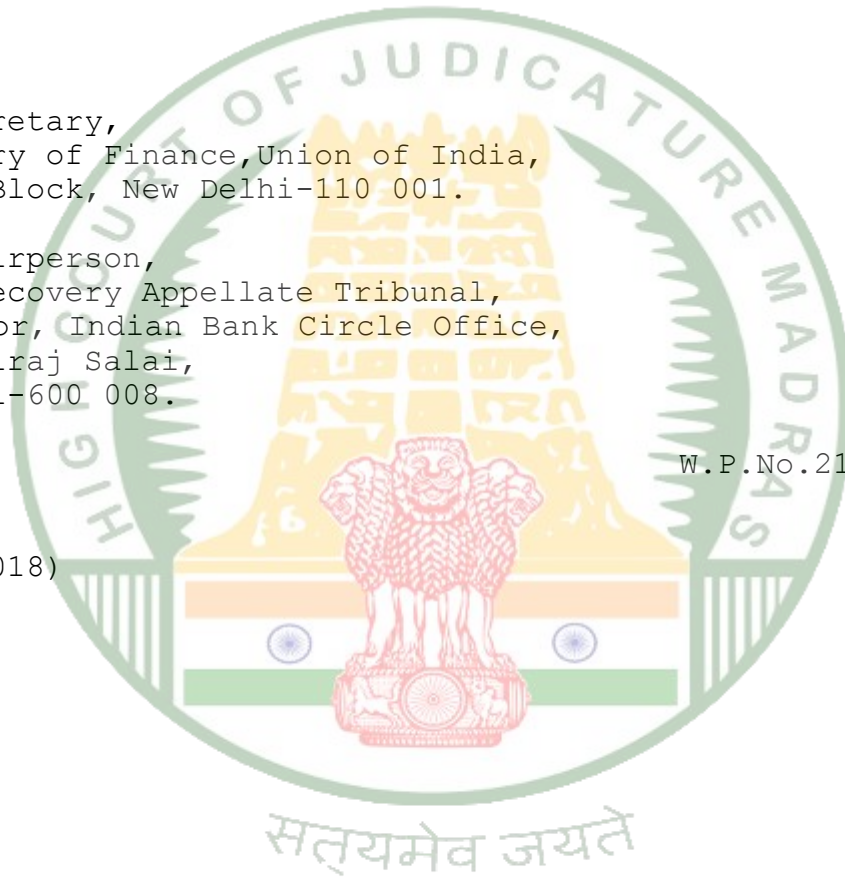
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To

- 1.The Secretary,  
Ministry of Finance, Union of India,  
North Block, New Delhi-110 001.
- 2.The Chairperson,  
Debt Recovery Appellate Tribunal,  
4<sup>th</sup> Floor, Indian Bank Circle Office,  
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W.P.No.21967 of 2013

GSP(/12/2018)



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