

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH
and
THE HON'BLE MR. JUSTICE M.V. MURALIDARAN

W.P. No.22488 of 2015

T. Ashok Surana

Petitioner

vs.

1 The Registrar
Hon'ble Debts Recovery Appellate Tribunal
55, Ethiraj Salai IV Floor
Egmore, Chennai 600 008

2 The Authorised Officer
Indian Bank
Mylapore Branch
21 North Mada Street
Mylapore, Chennai 600 004

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration declaring that the order in AIR (SA) 97/2015 dated 13.04.2015 is a perverse one of avoiding to determine the jurisdiction with confuscated reasoning as illegal, non est and void, declare the action of the second respondent as without jurisdiction on the admitted facts raised in para 14 of the affidavit.

For petitioner : Mr. T. Ashok Surana - Party in person

For R2 : Mr. Jayesh B. Dolia
for M/s. Aiyar & Dolia

ORDER

(Order of the Court was made by P.N. PRAKASH, J.)

This writ petition has been preferred with the following prayer:

"a writ of declaration declaring that the order in AIR (SA) 97/2015 dated 13.04.2015 is a perverse one of avoiding to determine the jurisdiction with confuscated reasoning as illegal, non est and void, declare the action of the second respondent as without jurisdiction

on the admitted facts raised in para 14 of the affidavit."

2 The petitioner filed an application in S.A. No.179 of 2011 before the Debts Recovery Tribunal-I, Chennai under Section 17 of the SARFAESI Act seeking to set aside the sale notice dated 06.07.2011, the sale certificate issued by Indian Bank in favour of the auction purchaser and the order dated 06.01.2011 issued by the Chief Metropolitan Magistrate, Egmore, Chennai in CrI.M.P. No.4234 of 2010. The said application was transferred from the file of the Debts Recovery Tribunal-I, Chennai, to the file of the Debts Recovery Tribunal-II, Chennai and was re-numbered as S.A. No.86 of 2014. The Debts Recovery Tribunal-II, Chennai, after hearing both sides, dismissed S.A.No.86 of 2014 on 20.01.2015. Challenging said order, the petitioner filed A.I.R.(S.A.) No.97 of 2015 before the Debts Recovery Appellate Tribunal, Chennai and argued before the Presiding Officer that he has no jurisdiction to hear the appeal. In other words, after having preferred the appeal, he contended that the appellate authority cannot entertain the appeal. Recording his submission and conduct, the appellate authority, viz., the Debts Recovery Appellate Tribunal, Chennai, by order dated 13.04.2015, dismissed A.I.R. (S.A.) No.97 of 2015. Challenging the said order, this writ petition has been filed.

3 Heard Ashok Surana, who appeared as party in person and Mr.Jayesh B. Dolia, learned Standing Counsel for the second respondent/Indian Bank.

4 In our opinion, when once the petitioner submitted himself to the jurisdiction of the Debts Recovery Appellate Tribunal, Chennai, by filing an appeal, it is not open to him to contend before the Presiding Officer that he has no jurisdiction to entertain the appeal. The petitioner contended that, the said Presiding Officer, in other cases, had not been applying the law properly and that is the reason why he contended before the Presiding Officer that he has no jurisdiction. The alleged mis-application of law on certain facts by the Presiding Officer of the Debts Recovery Appellate Tribunal would not mean that he lacks jurisdiction to entertain the case. That may be a good ground for the petitioner to agitate before the higher forum, but, certainly, it is not a ground for challenging the very maintainability of the appeal, especially after subjecting himself to the said jurisdiction by filing an appeal.

5 Under such circumstances, this Court does not find any infirmity in the order dated 13.04.2015 passed by the Debts Recovery Appellate Tribunal, Chennai in A.I.R. (SA) No.97 of 2015.

In the result, this writ petition is dismissed as being devoid of merits. Costs made easy.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

cad

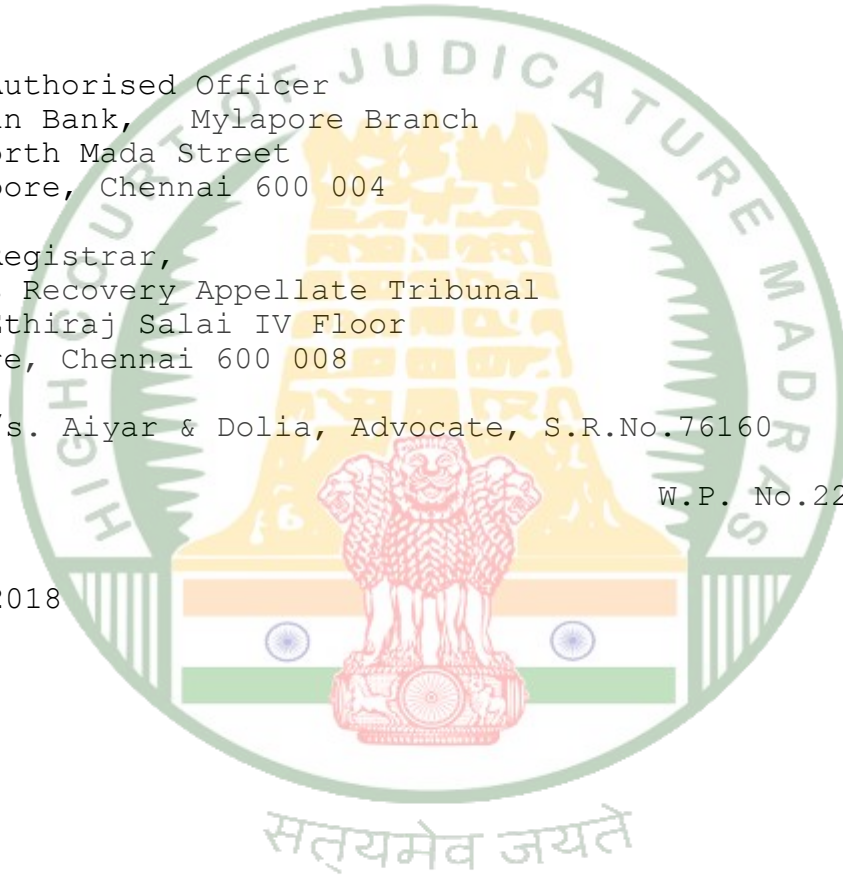
To

1. The Authorised Officer
Indian Bank, Mylapore Branch
21 North Mada Street
Mylapore, Chennai 600 004
2. The Registrar,
Debts Recovery Appellate Tribunal
55, Ethiraj Salai IV Floor
Egmore, Chennai 600 008

+1cc to M/s. Aiyar & Dolia, Advocate, S.R.No.76160

W.P. No.22488 of 2015

SS (Co)
CS/07/12/2018



WEB COPY