

RESERVED ON : 24.09.2018

DELIVERED ON : 27.09.2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P(NPD).No.2252 of 2018 and

C.M.P.Nos.14146 & 14147 of 2018

1.G.Bharathi

2.G.Thilagavathi

.. Petitioners

Vs.

1.Dewan Housing Finance Limited
rep by its Authorized Officer
Kalpalathika Tower,
Old No.24, New No.36, 3rd Floor,
Dr.Ambedkar Road,
Ashok Nagar Main Road,
Kodambakkam, Chennai - 600 024.

2.V.Gopalakrishnan

3.S.Rajeswari

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 11.07.2018 made in AIR (SA).No.305 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For Petitioners : Mr.R.Gowthama Narayanan

For Respondent : Mr.G.Chandra Mohan (R1)

ORDER

M.DURAI SWAMY, J.

Challenging the order passed in AIR (SA).No.305 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai, the petitioners have filed the above Civil Revision Petition under Section 227 of the Constitution of India.

2. According to the petitioners, they are the owners of the property, which was mortgaged by the 2nd respondent in favour of the 1st respondent. Further according to the petitioners, the 2nd respondent has no title or interest in the property and that he is not in possession of the same. The 2nd respondent availed loan from the 1st respondent by offering the property as security, which they purchased under a registered Sale Deed from one B.Balaji.

3. The 1st respondent issued possession notice under Section 13(4) of the SARFAESI Act on 05.11.2016, alleging that the 2nd respondent has no title over the property mortgaged with the 1st respondent.

4.The petitioners filed an appeal in S.A.No.133 of 2016 on the file of the Debts Recovery Tribunal - II, Chennai to declare the measures taken by the 1st respondent under the provisions of the SARFAESI Act culminating in the possession notice dated 05.11.2016 as void, to set aside the possession notice dated 05.11.2016 and for other reliefs. The 1st respondent - Bank filed their counter and contested the S.A. The Debts Recovery Tribunal, after taking into consideration the case of both parties, dismissed the S.A. finding that the issues involved in the matter can only be decided by a Civil Forum and the same cannot be decided by the Tribunal. Aggrieved over the same, the petitioners have preferred an appeal in R.A.(SA).No.305 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai.

5.Before the Debt Recovery Appellate Tribunal, the petitioners have paid a Court fee of Rs.14,905/- under Rule 13(2)(1)(d) of the Security Interest (Enforcement) Rules, 2002. However, the Registry of the Appellate Tribunal raised an objection with regard to the payment of the Court fee. According to the Appellate Tribunal, the petitioners have to pay a Court fee of Rs.31,500/- in terms of Rule 13(2)(1)(a) of the Rules.

6.The petitioners contended that they have paid the Court fee under Rule 13(2)(1)(d) of the Rules even before the Debts Recovery Tribunal in S.A.No.133 of 2016 and the Appellate Tribunal cannot claim Court fee under Rule 13(2)(1)(a) of the Rules. The Debt Recovery Appellate Tribunal observed that the petitioners should be treated on par with the borrower and therefore, they are liable to pay the Court fee under Rule 13(2)(1)(a).

7.Admittedly, the petitioners are not the borrowers. They are claiming title over the property, which is sought to be sold in the public auction. It is needless to say that only a Civil Court can decide the right and title of the parties in respect of the property in dispute. The Tribunal has no jurisdiction to decide the right and title of the parties in respect of the said property.

8.On a reading of Rule 13, it could be seen that Rule 13(2)(1)(a) is applicable to the applicant, who is a borrower and the amount of debt due is less than Rs.10 lakhs. Rule 13(2)(1)(b) relates to the applicant, who is a borrower and the amount of debt due is Rs.10 lakhs and above. Rule 13(2)(1)(c) & (d) relates to the applicant, who is an aggrieved party other than the borrower.

9. When admittedly, the petitioners are not borrowers and they have not executed the mortgage in favour of the 1st respondent, they cannot be treated on par with the borrowers. That apart, the petitioners were allowed to pay Court fee under Rule 13(2)(1)(d) of the Rules in S.A.No.133 of 2016 by the Debts Recovery Tribunal. Therefore, the Debt Recovery Appellate Tribunal cannot claim Court fee under Rule 13(2)(1)(a).

10. When the Security Interest (Enforcement) Rules, 2002 specifically provides for separate Court fee for the aggrieved party other than the borrower, the petitioners cannot be directed to pay the Court fee under Rule 13(2)(1)(a) or (b). The order passed by the Debt Recovery Appellate Tribunal directing the petitioners to pay the Court fee under Rule 13(2)(1)(a) cannot be sustained and the same is liable to be set aside.

11. However, paying Court fee under Rule 13(2)(1)(c) or (d) of the Security Interest (Enforcement) Rules, 2002, shall not give any advantage to the petitioners in depositing the pre-deposit amount as per Section 18 of the SARFAESI Act. In the case of petitioners filing an application for waiver of pre-deposit amount, the same shall be decided by the Debt Recovery Appellate Tribunal independently, on merits and in accordance with law.

12.For the reasons stated above, the order dated 11.07.2018 in S.A.(SR).No.305 of 2018 made by the Debt Recovery Appellate Tribunal, Chennai is set aside. The petitioners are liable to pay the Court fee only under Rule 13(2)(1)(c) or (d) of the Security Interest (Enforcement) Rules, 2002. The Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No

Internet : Yes

Speaking /Non Speaking Order
va

To

(V.K.T., CJ.)

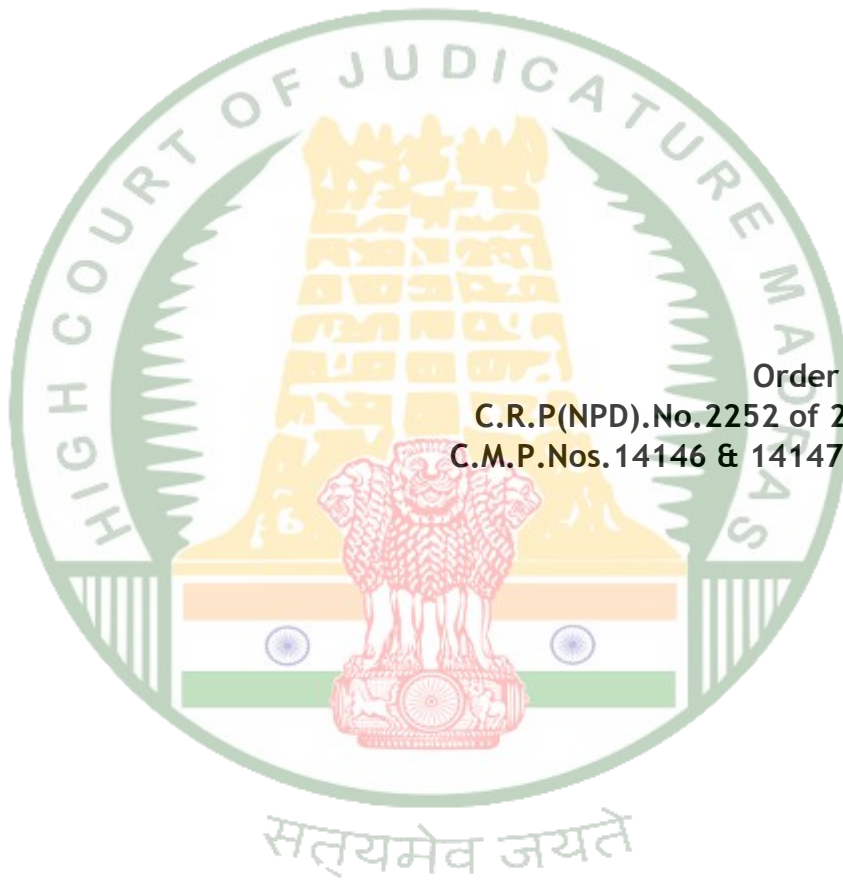
(M.D., J.)

27.09.2018

1.The Authorized Officer,
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