

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.21798 of 2018 &
W.M.P.No.25565 of 2018

1.M/s.Calibre Educational Foundation
Represented by its Trustees
Mrs.Madhuvanthi Arun
No.28, Seethammal Road
Alwarpet, Chennai - 600 018

2.Mrs.Madhuvanthi Arun
3.Mrs.Sudha Mahendra
4.Y.G.Mahendra

... Petitioners

vs.

1. Karur Vysya Bank
Represented by its The Authorized Officer
Divisional Office "KVB Towers"
1st Floor, 568, Anna Salai, Teynampet
Chennai - 600 018

2.The Debts Recovery Appellate Tribunal
Rep. by its Registrar
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai, Chennai
Tamil Nadu - 600 008

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records pertaining to the order dated 30.07.2018 on the file of the 2nd respondent in I.A.No.640 of 2018 in AIR No.394 of 2018 in un-numbered RA.(SA)..../2018 and quash the same to the extent of directing the petitioners herein to deposit more than 25% of the demand of 1st respondent as pre-deposit to entertain the appeal filed by the petitioners in AIR No.394 of 2018 on the file of the 2nd respondent against S.A.No.103 of 2017 on the file of Hon'ble Debts Recovery Tribunal-II, Chennai and for consequential orders.

For Petitioner : Mr.J.Ravikumar

For Respondents: Ms.V.Anusha - for R1
for Mr.A.v.Radhakrishnan

R2 - Tribunal

O R D E R

(Order of the Court made by M.DURAI SWAMY, J.)

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records pertaining to the order dated 30.07.2018 on the file of the 2nd respondent in I.A.No.640 of 2018 in A.I.R. No.394 of 2018 in un-numbered RA.(SA).../2018 and to quash the same to the extent of directing the petitioners herein to deposit more than 25% of the demand of 1st respondent as pre-deposit to entertain the appeal filed by the petitioners in A.I.R. No.394 of 2018 on the file of the 2nd respondent against S.A.No.103 of 2017 on the file of the Debts Recovery Tribunal-II, Chennai.

2. The petitioner has challenged the order passed by the Debts Recovery Tribunal-II, Chennai made in S.A.No.103 of 2017 before the Debt Recovery Appellate Tribunal.

3. Under Section 18 of the SARFAESI Act, the borrowers should deposit 50% of the amount of debt due from them as claimed by the Secured Creditors or determined by the Debts Recovery Tribunal, whichever is less. However, as per the second proviso, the Appellate Tribunal may for the reasons to be recorded in writing, reduce the amount from 50% to not less than 25%.

4. In the case on hand, Section 13(2) Notice dated 31.12.2016 was issued to the petitioners demanding a sum of Rs.1,55 crores. The Debt Recovery Appellate Tribunal, Chennai, by order dated 30.07.2018, directed the petitioner to make pre-deposit of Rs.60,00,000/- [Rupees sixty lakhs only] in two equal installments.

5. The learned counsel appearing for the petitioners submitted that since section 18 provides for making pre-deposit of 25% of the debt, the said concession may be extended to the petitioners for the reason that they are finding it difficult to mobilise the sum of Rs.60,00,000/-

6. Countering the submission made by the learned counsel for the petitioners, the learned counsel for the 1st respondent submitted that the petitioners being an Educational Institution, they should be directed to make pre-deposit of Rs.

60,00,000/- as fixed by the Debt Recovery Appellate Tribunal.

7. However, we are convinced that as per 2nd proviso to Section 18 of the SARFAESI Act, the petitioners can be allowed to make the pre-deposit of 25% of the amount claimed in section 13(2) Notice, viz., Rs.1.55 cores.

8. Accordingly, the order passed by the Debt Recovery Appellate Tribunal is modified to the effect that the petitioners are directed to make pre-deposit of 25% of Rs.1.55 cores with the Registrar of the Tribunal, within two weeks from the date of receipt of a copy of this order. On making such deposit, the Debts Recovery Appellate Tribunal, Chennai is directed to number the appeal and dispose of the same on merits and in accordance with law.

With these observations, the Writ Petition is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

Rj

To

1. The Authorized Officer
Karur Vysya Bank
Divisional Office "KVB Towers"
1st Floor, 568, Anna Salai, Teynampet
Chennai - 600 018

2. The Registrar,
Debts Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai, Chennai
Tamil Nadu - 600 008

+1 CC to Mr.A.V. Radhakrishnan, Advocate sr 75475.
+2 Ccs to Mr.J. Ravikumar, advocate sr 75107.

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KAN (CO)
SP(02/11/2018)