

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.23250 of 2018 and

W.M.P.No.27130 of 2018

1.M/s.Sheila Cine Arts,
Partnership Firm rep by Sheila Sivagnanam
No.97, Dasarathan Street,
Saligramam, Chennai - 600 093.
2.Sheila Sivagnanam
3.S.Sivaraman ... Petitioners

Vs.

1.Indian Bank,
Saligramam Branch,
Saligramam, Chennai - 600 093.
2.The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 600 008. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the records culminating in SIR No.569 of 2017 on the file of the 2nd respondent and quash the order dated 10.04.2018 passed by the 2nd respondent dismissing the application for want of compliance of pre-deposit.

For Petitioners : Ms.Shabnam Banu

O R D E R

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

The petitioners have filed the above Writ Petition to issue a Writ of certiorari to call for the records culminating in SIR No.569 of 2017 on the file of the 2nd respondent and quash the order dated 10.04.2018 passed by the 2nd respondent dismissing the application for want of compliance of pre-deposit.

2.It is the case of the petitioners that the 1st respondent had filed O.A.No.1391 of 1998 on the file of the Debts Recovery Tribunal-I, Chennai seeking for recovery of a sum of

Rs.79,66,680.25p with interest at the rate of 20.40% with quarterly rests from the date of application till the date of realization. Further, it is the case of the petitioners that on 16.01.2017, they received an application from the Asset Reconstruction Company of India Limited (ARCL) wherein it was mentioned that on 30.12.2013, an Assignment Deed was entered between the 1st respondent and ARCL for a consideration value of Rs.67,87,04,620/-. On procuring the assignment copy, the petitioners realized that their liability according to the books POS and ledger as on 2013 was Rs.42,02,111/-. According to the petitioners, the 1st respondent had suppressed the existence of this Assignment Deed and proceeded with O.A.No.1391 of 1998 before the Debts Recovery Tribunal. As against the order passed in I.A.No.257 of 2017 in O.A.No.1391 of 1998 on the file of the DRT - 1, Chennai, declining to condone the delay of 185 days, the petitioners preferred an appeal before the Debts Recovery Appellate Tribunal, Chennai. Though the Original Application was filed as early as in the year 1998, the petitioners have not paid any amount so far.

3.Under Section 18 of the SARFAESI Act, any person aggrieved by any order made by the Debts Recovery Tribunal, may prefer an appeal to the Appellate Tribunal within thirty days from the date of receipt of the copy of the order, provided he has deposited, with the Appellate Tribunal, 50% of the amount of debt due from him as claimed by the Secured Creditors or determined by the Debts Recovery Tribunal, whichever is less.

4.As per the 3rd proviso to Section 18 for the reasons to be recorded in writing, the Appellate Tribunal may reduce the amount to not less than 25% of the debt. Therefore, from Section 18 it is clear that the pre-deposit upto 50% of the debt amount, which can be reduced to 25%, but not less than 25%, in any case, is a mandatory condition and therefore, the petitioners cannot circumvent paying the pre deposit amount as per Section 18.

5.The learned counsel for the petitioners submitted that since the amount has been mentioned as Rs.42,02,111/- in the Assignment Deed dated 30.12.2013, they cannot be directed to pay the pre-deposit amount on the sum of Rs.79.66 lakhs. The Tribunal had recorded that the petitioners have not made any payment so far though the Original Application was filed as early as in the year 1998 claiming a sum of Rs.42 lakhs. The Tribunal, taking into consideration all these aspects directed the petitioners to make a pre-deposit amount of Rs.30 lakhs, which they failed to comply.

6.Since the provisions of Section 18 is mandatory, we do not find any reason to interfere with the order passed by the Debts Recovery Appellate Tribunal. The Writ Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

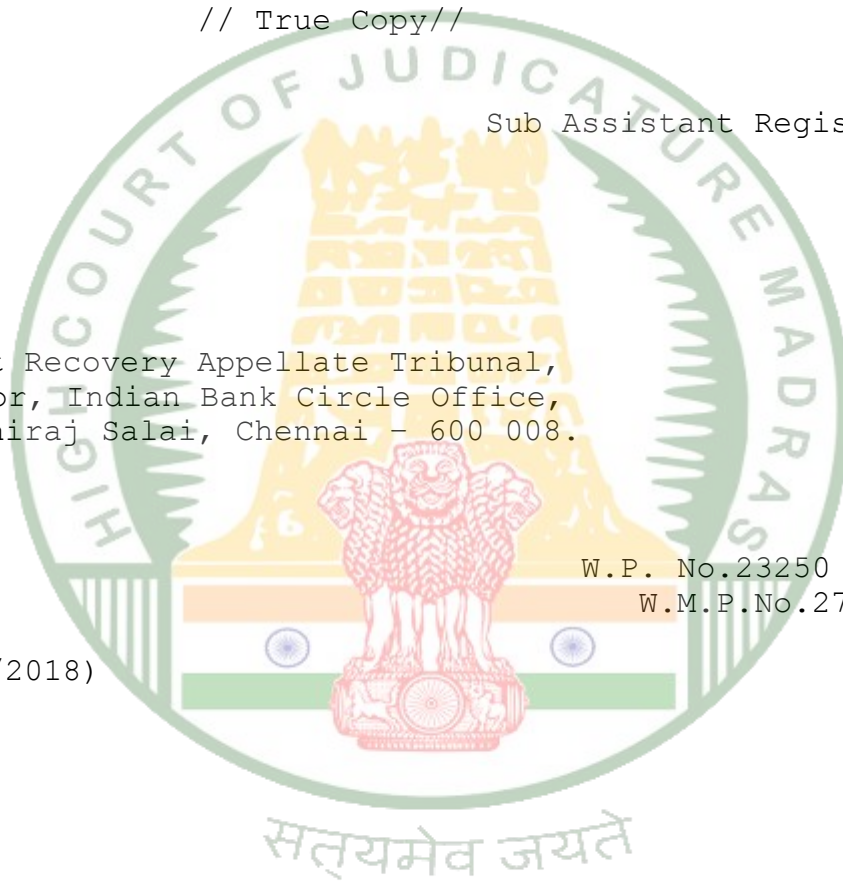
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To

1.The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 600 008.

W.P. No.23250 of 2018 and
W.M.P.No.27130 of 2018

RSI (CO)
RMP (20/09/2018)



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