

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. No.23726 of 2018 and
W.M.P.No.27674 of 2018

1.M/s.S.B.Trader
rep by its Partners
M.Saravanalingam & S.Gayathri
F2, Muthiyalu Residency,
Indra Nagar, 1st Main Road,
Paruthipattu, Avadi, Chennai - 600 071.
2.M.Saravanalingam
3.S.Gayathri
4.M.Bala Nagammal
5.M.Venkatasubramaniam
6.M.Gandhimathi

.. Petitioners

Vs.

ASREC (India) Limited
Room No.3, III Floor, Wellington Estate,
53, Ethiraj Salai, Egmore,
Chennai - 600 008.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the records on the file of the Debt Recovery Appellate Tribunal, Chennai in respect of order dated 21.08.2018 made in I.A.No.473 of 2018 in AIR No.132 of 2018 against O.A.No.193 of 2016 by the DRT - I, Chennai and quash the same.

For Petitioners : Mr.R.Singaravelan, Senior Counsel
for Mr.V.S.Jagadeesan

O R D E R

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

Challenging the order passed in I.A.No.473 of 2018 in AIR No.132 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai, the above Writ Petition has been filed.

2.It is the case of the petitioners that they availed loan from the respondent - Bank. Against the alleged default committed by the petitioners, the respondent - Bank filed Original Application in O.A.No.193 of 2016 before the Debts Recovery Tribunal - I, Chennai for the recovery of the outstanding loan amount. The Debts Recovery Tribunal, by order dated 31.08.2017, allowed the Original Application. Aggrieved over the order passed by the Debts Recovery Tribunal, the petitioners preferred an appeal in AIR No.132 of 2018 along with an application in I.A.No.473 of 2018 to dispense with the deposit under Section 21 of the SARFAESI Act. The Debt Recovery Appellate Tribunal, Chennai, by order dated 21.08.2018, disposed of the application by directing the petitioners to make a pre-deposit of Rs.16 lakhs in 2 installments. Aggrieved over this order, the petitioners have filed the Writ Petition.

3.Under Section 18 of the SARFAESI Act, it is mandatory that any person aggrieved by any order made by the Debts Recovery Tribunal, under Section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within 30 days from the date of receipt of the order of the Debts Recovery Tribunal, provided they had deposited with the Appellate Tribunal 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, the Appellate Tribunal may for the reasons to be recorded in writing, reduce the amount to not less than 25% of the debt referred above. Therefore, from the provisions of Section 18, it is clear that the pre-deposit of either 50% or 25%, as the case may be, is mandatory for entertaining an appeal.

4.In the case on hand, the O.A.No.193 of 2016 was decreed for a sum of Rs.44.90 lakhs, against which the petitioners have filed the appeal before the Debt Recovery Appellate Tribunal. By order dated 21.08.2018, the Debt Recovery Appellate Tribunal had directed the petitioners to make the pre-deposit of Rs.16 lakhs in 2 installments, which according to us, is just and proper. Fixing the pre-deposit of Rs.16 lakhs, out of the total decree amount of Rs.44.90 lakhs, cannot be stated to be on the higher side. Hence, we are not inclined to entertain the Writ Petition.

5.The learned senior counsel appearing for the petitioners submitted that since the time for compliance of the conditional order passed by the Debt Recovery Appellate Tribunal expires tomorrow (i.e.) on 12.09.2018, time may be extended by ten (10) days for compliance of the same.

6.In view of the submission made by the learned senior counsel for the petitioners, we grant ten days time to the petitioners to comply with the conditional order dated 21.08.2018.

7.We do not find any ground to interfere with the order passed by the Debt Recovery Appellate Tribunal. Hence, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

TO:

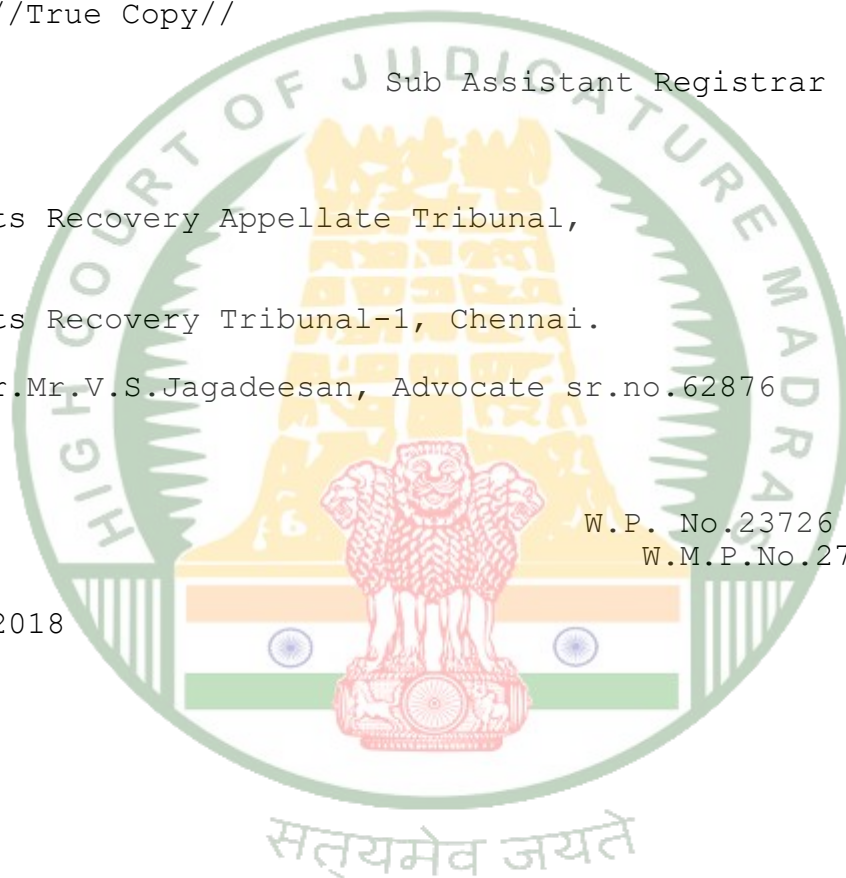
1.The Debts Recovery Appellate Tribunal,
Chennai.

2.The Debts Recovery Tribunal-1, Chennai.

+1cc to Mr.Mr.V.S.Jagadeesan, Advocate sr.no.62876

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nr 11/09/2018



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