

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2018

DELIVERED ON : 12.09.2018

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P. Nos.3086 to 3088 of 2012 and
W.P.No.22495 of 2012 and
M.P.No.1 & 1 of 2012 and 2, 2 & 1 of 2012
in C.R.P. Nos.3086 to 3088 of 2012 and
M.P.Nos. 1 to 3 of 2012
in W.P.No.22495 of 2012

1.P.Shafeeq Ahmed

2.P.Asif Ahmed ... Petitioners in C.R.Ps and W.P.

v.

1.State Bank of India
Vaniyambadi Branch
Represented by its
Chief Manager

2.R.R.Vasu @ Vijayashankar

... Respondents in C.R.Ps and W.P.

C.R.P.No.3086 of 2012 filed under Article 227 of the Constitution of India against the order dated 24.08.2011 as modified by an order dated 19.09.2011 made in I.A.No.413 of 2011 in O.A.No.368 of 2007 passed by the Presiding Officer, Debts Recovery Tribunal-III, Chennai.

C.R.P.No.3087 of 2012 filed under Article 227 of the Constitution of India against the common order dated 19.07.2012 made in M.A.No.10 of 2012 in SR. No.3185 of 2011 in I.A.SR.No.3134 of 2011 in O.A.No.368 of 2007 passed by the Presiding Officer, Debts Recovery Tribunal-III, Chennai.

C.R.P.No.3088 of 2012 filed under Article 227 of the Constitution of India against the common order dated 19.07.2012 made in M.A.No.11 of 2012 in SR. No.3185 of 2011 in I.A.SR.No.3134 of 2011 in O.A.No.368 of 2007 passed by the Presiding Officer, Debts Recovery Tribunal-III, Chennai.

W.P.No.22495 of 2012 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records and the proceedings in I.A.No.449 of 2011 in DRC No.156 of 2009 dated 24.07.2012 as modified by an order dated 26.07.2012 on the file of the Recovery Officer, Debts Recovery Tribunal-III, Chennai and quash the same and direct the Debts Recovery Tribunal-III, Chennai to dispose of the I.A.No.449 of 2011 in DRC No.156 of 2009 in accordance with law.

For Petitioners
(in CRPs and WP): Mr.R.Thiagarajan

For Respondents : Mr.P.Elaya Rajkumar
for M/s.Ramalingam Associates
(for R1 in CRPs and WP)

Mrs.Chitra Sampath, Senior Counsel
for Mr.K.A.Ramakrishnan
(for R2 in CRPs and WP)

COMMON ORDER

M.DURAISWAMY, J.

Since the issue involved in all the above matters are common, all the matters are disposed of by this common order.

2. C.R.P.No.3086 of 2012 has been file by the petitioners-auction purchasers challenging the order passed in I.A.No.413 of 2011 in O.A.No.368 of 2007 on the file of the Debts Recovery Tribunal-III, Chennai.

3. C.R.P.No.3087 of 2012 has been file by the auction purchasers challenging the order passed in M.A.No.10 of 2012 in SR. No.3185 of 2011 in I.A.SR.No.3134 of 2011 in O.A.No.368 of 2007 on the file of the Debts Recovery Tribunal-III, Chennai.

4. C.R.P.No.3088 of 2012 has been file by the auction purchasers challenging the order passed in M.A.No.11 of 2012 in SR. No.3185 of 2011 in I.A.SR.No.3134 of 2011 in O.A.No.368 of 2007 on the file of the Debts Recovery Tribunal-III, Chennai.

5. W.P.No.22495 of 2012 has been filed by the auction purchasers to issue a Writ of Certiorari Mandamus to call for the records in respect of the proceedings in I.A.No.449 of 2011 in DRC No.156 of 2009 dated 24.07.2012 as modified by an order dated 26.07.2012 on the file of the Recovery Officer, Debts Recovery Tribunal-III, Chennai, to quash the same and direct the Debts Recovery Tribunal-III, Chennai to dispose of the application in I.A.No.449 of 2011 in DRC No.156 of 2009, in accordance with law.

6.1 On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the petitioners are auction purchasers of the property mentioned as item 4 in the 'C' schedule in O.A.No.368 of 2007. In the said Original Application, the petitioners have filed M.A.No.10 of 2012 to implead them as respondents 2 and 3. I.A.SR.No.3134 of 2011 is an application filed by the 2nd respondent [14th defendant in the O.A.No.368/2007] before the Recovery Officer on 10.08.2011 to set aside the sale conducted on 14.07.2011 and to permit him redeem their property by paying the entire sale consideration of Rs.2,85,60,000/- [Rupees two crore eighty five lakhs and sixty thousand only] .

6.2 The Recovery Officer, by order dated 11.08.2011, returned the application finding that the relief sought for is not fully complied. However, the Recovery Officer granted an order of stay in respect of the confirmation of sale.

6.3 The order dated 11.08.2011 was challenged before the Debts Recovery Tribunal under section 30 of the Recovery of Debts Due To Banks & Financial Institutions Act, 1993 and the same was numbered as SR. No.3185 of 2011 and the same was also disposed of by the Debts Recovery Tribunal by remanding the matter back to the Recovery Officer for adjudication under Rule 60 of the Second Schedule of Income Tax Act.

6.4 By order dated 18.08.2011, the 2nd respondent was directed to deposit a sum of Rs.2,85,60,000/- [Rupees two crores eighty five lakhs and sixty thousand only] being the sale consideration of the 'C' schedule property before the Recovery Officer. Further, the Debts Recovery Tribunal directed the 2nd respondent to deposit 15% of the sale consideration calculated from the date of proclamation of sale, till the date of deposit and another 5% of sale consideration i.e. poundage, before the Recovering Officer. Thereafter, the 2nd respondent filed I.A.No.413 of 2011 in S.R.No.3185 of 2011 before the Debts Recovery Tribunal seeking for extension of time for compliance of the order dated 18.08.2011. The Tribunal granted three weeks time to the 2nd respondent to deposit the amount and the same was also complied with by the

2nd respondent on 19.09.2011. Therefore, the appeal was disposed of and I.A. S.R.No.3134 of 2011 in DRC No.159 of 2009 was remitted back to the Recovery Officer for fresh disposal.

6.5 M.A.No.11 of 2012 was filed by the petitioners-auction purchasers to review the order dated 18.08.2011 made in SR.No.3185 of 2011 in I.A.SR.No.3134 of 2011 and to recall the same for setting aside the order passed by the Tribunal. The petitioners are the auction purchasers of the 'C' schedule property and have paid the entire sale consideration. However, the sale was not confirmed in their favour. Thereafter, the borrower filed an application under Rule 60 of the Second schedule of Income Tax Act for setting aside the sale without making the deposit of the sale amount and the poundage, which is required under Rule 60 before the Recovery Officer. Since the Tribunal passed the impugned order dated 18.08.2011 without impleading the petitioners, the petitioners have filed applications to implead them as respondents to review the order dated 18.08.2011.

7. It is settled position that any person aggrieved over the order passed by the Recovery Officer can approach the Tribunal under section 30 of the Recovery of Debts Due To Banks & Financial Institutions Act, 1993 within 30 days from the date of receipt of a copy of that order. The Debts Recovery Tribunal-III, Chennai observed that the applications were filed by the petitioners on 14.02.2012 challenging the order dated 18.08.2011 without filing an application for condonation of delay.

8. As per provisions of Rule 5-A of the Debts Recovery Tribunal (Procedures) Rule, 1993, no application for review shall be made after the expiry of 60 days period. Since there was no error apparent on the face of the record warranting interference in the Review Application, the Debts Recovery Tribunal dismissed the applications.

9. Pursuant to the order passed by the Tribunal, the Recovery Officer passed an order dated 24.07.2012 in I.A.No.449 of 2011 in DRC No.156 of 2009 whereby the sale held on 14.07.2011 was cancelled and the auction purchaser was directed to take back the sale proceeds with respect to item-4 property plus 15% of the sale consideration i.e., Rs.8,44,770/- [eight lakhs forty four thousand seven hundred and seventy only] and another 5% i.e. Rs.14,27,500/- [fourteen lakhs twenty seven thousand and five hundred only] as ordered in SR No.3185 of 2011, dated 18.08.2011. This order is under challenge in W.P.No.22495 of 2012.

10. The order passed by the Recovery Officer in I.A.No.449 of 2011 is consequent to the order passed by the Debts Recovery Tribunal in SR No.3185 of 2011.

11. The learned counsel appearing for the petitioners submitted that since the petitioners have paid the entire sale consideration, the Tribunal ought not to have set aside the sale. In support of his contention, the learned counsel relied upon a judgment reported in 2011(1) SCC 429 [J.P.Builders and another v. A.Ramadas Rao and another].

12. The judgment reported in 2011(1) SCC 429 (cited supra) relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case for the reason that the appellant therein was the borrower, hence, he was liable to pay the entire debts. In the case on hand, the petitioners are not the borrowers and they are auction purchasers.

13. The learned counsel appearing for the 1st respondent-bank submitted that the petitioners have got remedy by way of an appeal before the Debts Recovery Appellate Tribunal as against the order passed by the Debts Recovery Tribunal and the Civil Revision Petitions and the Writ Petition filed by them challenging the order passed by the Debts Recovery Tribunal are liable to be rejected on that sole ground.

14. The learned Senior Counsel appearing for the 2nd respondent also submitted that the petitioners cannot approach this court under Article 226 and 227 of the Constitution of India without exhausting the alternative remedy.

15. It is settled law that the High Court shall not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that the said rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. Under the SARFAESI Act, for recovery of such dues, they not only contain comprehensive procedure for recovery of the dues but also envisage Constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person.

16.1 The Hon'ble Supreme Court of India, in the judgment reported in (2018) 3 Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], has held as follows:

" 10. In Satyawati Tandon [United Bank of India Vs. Satyawati Tandon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260], the High Court had restrained [Satyawati Tandon Vs. State of U.P., 2009 SCC Online All 2608] further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and

the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of

the alternate statutory remedy available holding:-

"43.Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

* * *

55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

11.In Union Bank of India and another Vs. Panchanan Subudhi, (2010) 15 SCC 552: (2013) 2 SCC (Civ) 221, further proceedings under Section 13(4) were stayed in the writ jurisdiction subject to deposit of Rs.10,00,000/- leading this Court to observe as follows :

"7. In our view, the approach adopted by the High Court was clearly erroneous. When the respondent failed to abide by the terms of one-time settlement, there was no justification for the High Court to entertain the writ petition and that too by ignoring the fact that a statutory alternative remedy was available to the respondent under Section 17 of the Act."

12. The same view was reiterated in *Kanaiyalal Lalchand Sachdev vs. State of Maharashtra*, (2011) 2 SCC 782 : (2011) 1 SCC (Civ) 570, observing:

"23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See *Sadhana Lodh v. National Insurance Co. Ltd.*, (2003) 3 SCC 524 : 2003 SCC (Cri) 762; *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675 and *SBI v. Allied Chemical Laboratories*, (2006) 9 SCC 252)."

13. In *Ikbal, Sri Siddeshwara Coop. Bank Ltd., Vs. Ikbal*, (2013) 10 SCC 83 : (2013 4 SCC (Civ) 638, it was observed that the action of the Bank under Section 13(4) of the 'SARFAESI Act' available to challenge by the aggrieved under Section 17 was an efficacious remedy and the institution directly under Article 226 was not sustainable, relying upon *Satyawati Tandon (United Bank of India Vs. Satyawati Tandon)*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260, observing: (*Ikbal, Sri Siddeshwara Coop. Bank Ltd., Vs. Ikbal*, (2013) 10 SCC 83 : (2013 4 SCC (Civ) 638, pp.94-95, paras 27-28)

"27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented."

28. ... In our view, there was no justification whatsoever for the learned Single Judge to allow

the borrower to bypass the efficacious remedy provided to him under Section 17 and invoke the extraordinary jurisdiction in his favour when he had disentitled himself for such relief by his conduct. The Single Judge was clearly in error in invoking his extraordinary jurisdiction under Article 226 in light of the peculiar facts indicated above. The Division Bench also erred in affirming the erroneous order of the Single Judge."

14.A similar view was taken in Punjab National Bank vs. Imperial Gift House, (2013) 14 SCC 622, observing:-

"3. Upon receipt of notice, the respondents filed representation under Section 13(3-A) of the Act, which was rejected. Thereafter, before any further action could be taken under Section 13(4) of the Act by the Bank, the writ petition was filed before the High Court.

4. In our view, the High Court was not justified in entertaining the writ petition against the notice issued under Section 13(2) of the Act and quashing the proceedings initiated by the Bank."

15. It is the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in United Bank of India Vs. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260), has also not been kept in mind before passing the impugned interim order:-

"46. It must be remembered that stay of an action initiated by the State and/or its agencies/ instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/ institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful and circumspect in exercising its discretion to grant stay in such matters. Of course, if the petitioner is able to show that its case falls within any of the exceptions carved out in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, AIR 1969 SC 556, Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1 and Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107 and some other judgments, then the High Court may, after considering all the relevant parameters and public interest, pass an appropriate interim order."

16.2. In the judgment reported in (2018) 1 Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] the Apex Court held as follows:

"27. The reason is that Section 17(2) empowers the Tribunal to examine all the issues arising out of the measures taken under Section 13(4) including the measures taken by the secured creditor under Rules 8 and 9 for disposal of the secured assets of the borrower. The expression "provisions of this Act and the Rules made thereunder" occurring in sub-sections (2), (3), (4) and (7) of Section 17 clearly suggests that it includes the action taken under Section 13(4) as also includes therein the action taken under Rules 8 and 9 which deal with the completion of sale of the secured assets. In other words, the measures taken under Section 13 (4) would not be completed unless the entire procedure laid down in Rules 8 and 9 for sale of secured assets is fully complied with by the secured creditor. It is for this reason, the Tribunal has been empowered by Section 17(2), (3) and (4) to examine all the steps taken by the secured creditor with a view to find out as to whether the sale of

secured assets was made in conformity with the requirements contained in Section 13(4) read with the Rules or not?

28. We also notice that Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction purchaser in case the auction purchaser commits any default in paying installment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5). In our view, the measures taken under Section 13(4) commence with any of the action taken in clauses (a) to (d) and end with measures specified in Rule 9.

29. In our view, therefore, the expression "any of the measures referred to in Section 13(4) taken by secured creditor or his authorized officer" in Section 17(1) would include all actions taken by the secured creditor under the Rules which relate to the measures specified in Section 13(4).

...

32. In *United Bank of India vs. Satyawati Tondon & Ors.*, (2010) 8 SCC 110, this Court had the occasion to examine in detail the provisions of the SARFAESI Act and the question regarding invocation of the extraordinary power under Article 226/227 in challenging the actions taken under the SARFAESI Act. Their Lordships gave a note of caution while dealing with the writ filed to challenge the actions taken under the SARFAESI Act and made following pertinent observations which, in our view, squarely apply to the case on hand:

"42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that

the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to

fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance."

17. When the petitioners should have availed the effective alternative remedy by filing an appeal before the Debts Recovery Tribunal and Debts Recovery Appellate Tribunal, this court cannot entertain the Civil Revision Petitions under Article 227 of the Constitution of India and the Writ Petition filed under Article 226 of the Constitution. A statutory appeal has been provided under section 20 of the Recovery of Debts Due To Banks & Financial Institutions Act, 1993 against the order passed by the Presiding Officer, Debts Recovery Tribunal-III, Chennai.

18. The ratio laid down by the Hon'ble Supreme Court in the above referred judgments are applicable to the present case. The petitioners have not made out a case for interference.

19. In these circumstances, the Civil Revision Petitions and the Writ Petition are devoid of merits and the same are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

Rj

To

1.The Chief Manager,
State Bank of India,
Vaniyambadi Branch, Vellore.

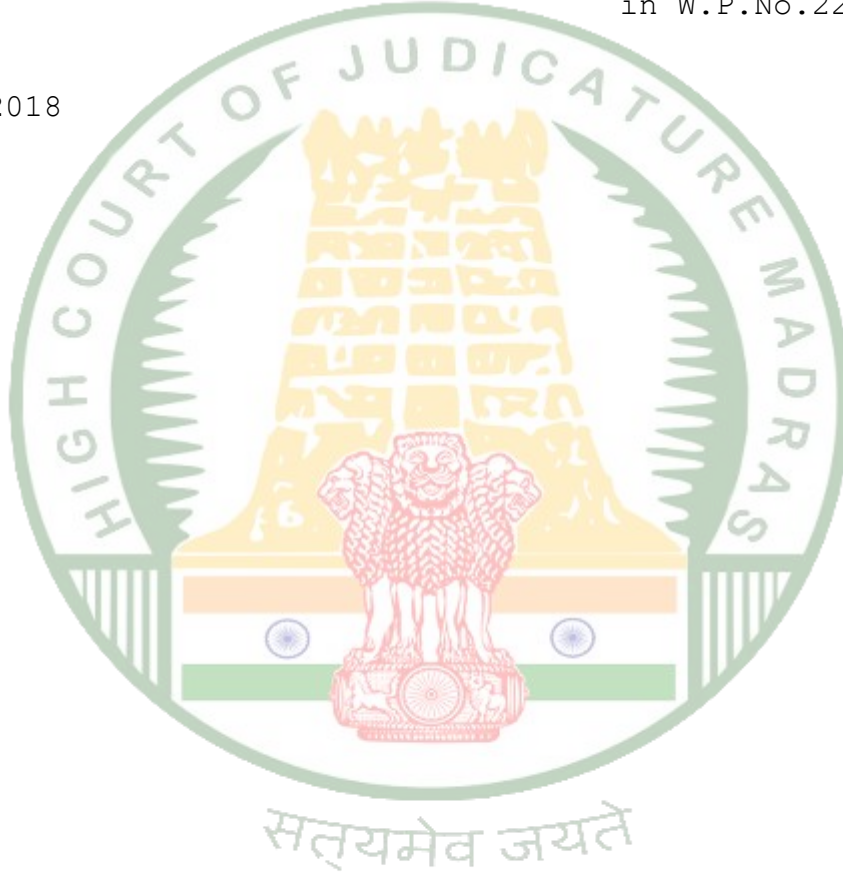
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2.The Debts Recovery Tribunal-III
Chennai.

+4cc to M/s.Ramalingam Associates, Advocate sr.no.63566, 63565
+4cc to Mr.K.A.Ramakrishnan, Advocate sr.no.63345

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