IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2528 & 6287 of 2019
and
W.M.P.Nos.2802 & 7127 of 2019

W.P.No.2528 of 2019:

Mrs.A.K.Vijayalakshmi .. Petitioner

Vs

1.Indian Bank,
Gee Gee Complex,
No.42, Anna Salai,
Chennai - 600 002.
Now transferred to ARMB - I,
Ethiraj Salai, Chennai.

2.M/s.Expo Team,
No.2, 3rd Cross Street,
Sylam Lodge Colony,
Kilpauk, Chennai - 600 010.

3.Mr.E.K.Jeevaraj

4.Mr.C.A.Srikumar

5.Mr.Srikanth

6.The Debt Recovery Appellate Tribunal,
Ethiraj Salai, Egmore,
Chennai - 600 008. .. Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent dated 30.10.2018 in R.A.No.35 of 2017 modifying the order of DRT-II Chennai in O.A.No.515 of 2015, dated 21.03.2016 and quash the same.

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For Petitioner : Mr.R.Srinivas
For Respondent 1 : Mr.P.V.Muralidhar
For Respondents 2 to 4 : Not ready in notice
For Respondent 5 : Mr.A.V.Arun
For Respondent 6 : Tribunal

W.P.No.6287 of 2019:

A.K.Srikanth .. Petitioner

Vs

1.The Debts Recovery Appellate Tribunal
Rep. by its Registrar,
55, Wellington Estate, IV Floor,
Ethiraj Salai, Chennai - 600 105.

2.The Debts Recovery Tribunal - II,
Rep. by its Registrar,
Deva Towers, IV Floor,
No.770-A, Anna Salai,
Chennai - 600 002.

3.Indian Bank,
GEE GEE Complex,
No.42, Anna Salai,
Chennai 600 002.

4.M/s.Expo Team,
B-6, The Habitat, Sylvan Lodge Colony,
Kilpauk Garden 1st Street, Chennai - 600 010.

5.E.K.Jeevaraj

6.C.A.Srikumar .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records in the order dated 30.10.2018 made in R.A.No.35 of 2017 on the file of the Honourable Debts Recovery Appellate Tribunal, Chennai, the first respondent herein and quash the same.

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For Petitioner	:	Mr.A.V.Arun
For Respondents 1 & 2	:	Tribunal
For Respondent 3	:	Mr.P.V.Muralidhar
For Respondent 4 to 6	:	Not ready in notice
For Respondent 7	:	Mr.R.Srinivas

COMMON ORDER
(Order of the Court was made by the
Hon'ble Mr.Justice C.SARAVANAN)

By this common order, both the Writ Petitions are being finally disposed.

2.Both the Writ Petitions have been filed by the legal representatives of Kalavathi Karunanithi (the 4th defendant in O.A.No.515 of 2015 [formerly O.A.198 of 1998] who had allegedly executed a guarantee in favour of Indian Bank (1st respondent in W.P.No.2528 of 2019/3rd respondent in W.P.No.6287 of 2019) and offered security by way of a mortgage by deposit of title deed of her property situated in Thiruvanmiyur village, plot No.2, Survey No.18314, patta No.1103 of an extent of 1 ground 1525 sq.ft as security to the loan given to the borrower namely partnership M/s.Expo Team concerned.

3.Indian Bank had originally filed O.A.No.198 of 1998 before the Debt Recovery Tribunal - I, Chennai for recovering money from the borrowers and guarantors. Subsequently, O.A.No.198 of 1998 was transferred to the Debt Recovery Tribunal - II, Chennai and was renumbered as O.A.No.515 of 2015. After the death of Kalavathi Karunanithi, the petitioners were impleaded as 5th and 6th defendants in O.A.No.515. 2015.

4.Before, the Debt Recovery Tribunal following points were framed for consideration:-

i. whether the applicant bank is entitled to recovery certificate as prayed for in the O.A?

ii. Whether the D4 has given personal guarantee to secure the loan availed by D1 and created equitable mortgage over the property mentioned in the schedule to the O.A?

iii. Whether the applicant is entitled to interest @ 19.38% p.a with quarterly rests as prayed for in the O.A?

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5.By an order dated 21.03.2016, the Debt Recovery Tribunal – II, Chennai had allowed the O.A filed by the Indian Bank with the following directions:-

i. the applicant bank to recover the sum of Rs.2,46,31,992.61 (Rupees two crore forty-six lakhs thirty one thousand nine hundred and ninety-two and paise sixty one only) with interest @ 12% p.a (simple) from the date of institution of the OA till realization and also costs of the OA from the defendants 1 to 3 jointly and severally;

ii. Issue Recovery Certificate in favour of the applicant bank in terms of this final order;

iii. Applicant is directed to file costs memo within two weeks of receipt of this order; and

iv. Communicate a copy of this order to the parties concerned.

6.As far as point No.ii was concerned, the Debt Recovery Tribunal – II held as follows:-

> 16.Learned counsel for the applicant bank submitted that D4 deposited title deeds of the schedule property in favour of applicant bank for the loan availed by D1 and also created equitable mortgage in favour of the applicant bank. Therefore, the D4 is liable in respect of the schedule mentioned mortgaged property.
> 17.The 6th Defendant filed counter proof affidavit in support of her contentions and also filed a Memo (Sr No.2311/16) along with two original Passports of D4. Learned Counsel for the D6 submitted that D4 never signed any paper before applicant bank in respect of D1's loan, D4's signature was forged and the title deed was not given by D4 to the applicant bank, she never created equitable mortgage in favour of the applicant bank, the alleged Letter of acknowledgment of Deposit of title deeds (Exh.20) and the Agreements of Guarantee Exh.A19 and A34 clearly show that the signatures found in the said documents are not the signatures of D4 and when compared with the passport of D4, it is clearly proved that the signatures found in the Letter of acknowledgment of Deposit of title deeds and the Agreements of Guarantee are not

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the signatures of D4. Therefore, the deceased D4 and her legal heirs- D5 & D6 are not liable to the claim made by the applicant bank in the OA and the schedule mentioned property was not mortgaged by D4 in favour of applicant bank.

18.On perusal of the signatures found in the D4's vakalat and D4's written statement, both the signatures are entirely different from the Exh.A20 - Letter acknowledging the deposit of title deeds and the Agreements of Guarantee (Exh.A 19 & A34). In exhibits A20, A19 & A34, the signatures found as "Mrs.A.K.Nithi" but in vakalat and written statement of D4, the signatures found as 'Mrs.Kalavathy Karunanithy'. Further, when we compare the signatures of D4 found in Exh.A20-Letter acknowledging deposit of title deeds, A19 & A34 Agreements of Guarantee and the signatures of D4 found in the Passports of D4, it clearly shows that the signatures found in Exh.A20, A19 & A34 are entirely different from the signatures found in the Passports. Therefore, I come to the conclusion that the signatures in the Exh.A20-Letter acknowledging deposit of title deeds and the Exh.A19 & A34-Agreements of Guarantee are not the signatures of D4. Therefore, the schedule mentioned property is not a mortgaged property. The applicant bank cannot proceed against this property. Therefore, I find D5 & D6 are not liable to applicant bank's claim in the OA and also in respect of the schedule mentioned property. It is true that the D4 has not created equitable mortgage in favour of the applicant bank in respect of the schedule mentioned property and guaranteed the loan. Point No.2 is answered accordingly.

7.Since the petitioner's mother was held to have not given the guarantee, the Petitioners were discharged of liability.

8.Aggrieved by the order dated 21.03.2016 passed by the Debt Recovery Tribunal - II, Chennai in O.A.No.515 of 2015, the contesting respondent Indian Bank filed R.A.No.35 of 2017 before the Debt Recovery Appellate Tribunal, Chennai.

9.By the impugned order dated 30.10.2018, the Debt Recovery Appellate Tribunal has reversed the aforesaid finding in the

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order dated 21.03.2016 of the Debt Recovery Tribunal - II, Chennai, dropping the liability against the writ petitioners. The operative portion of the order reads as under:-

> 7.On careful perusal of pleadings of the parties, submissions of the Ld.Counsel of the parties and record, it becomes clear that original title deeds in question are still in possession of Appellant Bank and was said to have been given by R4 after execution of the Memorandum of Deposit of Title Deeds and also Guarantee Deed, Record reveals that deceased R4 filed a separate Written Statement in O.A, but took a defence that property in question belonged to her husband and after the death of her husband, by oral partition, this house has been given to son and daughter and they have 1/5th share in it.
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> 8.Record further reveals the R5 & R6 sincerely the O.A and were given an opportunity of cross-examination also, but a condition was imposed for deposit of Rs.5 lakhs, which they failed to comply. R5 & R6 further agreed to make a deposit of Rs.20 lakhs during pendency of O.A., but they did not comply it. Rather, they tried to litigate of matter in High Court in Writ jurisdiction also.
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> 9.In so far Exhits A 19, 20 and A34 are concerned, these are the Agreements of guarantee and acknowledgment for deposit of title deeds respectively. There appears no question of doubting anything, because original title deeds were produced before the Bank Officers. In normal course of banking business, if documents are received and guarantee has been executed, documents can be presumed to be executed in good faith. Any other standard documents for comparison of signature that should have been taken, must be prior to the date of signature of guarantee deed. Apprehension of the Bank cannot be said to be baseless that subsequent signatures can be made with a variation deliberately also.
>
> 10.It is true that in certain situations, even the Court has a right to compare the signatures, but it depends on the nature of dispute. Where among the family members, Civil Suits were filed for partition and declaration of title, whether

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> it was oral partition or not, who was the author of money spent in purchase of the property is the main question which made this case a peculiar case, where comparison of signatures by PO of DRT should have been avoided.
>
> 11.Taking into consideration the entire facts and circumstances of this case, where original title deeds are still in possession of the Appellant Bank and amongst R4, R5 & R6, Civil Suits were filed for partition and declaration of title deeds etc., O.A should have been allowed against all the Respondents, because R4, R5 & R6 may resolve their disputes in some other forum also. If original title deeds are still in possession of the bank and even R5 and R6 are not able to explain how these documents reached to the possession of the Bank and in view of the contradictory pleadings taken in Civil Suits by R5 & R6, Bank has a right of recovery of money from them also.
>
> 12.Hence, impugned orders deserved to be modified. O.A should have been decreed against all the Respondents/Defendants. R5 and R6 are also having a liability of repayment co-existing with the remaining Respondents.

10.Therefore, separate two Writ Petitions were filed by the respective petitioners.

11.The facts of these two cases are that Indian Bank had filed O.A.No.515 of 2015 against borrowers namely M/s.Expo Team and its partners who are 2nd to 4th respondents in W.P.No.2528 of 2019/ 4th to 6th respondents in W.P.No.6287 of 2019.

12.It was the case of the respondent Indian Bank that the borrowers and guarantors had defaulted in making payment and therefore they were entitled to recover:-

> (i)a sum of Rs.7,66,162/- being the amount payable under FEP returned unpaid with interest at 19.38 with quarterly rests from the date of the application and till date of realisation
>
> (ii)a sum of Rs.55,10,372/- respect of ADOVEXBIR facility with interest at 19.38 with quarterly rests from the date of the application and till date of realisation;
>
> (iii)a sum of Rs.22,83,846.26/- respect of TOD

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facility with interest at 19.38 with quarterly rests from the date of the application and till date of realisation;

(iv)a sum of Rs.1,03,27,540.00/- respect of PC facility with interest at 19.38 with quarterly rests from the date of the application and till date of realisation (v) a sum of Rs.57,44,072.35/- respect of Advance Bills facility with interest at 19.38 with quarterly rests from the date of the application and till date of realisation.

13.In the proceedings, the deceased Kalavathi Karunanithi (4th respondent in O.A) had denied the execution of any documents by deposit of title deed. The defence of the deceased Kalavathi Karunanithi (the mother of the respective petitioner) in her counter before the Debt Recovery Tribunal reads as under:-

> 2.This respondent states that all the averments contained in the Application 198 of 1998 (Transferred O.A.No.515 of 2015) are totally False. It is true that the property situated at 2, Vembuli Ammon Koil Street, Thiruvanmiyur, Chennai - 600 041, belongs to this respondent. This property was purchased by the 4th respondent's late husband Karunanithi in the name of the fourth in the year 1969. This respondent states that after the death of her husband Karunanithi on 15.10.89, this respondent her son Srikanth and her daughter A.K.Vijayalakshmi had partitioned this property orally on 2.2.1990. This respondent was allotted one fifth share, her son Srikanth was alloted three fifth share, and her daughter A.K.Vijayalakshmi was alloted one fifth share. There for the share alloted to this respondent is only one fifth totally, in the property situated at No.2, Vembuli Amman Koil Street, Thiruvanmiyur, Chennai - 600 041.
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> 3.This respondent further states that she is not liable to repay any amount to the applicant Bank. This respondent totally denies any liability to the Applicant Bank. This respondent totally denies having signed any document, mortgaging her share of the aforesaid property to the Applicant bank. This respondent states

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that under these circumstances the Application and the claim as against her by the Applicant Bank may be dismissed.

14.The respondent Indian Bank, however, proceeded to file proof affidavit before the Debt Recovery Tribunal and during the pendency of the aforesaid O.A., the said Kalavathi Karunanithi passed away, pursuant to which the respective petitioners in the both Writ Petitions were impleaded as legal representatives of the deceased Kalavathi Karunanithi (4^{th} defendant in O.A).

15.After the petitioners were impleaded as legal representatives of the deceased Kalavathi Karunanithi, the respective petitioners filed their separate counter statements and sought permission to produce two original passports of their mother late Kalavathi Karunanithi for comparison of her signature to contend that their mother had not signed in these loan documents in as much as the signature in the Exs.A19, A20 & A34 were in variance with the signatures in Vakalat, Counter and the Passports. In all the documents produced by the respondent Indian Bank, the signature of the said deceased Kalavaithi Karunanithi is shown to be signed as "A.K.Nithi" whereas her signature of the deceased Kalavathi Karunanithi in the Counter, Vakalat and Passports were shown to be signed as "Mrs.Kalavathi Karunanithi". However, this was not the defence in Counter filed by her.

16.According to the petitioners, the signatures of their mother shown to be signed by their Mrs.A.K.Nithi in Exs.A19, 20 and 34 were not that of hers as she used to sign only as "Mrs.KalavathyKarunanithy".

17.According to the petitioners in the Writ Petitions, the respondent Indian Bank had introduced forged documents to make it seem as if late Kalavathi karunanithi had mortgaged the property by the deposit of title deeds. That apart, several other defences were raised by the respective petitioners before the Debt Recovery Tribunal in the said O.A.

18.Heard the learned counsel for the respective petitioners and the learned counsel for the respondent Indian Bank.

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19.Mr.R.Srinivas, the learned counsel for the petitioner in W.P.No.2528 of 2019 submits that the findings of facts arrived by the Debt Recovery Tribunal could not be reversed by the Debt Recovery Appellate Tribunal. He further submitted that the findings of facts arrived by the Debt Recovery Tribunal in the

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exercise of power vested under Section 73 of the Indian Evidence Act conclusively establishes that the signatures in Exs.19, 20 & 34 was not that of their mother and was forged signature. It was further submitted that the bank has not led any positive evidence to controvert the evidence tendered before the Debt Recovery Tribunal. The learned counsel for the petitioner submits that the order of the Debt Recovery Appellate Tribunal reversing the finding of the Debt Recovery Tribunal, was liable to be set aside.

20.Mr.A.V.Arun, the learned counsel for the petitioner in W.P.No.6287 of 2019 reiterated the above submissions and submits that the order passed by the Debt Recovery Appellant Tribunal was liable to be set aside.

21.In this connection, the learned counsels for the petitioners relied on the following decisions:-

i. Ajay Kumar Parmar vs State of Rajasthan, (2012) 12 SCC 406.
ii. Chennadi Jalapathi Reddy vs Baddam Pratapa Reddy (dead) thr. Lrs. & Another, 2019 SCC OnLine 1098.

22.Per contra, Mr.P.V.Muralidhar, the learned counsel for the respondent Indian Bank submitted that the order passed by Debt Recovery Appellate Tribunal was well reasoned and requires no interference.

23.We have perused the order of the Debt Recovery Tribunal - II and the Debt Recovery Appellant Tribunal.

24.During the course of the hearing, a question was posed to the respective counsel for the petitioners in Writ Petitions as to how the title deed of the property came into the hands of the respondent Indian Bank, if there was no equitable mortgage created by the late Kalavathi Karunanithi. But there was no answer to the same.

25.The learned counsels stated that the Mr.C.A.Srikumar 3rd defendant who is one of the respondent was a close friend of the Mr.A.K.Srikanth appellant in W.P.No.6287 of 2019.

26.We are of the view that the Debt Recovery Tribunal had erred in resorting to Section 73 of the Indian Evidence Act to come to a conclusion that the signatures in Exs. A19, 20 & 34 were not of the deceased 4th defendant Kalavathi Karunanithi.

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27.Though the Debt Recovery Tribunal is strictly not bound by the Civil Procedure Code and the strict rules of evidence under the Indian Evidence Act, 1872 and may not apply to it as such, but nothing prevented the respective petitioners in the Writ Petitions or for that matter the late Kalavathi Karunanithi, during her lifetime to file appropriate application to cross-examine the Bank Officials to establish that the signature in Exs.A19, 20 & 34 were not signed by Kalavathi Karunanithi. In fact, in the counter filed by Kalavathi Karunanithi, she has merely denied having signed the said documents. However, she did not make any attempt to take effective steps before the Debt Recovery Tribunal to establish her defence under Section 45, 47 and 67 of Indian Evidence Act, 1872.

28.The defence taken by the respective petitioners that the signature of the late Kalavathi Karunanithi in documents Exs.A19, 20 & 34 were signed as "A.K.Nithi" and was not the signature of the late said Kalavathi karunanithi is merely an afterthought.

29.The Hon'ble Supreme Court in Ajay Kumar Parmar vs State of Rajasthan, (2012) 12 SCC 406 has categorically held as follows:-

> 28.The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the court may also not be conclusive. Therefore, when the court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the court must keep in mind the risk involved, as the opinion formed by the court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The court, therefore, as a matter of prudence and caution

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should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.

30.The recent decision of the Hon'ble Supreme Court rendered in Chennadi Jalapathi Reddy vs Baddam Pratapa Reddy (dead) thr. Lrs. & Another, 2019 SCC OnLine 1098, the Court has reiterated the above position that the evidence of a handwriting expert should rarely be given precedence over substantive evidence. There the High Court disbelieved and the signature of plaintiff (PW 1) and attestors (PW 2 & PW 3) and had relied upon the opinion evidence of DW-2, the handwriting expert, who opined that the signature of the first defendant on the Agreement of Sale Ext.A-1 did not tally with his admitted signatures. It was in that background the Court held as follows:-

> 11.By now, it is well-settled that the Court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the Court may seek independent and reliable corroboration in the facts of a given case. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it. In this respect, reference may be made to a long line of precedents that includes Ram Chandra and Ram Bharosey v. State of Uttar Pradesh, AIR 1957 SC 381, Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529, Magan Bihari Lal v. State of Punjab, (1977) 2 SCC 210, and S. Gopal Reddy v. State of Andhra Pradesh, (1996) 4 SCC 596.
>
> 12.We may particularly refer to the decision of the Constitution Bench of this Court in Shashi Kumar Banerjee (supra), where it was observed that the evidence of a handwriting expert can rarely be given precedence over substantive evidence. In the said case, the Court chose to disregard the testimony of the handwriting expert as to the disputed signature of the testator of a Will, finding such evidence to be inconclusive. The Court instead relied on the clear testimony of the two attesting witnesses as well as the

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> circumstances surrounding the execution of the Will.
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> 13.On the other hand, in Murari Lal v. State of Madhya Pradesh, (1980) 1 SCC 704, this Court emphasised that reliance on expert testimony cannot be precluded merely because it is not corroborated by independent evidence, though the Court must still approach such evidence with caution and determine its creditworthiness after considering all other relevant evidence. After examining the decisions referred to supra, the Court was of the opinion that these decisions merely laid down a rule of caution, and there is no legal rule that mandates corroboration of the opinion evidence of a handwriting expert. At the same time, the Court noted that Section 46 of the Indian Evidence Act, 1872 (hereinafter "the Evidence Act") expressly makes opinion evidence open to challenge on facts.
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> 14.In Alamgir v. State (NCT, Delhi), (2003) 1 SCC 21, without referring to Section 46 of the Evidence Act, this Court reiterated the observations in Murari Lal (supra) and stressed that the Court must exercise due care and caution while determining the creditworthiness of expert evidence.

31.However, in the present case, the petitioners have neither led any substantive evidence nor brought any expert evidence to dislodge the case of the respondent Indian bank. Instead, they had merely exhorted the Presiding Officer of the Debt Recovery Tribunal to invoke power under Section 73 of the Indian Evidence Act, 1882. In our view, the learned presiding officer to Debt Recovery Tribunal ought not to have taken up the exercise under the aforesaid provisions of the Act in absence of any other substantive evidence.

32.We are of the view that the impugned order of the Debt Recoery Appellate Tribunal is well reasoned and deserves to be affirmed. In the light of the above discussion, we uphold the impugned order passed by the DRAT.

33.However, we make it clear that the petitioners can be made liable only to the extent of property/estate inherited by them from the estate of late Kalavathi Karunanithi.

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34.We therefore dismiss both the Writ Petitions with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

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Sub Assistant Registrar

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To:

1.The Registrar,
The Debts Recovery Appellate Tribunal
55, Wellington Estate, IV Floor,
Ethiraj Salai, Chennai - 600 105.

2.The Registrar,
The Debts Recovery Tribunal - II,
Deva Towers, IV Floor,
No.770-A, Anna Salai,
Chennai - 600 002.

3.Indian Bank,
GEE GEE Complex,
No.42, Anna Salai,
Chennai 600 002.

+2cc to M/s.A.V.Arun, Advocate SR.94535,94536

W.P.Nos.2528 & 6287 of 2019
and
W.M.P.Nos.2802 & 7127 of 2019

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