

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2019

CORAM :

The Hon'ble Dr.VINEET KOTHARI, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

W.P. No.10625 of 2019
and W.M.P.Nos.11103 and 11105 of 2019

1.D.Thiagaraj
2.Vanaja.K

.. Petitioners

-vs-

1.P.N.B.Housing Finance Limited,
Rep. by its Vice President,
Sr.Govindaswamy.

2.Pradeep
3.Koteshwara Sahakari Bank Niyamitha,
Bengalure-560 020.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records and quash the order dated 08.06.2018 passed by the learned Debts Recovery Appellate Tribunal Chennai in AIR (SA) No.427 of 2017 against the petitioners and direct the learned Debts Recovery Appellate Tribunal, Chennai, to take the main appeal AIR (SA) No.427 of 2017 on file without any pre-deposit.

For Petitioners : Mr.N.S.Ganesh

For Respondents : Mr.T.Saikrishnan for R-1

: Mr.Rahul Balaji for R-2

: No appearance for R-3

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O R D E R

(Order of the Court was made by The Hon'ble Acting Chief Justice)

The petitioners, Mr.D.Thiagaraj, S/o.Late N.Dhana Singh and Smt.Vanaja.K., W/o.D.Thiagaraj, the borrowers of the respondent no.1 - P.N.B. Housing Finance Limited, took a housing loan from respondent no.1 - P.N.B. Housing Finance Limited and in the SARFAESI proceedings against them for realisation of the dues, the present petitioners are aggrieved by the order dated 8th June, 2018, passed by the learned Debts Recovery Appellate Tribunal, Chennai, which has dismissed the appeal of the petitioners against the order of the Debts Recovery Tribunal for want of pre-deposit of a sum of Rs.5 lakhs in terms of proviso to Section 18 (1) of the SARFAESI act, for entertaining the appeal on merits. The said sum of Rs.5 lakhs is approximately 50% of the debt due as determined by the Debts Recovery Tribunal.

2.The learned counsel for the petitioners urged before us that the third proviso to Section 18 (1) of the Act permits that the pre-deposit may be reduced to 25% also. But the learned Debts Recovery Appellate Tribunal has failed to exercise the discretion in favour of the petitioners. He also drew the attention to the fact that the first respondent-Financial Institution had already sold the property in question, namely, the house and realised excess amount, which is lying in the lien account of the respondent-Financial Institution itself. He, therefore, submitted that a sympathetic view deserves to be taken in the present case.

3.The learned counsel for the respondents, however, supported the impugned order.

4.Having heard the learned counsels for the parties, we are of the opinion that in the facts and circumstances of the case, the appeal of the petitioners deserves to be heard on merits, subject to the condition that the petitioners make a deposit of Rs.3,00,000/- (Rupees three lakhs only) instead of Rs.5 lakhs, as directed by the Debts Recovery Appellate Tribunal. After the said deposit of Rs.3 lakhs is made by the petitioners before the Debts Recovery Appellate Tribunal within a period of two weeks from today, the learned Debts Recovery Appellate Tribunal will restore the appeal to its original number and position and hear the appeal on merits in accordance with law. It is made clear that no extension of time shall be granted to the petitioners under any circumstances for the aforesaid deposit and in case, there is any default in the deposit of Rs.3 lakhs with the period of two weeks from today, the present writ petition shall be treated as dismissed and the first respondent-Financial Institution shall be free to proceed further in accordance with law.

With the above observations, the writ petition is disposed of. No costs. Consequently, W.M.P.Nos.11103 and 11105 of 2019 are closed.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

sra

To

The Debts Recovery Appellate Tribunal,
Chennai.

+1cc to Mr.R.Parthasarathy, Advocate, SR.83303
+1cc to Mr.T.Saikrishnan, Advocate, SR.83011
+1cc to Mr.A.V.Somasundaram, Advocate, SR.82934

W.P.No.10625 of 2019

SR(CO)
CB(03/10/2019)



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