

**W.M.P.No.5698 of 2019 in
W.P.No.16998 of 2018**

**THE HON'BLE CHIEF JUSTICE
and
M.DURAIWAMY, J.**

(ORDER OF THE COURT WAS MADE BY M.DURAIWAMY, J.)

By order dated 22.11.2018, we have dismissed the Writ Petition in W.P.No.16998 of 2018.

2.Now, the petitioner has filed the above Miscellaneous Petition to refund the proceeds of the deposit made under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 to her within a time frame.

3.It is brought to the notice of this Court that pursuant to the order passed in W.P.No.24185 of 2017 dated 16.11.2017, she had deposited a sum of Rs.25 lakhs with the Registrar, Debt Recovery Appellate Tribunal, Chennai. The Division Bench of this Court, while allowing the Writ Petition, further directed the Debt Recovery Appellate Tribunal to process the appeal and assign regular Appeal Number on such deposit being made by the petitioner.

4.The learned counsel appearing for the petitioner submitted that the pre-deposit amount of Rs.25 lakhs deposited by the petitioner may be refunded to her for the reason that the appeal filed before the Debt Recovery Appellate Tribunal and also the Writ Petition filed by the petitioner challenging the order passed by the Debt Recovery Appellate Tribunal were disposed of.

5.In support of his contention, the learned counsel relied upon a judgment reported in *AIR 2016 Supreme Court 2024 [Axis Bank Vs. S.B.S. Organics Private Limited and Anr.]* wherein the Apex Court held as follows:

“...

23.We are also unable to agree with the contention that the Bank has a lien on the pre-deposit made under Section 18 of the SARFAESI Act in terms of Section 171 of the Indian Contract Act, 1872. Section 171 of the Indian Contract Act, 1872 on general lien, is in a different context:-

“171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers: - Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of amount, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to

them, unless there is an express contract to that effect.””

6.The learned counsel appearing for the respondent - Bank has no serious objection for granting the prayer sought for in the petition.

7.In view of the ratio laid down by the Hon'ble Supreme Court and also taking into consideration that the Writ Petition in W.P.No.16998 of 2018, which was filed challenging the order passed by the Debt Recovery Appellate Tribunal, was dismissed by this Court, the petitioner is entitled to get refund of the amount deposited by her as pre-deposit. The Bank shall have no lien on the amount deposited by the petitioner as pre-deposit before the Debt Recovery Appellate Tribunal.

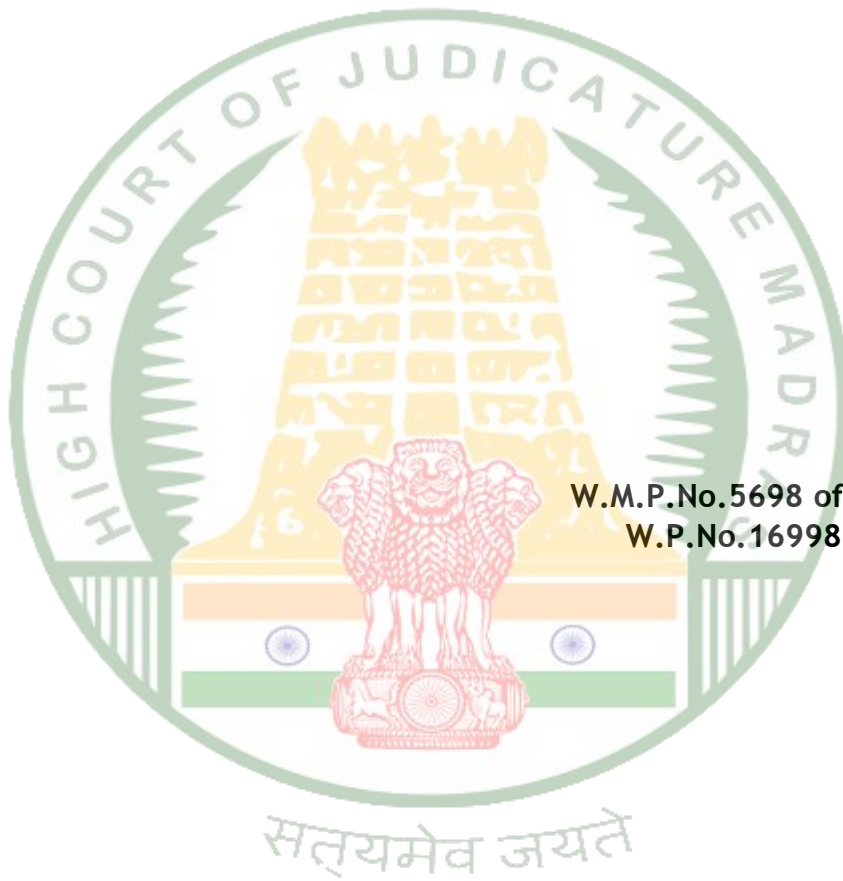
8.In such view of the matter, the petition in W.M.P.No.5698 of 2019 in W.P.No.16998 of 2018 is ordered. The Debt Recovery Appellate Tribunal is directed to refund the sum of Rs.25 lakhs deposited by the petitioner pursuant to the order passed in W.P.No.24185 of 2017 dated 16.11.2017.

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(V.K.T., C.J.) (M.D., J.)
20.03.2019

THE HON'BLE CHIEF JUSTICE
and
M.DURAI SWAMY, J.

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W.P.No.16998 of 2018

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