

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM :

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

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

W.P. No.13111 of 2018
and WMP No.15414 of 2018

Joseph K.J

.. Petitioner

-vs-

1. The Debt Recovery Appellate Tribunal,
4th floor, Indian Bank Circle Office,
55, Ethiraj Salai,
Chennai - 600 008

2. The Authorised Officer,
Indian Overseas Bank,
Ernakulam.

3. Sebastian T.T.

4. The Debts Recovery Tribunal-1,
Ernakulam, Kerala

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the first respondent connected with I.A.No.329 of 218 in AIR (SA)No.83 of 2018 dated 08.05.2018 and quash the same.

For Petitioner	:	Ms.S. Kala
For R.2	:	Mrs.D. Kamatchi
For R.1 & R.4	:	Tribunal
For R.3	:	No appearance

O R D E R

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

This Writ Petition has been filed praying to issue a Writ of Certiorari to call for the records of the first respondent connected with I.A.No.329 of 218 in AIR (SA)No.83 of 2018 dated 08.05.2018 and quash the same.

2. The petitioner is a third party tenant/lessee of the disputed premises. The Debts Recovery Appellate Tribunal, by the impugned Order dated 08.05.2018, has directed the petitioner/tenant to make pre-deposit of Rs.60 lakhs (Rupees Sixty lakhs only) with the Registrar of the Tribunal.

3. Learned counsel appearing on both sides agreed that the matter is already covered by the judgment of the Division Bench of this Court in CRP (NPD) Nos.1492 of 2017 etc., batch dated 11.04.2019, (Sree Jeya Soundharam Textile Mills Pvt Ltd and Others vs Canara Bank and Others,) which has been followed by this Bench in the case of M/s.Ashok Wood Works and another v. Indian Overseas Bank (W.P.No.22981 of 2019 dated 30.9.2019). The relevant portion of the order passed in CRP (NPD) Nos.1492 of 2017etc., batch is quoted here for ready reference.

“22. For the reasons stated above, we decide the issue with regard to making of pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal as follows:

- (i)The borrowers and guarantors are liable to make pre-deposit as per the provisions of Section 18 of the SARFAESI Act or under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 for preferring an appeal before the Debt Recovery Appellate Tribunal.
- (ii)The 3rd parties, who had purchased the property prior to the date of mortgage or derived/accrued title or right or tenancy right over the property prior to the date of mortgage, are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal, provided that they establish before the Debt Recovery Appellate Tribunal that they derived/accrued title or right or tenancy right over the property prior to the date of mortgage and that the property was mortgaged with the Bank without their knowledge. If such 3rd parties file applications for waiver and if they establish that they have purchased the property or that they derived/accrued title, right or tenancy right prior to the date of mortgage and the property was mortgaged with the Bank without their knowledge, the Debt Recovery Appellate Tribunal shall give a

finding with regard to the same and give exemption to such 3rd parties from making pre-deposit.

- (iii) The 3rd parties who had purchased the property either after the date of mortgage or derived/accrued title or right or tenancy right in respect of the property in question or after the initiation of SARFAESI proceedings are liable to make the pre-deposit and they should be treated on par with the borrower and the guarantor as per the provisions of both the Acts for the purpose of making pre-deposit.
- (iv) The Debt Recovery Appellate Tribunal shall consider the waiver applications filed by the 3rd parties, on merits and in accordance with law, following the principles laid down in this judgment and pass appropriate speaking orders giving findings with regard to the right of the 3rd parties.
- (v) The secured creditors viz., the Banks and Financial Institutions or a Consortium or Group of Banks and Financial Institutions are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal.
- (vi) The auction purchaser is not liable to make any pre-deposit while preferring an appeal to the Debt Recovery Appellate Tribunal as against the order passed by the Debts Recovery Tribunal.
- (vii) The appellant who has filed an appeal before the Debt Recovery Appellate Tribunal as against the Interlocutory order passed by the Debts Recovery Tribunal, is not liable to make the pre-deposit if the liability is not determined by the Debts Recovery Tribunal in the interlocutory order.
- (viii) In any other category other than the categories mentioned above, the Debt Recovery Appellate Tribunal shall decide the waiver application as per the principles laid down in this judgment."

4. In view of the aforesaid judgment, the order passed by the Debts Recovery Appellate Tribunal in I.A.No.329 of 218 in AIR (SA)No.83 of 2018 dated 08.05.2018 is set aside and the Writ Petition is allowed.

5. The parties are at liberty to approach the Debts Recovery Appellate Tribunal for further proceedings in the matter.

6. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

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4th floor, Indian Bank Circle Office,
55, Ethiraj Salai,
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2. The Authorised Officer,
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3. The Debts Recovery Tribunal-I
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PVS(CO)
SP(11/12/2019)