

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.Nos.15754 & 11852 of 2018
and W.M.P.No.18708 of 2018 in
W.P.No.15754 of 2018

K.S.Gopalakrishnan

... Petitioner in both W.Ps

Vs.

1.The Registrar,
Debt Recovery Appellate Tribunal,
Chennai.

2.The Corporation Bank,
Personal Banking Branch,
No.27, Whites Road,
Chennai - 600 014.

... Respondents in both W.Ps

W.P.No.15754 of 2018 filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the records of the appeal in R.A.(SA).No.73 of 2015 dated 02.12.2016 on the file of the Debt Recovery Appellate Tribunal, Chennai and quash the same as illegal, arbitrary and devoid of merits.

W.P.No.11852 of 2018 filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari calling for the records of the I.A.No.257 of 2018 in R.A.(SA).No.73 of 2015 on the file of the Debt Recovery Appellate Tribunal, Chennai relating to the impugned order dated 01.02.2018 and quash the same as illegal, arbitrary and devoid of merits.

For Petitioner : Mr.P.R.Thiruneelakandan
(in both W.Ps)

For Respondents : Mr.S.Sethuraman (R2)
(in both W.Ps)

R1 - Tribunal

C O M M O N O R D E R

(Order of the Court made by M.DURAISWAMY, J.)

Since the issue involved in both the Writ Petitions are identical between the same parties, the Writ Petitions are disposed of by this common order.

2.The petitioner has filed the Writ Petition in W.P.No.15754 of 2018 to issue a Writ of certiorari to call for the records of the appeal in R.A.(SA).No.73 of 2015 dated 02.12.2016 on the file of the Debt Recovery Appellate Tribunal, Chennai and to quash the same.

3.W.P.No.11852 of 2018 has been filed by the petitioner to issue a Writ of certiorari to call for the records of the I.A.No.257 of 2018 in R.A.(SA).No.73 of 2015 on the file of the Debt Recovery Appellate Tribunal, Chennai relating to the impugned order dated 01.02.2018 and to quash the same.

4.The respondent - Bank filed an appeal in R.A.(SA).No.73 of 2015 on the file of the Debt Recovery Appellate Tribunal, Chennai challenging the order passed in S.A.No.102 of 2014 on the file of the Debts Recovery Tribunal - II, Chennai. Since the petitioner failed to appear before the Appellate Tribunal on 02.12.2016, he filed an application in I.A.No.257 of 2017 to set aside the order dated 02.12.2016. In the affidavit filed in support of the petition, the petitioner has stated that his clerk, by mistake wrongly noted the date of argument as 28.01.2017 instead of 28.11.2016, therefore, he could not appear on 02.12.2016. The Debt Recovery Appellate Tribunal declined to accept the reason given by the petitioner for his non-appearance on 02.12.2016 and dismissed the application in I.A.No.257 of 2017 and consequently, confirmed the exparte order dated 02.12.2016. Since the petitioner has satisfactorily explained the reasons for his non-appearance on 02.12.2016, in the interest of justice, the Appellate Tribunal should have given an opportunity to contest the matter on merits.

5.The learned counsel for the respondent - Bank also fairly submitted that the respondent has no objection for remanding the matter to the Appellate Tribunal for fresh consideration.

6.For the reasons stated above, the order dated 02.12.2016 made in R.A.(SA).No.73 of 2015 and the order dated 01.02.2018 made in I.A.No.257 of 2018 in R.A.(SA).No.73 of 2015 are set aside. The matter is remitted back to the Debt Recovery Appellate Tribunal, Chennai for fresh consideration. The Debt Recovery Appellate Tribunal is directed to decide the appeal in R.A.(SA).No.73 of 2015 on merits and in accordance with law, after giving due opportunity of hearing to both the sides.

7.With these observations, the Writ Petitions are allowed.
No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar,
Debt Recovery Appellate Tribunal,
Chennai.

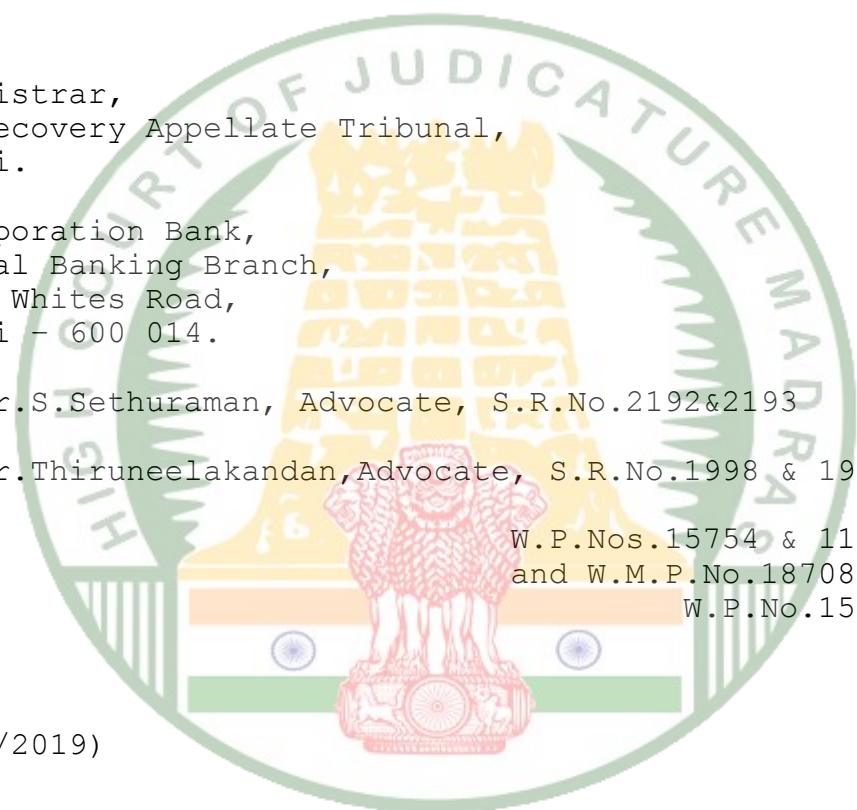
2.The Corporation Bank,
Personal Banking Branch,
No.27, Whites Road,
Chennai - 600 014.

+2cc to Mr.S.Sethuraman, Advocate, S.R.No.2192&2193

+2cc to Mr.Thiruneelakandan, Advocate, S.R.No.1998 & 1999

W.P.Nos.15754 & 11852 of 2018
and W.M.P.No.18708 of 2018 in
W.P.No.15754 of 2018

CA(CO)
GSP(06/02/2019)



सत्यमेव जयते

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