IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM :

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

W.P.No.22307 of 2019

V.Sridhar .. Petitioner

-vs-

1.The Authorised Officer,
Capital First Limited,
India Bulls Finance Centre,
15th Floor, Tower-2,
Senapathi Bapat Marg,
Elphistone Road, Mumbai-400 013.

2.M/s.Wings Interactive India Pvt. Ltd.,
rep. by its Director,
New No.2, Old No.20, Vembuliamman Koil Street,
Near Vembuliamman Temple,
Near Bus Stand, Virugambakkam,
Chennai-78.

3.V.Heman Kumar .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records pertaining to the impugned order dated 03.04.2019 in AIR (SA) No.713 of 2018 passed by the Chairperson, Debt Recovery Appellate Tribunal, Chennai and quash the same as illegal, arbitrary and same is against law.

For Petitioner : Mr.R.R.Pradheep

For Respondents : Mr.S.Sheik Ismail
for respondent No.1

Respondent Nos.2 and 3
Given up

ORDER

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

The petitioner, V.Sridhar, residing at No.2, Old No.20, Vembuliamman Koil Street, Virugambakkam, Chennai-78, has approached this Court against the rejection of the appeal filed by him before the Debt Recovery Appellate Tribunal, Chennai. Vide earlier order dated 06.03.2019, the Debt Recovery Appellate Tribunal, Chennai, had directed to deposit a sum of Rs.50 lakhs towards pre-deposit required under Proviso to Section 18(1) of the SARFAESI Act, 2002 over and above Rs.17.50 lakhs to be realised by the first respondent/Capital First Limited. Since the petitioner has failed to deposit the same, the appeal came to be dismissed by the Debt Recovery Appellate Tribunal vide impugned order dated 03.04.2019. The petitioner has preferred this writ petition before this Court challenging the said order.

2. The learned counsel for the first respondent, Mr.S.Sheik Ismail, has put in appearance.

3. The learned counsel for the petitioner, Mr.R.R.Pradheep, submitted that the said pre-deposit amount is more than 25% of the minimum required to be deposited under Third Proviso to Section 18(1) of the Act and, therefore, in the facts and circumstances of the case, the amount deserves to be reduced. He submitted that the said amount could not be deposited by the petitioner, who is carrying on the business of conducting computer/educational classes to poor children, as the money could not be realised from the Government of Maharastra against whom bills were raised.

4. The learned counsel for the first respondent/financial institution, however, opposed the submission and submitted that due to lapse of time the overdue amount increased.

5. Having heard the learned counsel for parties, we are of the opinion that though normally we would not interfere in such orders passed by the Debt Recovery Appellate Tribunal exercising discretion under Proviso to Section 18(1) of the Act, in the peculiar facts and circumstances of the case, we find that since part of the amount has been realised by the first respondent and the direction of the Debt Recovery Appellate Tribunal to deposit Rs.50 lakhs is more than the minimum required 25% of the pre-deposit to entertain such appeal, we direct that if the petitioner deposits a sum of Rs.30 lakhs (Rupees Thirty Lakhs only) as against Rs.50 lakhs directed by the Debt Recovery Appellate Tribunal within a period of four weeks from today, then the appeal filed before the Debt Recovery Appellate Tribunal shall stand restored to its original position and shall

be heard and decided on merits and in accordance with law. We make it clear that no extension of time, nor any reduction will be entertained under any circumstances. If the petitioner fails to deposit Rs.30 lakhs within the period of four weeks from today, the present writ petition shall be treated as dismissed by this Court.

6. We would like to further observe that whenever such orders are passed by the Debt Recovery Appellate Tribunal, the Appellate Tribunal should indicate the percentage of the amount due also in the orders for pre-deposit so that the facts regarding the amounts already realised against the outstanding may also be reflected in the reasons to be assigned by the Appellate Tribunal and thereafter, why specific amount was directed between the range of 25% and 50% under Proviso to Section 18(1) of the Act can also be ascertained by the higher Courts.

7. With these observations and directions, the writ petition is disposed of. No costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

bbr
Note to Registry:
Office to communicate this order to the
Debt Recovery Appellate Tribunal, Chennai.

To:

The Authorised Officer,
Capital First Limited,
India Bulls Finance Centre,
15th Floor, Tower-2,
Senapathi Bapat Marg,
Elphistone Road, Mumbai-400 013.

Copy to
The Registrar
Debt Recovery Appellate Tribunal
Chennai
+1 CC to Mr.G. Senthil Kumar, Advocate sr 84188.

W.P.No.22307 of 2019

MG(CO)
SP(06/11/2019)