

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 17.12.2019
Delivered On : 22.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.Nos.31073 and 31082 of 2019
and
WMP.Nos.31191 and 31201 of 2019

Easun Holdings Private Limited,
Represented by its Director,
M. Parthasarathy
VI Floor, Temple Tower,
672, Anna Salai, Nandanam,
Chennai - 600 035.

...Petitioner in both petitions

vs.

Standard Chartered Bank,
Commercial Building,
19, Rajaji Salai, 4th Floor,
Chennai - 600 001.

...Respondent in both petitions

Prayer in WP.No.31073 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in AIR (SA) No.179 of 2019 on the file of the Debts Recovery Appellate Tribunal, Chennai and quash the order dated 13.06.2019 which was passed in pursuance of the order dated 16.05.2019 and direct the respondent to defer all further proceedings in respect of the subject property under SARFAESI Act.

Prayer in WP.No.31082 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in IA.No.661 of 2019 in AIR (SA) No.179 of 2019 on the file of the Debts Recovery Appellate Tribunal, Chennai and quash the order dated 16.07.2019 which was passed in pursuance of the order dated 13.06.2019 and direct the respondent to defer all further proceedings in respect of the subject property under SARFAESI Act.

For Petitioner
in both petitions :Mr.Elambharathi
For Respondent
in both petitions :Mr.M.S.Krishnan
Senior Counsel
for Mr.Vinod Kumar

C O M M O N O R D E R
(Order of the Court was made by R.HEMALATHA, J.)

Assailing the orders dated 13.06.2019 and 16.07.2019 rendered by the Debts Recovery Appellate Tribunal, Chennai in AIR (SA) No.179 of 2019, the petitioner company had filed these two Writ Petitions.

2. The facts of the case as projected by the petitioner are that the petitioner is a Private Limited Company which had availed financial facilities from the respondent Bank and since the latter insisted for a collateral security, the agricultural property belonging to the former was accepted by the latter respondent Bank and the same was mortgaged. However, the respondent Bank had taken the blank signatures of the petitioner in different blank documents and also on an affidavit which stated that the property was not purchased for agricultural purposes nor intended to be used for the same. The respondent Bank proceeded against the petitioner under Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter, in short called as 'SARFAESI Act') for recovery of the loans. There were standing crops in the land and the plea that the SARFAESI Act does not apply to agricultural property was raised by the petitioner company at the first instance itself, with the bank, at the time of the receipt of the possession notice dated 15.10.2018. Aggrieved over the elusive reply from the Bank, the petitioner filed SA.No.348 of 2018 before Debts Recovery Tribunal-III, Chennai seeking relief by way of praying for setting aside the possession notice dated 12.10.2018. Debts Recovery Tribunal-III taking cue from the Supreme Court ruling in ITC Limited vs. Blue Coast Hotels Limited and Others reported in (2018) 15 Supreme Court Cases 99 concluded in its order dated 01.05.2019 that at the time of creating mortgage, the petitioner had filed an affidavit to the effect that the property though agricultural in nature was acquired for non-agricultural purpose and never been put for agricultural use nor intended to be put to use for agriculture. The Debts Recovery Tribunal had also pointed out that the Registration Department had classified the property as Residential Special Type I and consequently dismissed the SA.No.348 of 2018. The order also referred to the photographs adduced by the petitioner to substantiate that there were

standing crops on the said land and observed that the banana plantation was found only in a part of the land and it does not conclusively establish the agricultural nature of the land. The petitioner company appealed in the Debts Recovery Appellate Tribunal, Chennai in AIR (SA) No.179 of 2019 against the order of the Debts Recovery Tribunal-III, Chennai dated 01.05.2019. As the sum due to the respondent Bank was to the tune of Rs.54.18 crores as on 30.04.2018 with future interests, the petitioner was directed to comply with the predeposit of Rs.20 crores in two instalments of Rs.10 crores each, one immediate and the other within four weeks of the order which was dated 13.06.2019. The petitioner filed a review petition (IA.No.661 of 2019) on the said order which was dismissed on 16.07.2019. Hence, the two writ petitions challenging the two orders of Debts Recovery Appellate Tribunal, Chennai.

3. The bone of contention in this case is the nature of property. Mr.Elambharathi, learned Senior Counsel for the petitioner would contend that the secured asset is only an agricultural land and that merely because the petitioner company were made to sign an affidavit cum indemnity, it cannot alter the nature of the property. His specific contention is that the petitioner's signature was obtained by the bank in some blank papers along with other forms, at the time of creating the mortgage.

4. Per contra, Mr.M.S.Krishnan learned Senior Counsel appearing for the respondent Bank contended that the petitioner company has breached its own undertaking in the affidavit cum indemnity. He also drew the attention of this court to the affidavit cum indemnity submitted by the petitioner at the time of availing the loan facilities which reads as under:

"I on behalf of M/s.Easun Holdings Private Limited state and submit that the schedule property have been acquired for non-agricultural purpose and that they have never been put to agricultural use since acquisition not intended to be so used. Neither, M/s.Easun Holdings Private Limited nor its representatives in interest would at any point or in any context advance any claim/argument/plea that the schedule property is agricultural property so as to defeat the claims of the Bank under available laws including but not limited to SARFAESI"

His specific contention is that though the company had sworn the affidavit that it would not claim that the land as an agricultural land, the petitioner has taken that plea before the Debts Recovery Tribunal and that the petitioner company cannot

disown the affidavit cum indemnity.

5. The learned counsel for the writ petitioner has made a plea that the respondent Bank had taken signatures of the petitioner company on blank documents and also on the affidavit cum indemnity, the contents of which were not known to the petitioner. It is also further contended by him that all records pertaining to the said land clearly specifies the land as agricultural land. He has also pointed out the memorandum of mortgage and the sale notice, which are the records of the respondent Bank, showing the property as agricultural land.

6. To counter this contention of the learned counsel for the petitioner, the learned counsel for the respondent Bank would contend that the records of the Registration Department which are available online clearly classify the said land as residential one and a few unauthentic photos of some plantation, even if they are genuine cannot reverse the categorisation of the land as it is. It has been contended by the learned counsel for the respondent Bank that the petitioner did not raise this objection when the notice under Section 13 (2) was issued under the SARFAESI Act and only after the notice under Section 13 (4) of the said Act for possession was issued, the petitioner came up with this plea and the same was replied to appropriately by the respondent Bank.

7. Section 31 (i) of the SARFAESI Act stipulates thus:

"31. Provisions of this Act not to apply in certain case:-

The provisions of this Act shall not apply to...

(i) any security interest created in agricultural land;"

8. The expression 'security interest' was defined, prior to its amendment, in Section 2(zf) as follows:

"2(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;"

9. Clause (zf) was substituted with effect from 1 September 2016 by Act 44 of 2016. At present, the expression is defined as follows:

"(zf) "security interest" means right, title or interest of any kind, other than those specified in Section 31, upon property created in favour of any secured creditor and includes:-

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an

obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset."

10. Under the provisions of the SARFAESI Act 'secured asset' is defined as under:

(zc) 'secured asset' means the property on which security interest is created.

11. Section 13 of the SARFAESI Act provides for process to enforce the security interest for the purpose of recovery of the outstanding amount. Under the provisions of Section 13 of the SARFAESI Act, the secured creditor may enforce the security interest created in the property at the time of mortgage, charge, hypothecation and assignment. Further, Section 13 of the SARFAESI Act does not contemplate the recovery of money, ipso facto. The recovery of outstanding amount is by way of enforcement of security interest. Thus, the main object of the provisions of the Act is to recover the defaulted amount by enforcement of the security interest. All security interest can be enforced, except as exempted under the provisions of Section 31 of the SARFAESI Act, which creates exclusion clause, wherein, the provisions of the SARFAESI Act for any purpose would not be applicable. Out of 10 conditions, one is any security interest created in an agricultural land. Obviously, the relevant point of time in the creation of security interest and what was the nature and classification of the land at the time of creation of security interest are to be determined. The subsequent change or conversion is not contemplated under the provisions of the Act.

12. The statement of object and reasons, particularly Clause 2 (m) gives an indication as to what is the intention of the legislature. Clause 2 (m) reads as under:

(m) Non-application of the proposed legislation to security interests in agricultural lands, loans not exceeding rupees one lakh and cases where eighty percent of the loans are repaid by the borrower. Thus, it is manifest that the legislation, ie., SARFAESI Act will have no application to the security interest created in agricultural land and loans not exceeding rupees one lakh and cases where eighty percent of the loans are repaid by the borrower.

13. On a bare perusal of the object read with the relevant provisions, as aforesaid, it is clear that the nature of the

property at the time of creation of security interest is the relevant consideration for the purpose of application of the provisions of the SARFAESI Act.

14. The word 'agriculture' is defined under the Tamil Nadu Patta Pass Book Act, 1983, as under:

- (1) 'agriculture' includes,
- a) horticulture;
 - b) the raising of crops, grass or garden produce;
 - c) the use by a agriculturist of land held by him, or part thereof, for grazing;
 - d) the use of any land for the purpose of raising manure crops;
 - e) dairy farming;
 - f) poultry farming;
 - g) livestock breeding;
 - h) growing of trees;

and 'agriculture' shall be construed accordingly;

15. Under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, the word 'agriculture' is defined as under:

Definitions: In this Act, unless the context otherwise requires,

- (1) 'agriculture' includes,
- a) horticulture;
 - b) the raising of crops, grass or garden produce;
 - c) the use by an agriculturist of land held by him, or part thereof, for grazing;
 - d) the use of any land for the purpose of raising manure crops;
 - e) dairy farming;
 - f) poultry farming;
 - g) livestock breeding;
 - h) growing of trees;

and 'agriculture' shall be construed accordingly;

16. The learned counsel for the respondent Bank relied on the decision of the Apex Court in Indian Bank vs. K.Pappireddiyar reported in 2018 SCC OnLine SC 743 wherein, it is held thus

"12. The classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply. Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart.

13. The Division Bench of the Madras High Court has failed to adjudicate on the basic issue as to whether the land in respect of which the security interest was created, was agricultural in nature. The DRT rejected the objection of the debtor that the land was agricultural. In appeal, the DRAT reversed that finding. Apart from referring to the position in law, the impugned judgment of the High Court contains no discussion of the material which was relied upon by the parties in support of their respective cases; the Bank urging that the land was not agricultural while the debtor urged that it was. Both having regard to the two-judge Bench decision in "Blue coast Hotels Limited" and as explained above, the question as to whether the land is agricultural has to be determined on the basis of the totality of facts and circumstances including the nature and character of the land, the use to which it was put and the purpose and intent of the parties on the date on which the security interest was created. In the absence of a specific finding, we are of the view that it would be appropriate and proper to set aside the judgment of the High Court and to remit the proceedings for being considered afresh."

17. Now the matter goes down to whether the petitioner relies only on the classification of land in the revenue record or has other conclusive evidence to substantiate that the land was indeed agricultural in nature. The Apex Court in the above referred case put it in a nutshell as to how to deduce whether a parcel of land is agricultural or not.

The three aspects are,

- (a) Nature of land.
- (b) Use to which it was being put on date of creation of security interest.
- (c) Purpose for which it was set apart.

18. In CIT v. Siddarth J.Desai [(1983) 139 ITR 628 (Guj.)], the High Court of Gujarat referred to several cases on the question of agricultural land and observed as under:

"14. On a conspectus of these cases, several factors are discernible which were considered as relevant and which were weighed against each other while determining the true nature and character of the land. It may be useful to extract from those

decisions some of the major factors which were considered as having a bearing on the determination of the question. Those factors are:

(1) Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue?

(2) Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?

(3) Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement?

(4) Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land?

(5) Whether, the permission under s. 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?

(6) Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent, or temporary nature?

(7) Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes?

(8) Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural?

(9) Whether the land itself was developed by plotting and providing roads and other facilities?

(10) Whether there were any previous sales of portions of the land for non-agricultural use?

(11) Whether permission under s. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, whether the sale or intended sale, to such non-agriculturist was for non-agricultural or agricultural user?

(12) Whether the land was sold on yardage or on acreage basis?

(13) Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?"

19. In *N.K.S.Rengeswaran v. C.Ag.IT* [(2000) 242 ITR 344 (Mad.)], it was held that classification of revenue records as regards agricultural land may not be conclusive, if there had been no cultivation for many years before the assessment year.

20. In *Blue Coast Hotels case* (cited supra), it was also observed that Borrower Hotel is not an agriculturist and as admittedly, the mortgage created on the entire property offering the same as a loan for a Corporate Loan, cannot itself be the reason to permit the respondents to invoke SARFAESI Act for enforcement, as has been done in the present case.

21. In *V.K.Sekhar v. Indian Bank, Greamset Branch Chittoor* [2007 (2) BJ 57 (AP)], it was held that

"Disputed fact whether mortgaged properties being agricultural lands are exempt from provisions of Act cannot be enquired into in a writ petition, and notice u/s.13(4), if already published, effective remedy is available to the borrower under Section 17(1) of the Act".

22. In the light of the Division Bench decision of the Bombay High Court in *Blue Coast Hotels case* (cited supra), it is not necessary that the purpose of the loan availed by the borrower should be for agricultural purpose and the security created in respect of the agricultural land for the loan other than agricultural purposes is not amenable to action under Section 31(i) of the SARFAESI Act.

23. However in Hari Sagar Educational Trust v. Uttaranchal Gramin Bank [AIR 2012 Uttar 8] it was held that

"mere recording of the land as agricultural land does not mean that the land is being used only for agricultural purposes. The words "agricultural land" as given in Section 31(i) of the SARFAESI Act has to be literally understood i.e., land in which agricultural operations are going on".

24. In Commissioner of Wealth Tax, Andhra Pradesh v. Officer-in-charge [Court of Wards] Paigah [AIR 1977 SC 113 : (1976) 3 SCC 864], it was observed that an "Agricultural Land" must be a land which could be said to be either actually used or ordinarily used or meant to be used for agricultural purposes. In other words "agricultural land" must have a connection with an agricultural user or purpose. It is on the nature of user that the meaning of "agricultural purpose" and "agriculture" become relevant".

25. In C.I.T., West Bengal v. Raja Benoy Kumar Sahas Roy [AIR 1957 SC 768 : (1957) 2 MLJ (SC) 145], it was observed that

"Considering the connotation of the term 'agriculture' in the wider sense, it comprises within its scope the basic as well as the consequent operations regardless of the nature of the products raised on the land. These products may be grain or vegetable or fruits which are necessary for the sustenance of human beings including plantation and groves, grass or pasture for consumption of beasts or articles of luxury such as betel, coffee, spices, tobacco etc., or commercial crops like cotton, flax, jute, hemp, indigo, etc."

26. In Krishna Rao L.Balekar v. Third Wealth Tax Officer [AIR 1963 Mys. 111], it was observed that

"land is agricultural land when that land is used or is capable of being used for 'agricultural purpose'. It is not what use it can be put to by changing its character".

27. In the instant case, the nature of land is agricultural as can be construed from all the revenue records pertaining to the land. But this would not suffice for the simple reason that there are two other aspects which have to be looked into. At the time of creation of security interest, the use it was being put to was definitely not agriculture, if contents of the

affidavit are to be believed. In such an event, there is also a letter dated 26.02.2011 regarding the supply of 5 phase electricity line for agriculture service connection. The affidavit dated 04.03.2013 of the petitioner stating that the land is acquired for non-agricultural purposes and that it has never been put to agriculture use since acquisition, brings in a new dimension as regards to the "truth" in the affidavit. Having obtained agricultural service connection from TamilNadu Electricity Board in March 2011, an affidavit in March 2013 states that the land was neither acquired for agricultural purpose nor put to such use since the acquisition.

28. The third aspect of purpose for which it was set apart again is anyone's guess. Having got the EB connection for agricultural pumpsets, the petitioner has claimed that it was never intended for agricultural purpose nor was put to use for agriculture since acquisition. The affidavit also reads that there was no intention to use it for agriculture either. It was the contention of the learned counsel for the petitioner that the petitioner was shocked to find the affidavit cum indemnity later. It is also his contention that the affidavit was obtained without the petitioner's knowledge. It can be seen that the creation of Equitable Mortgage in the said property was confirmed by a memorandum of entry dated 11.03.2013 and declaration of mortgage by deposit of title deeds dated 29.01.2014 (registered with Sub Registrar Office, Thiruporur as Document No. 1238 of 2014). The affidavit is dated 04.03.2013 that is just a week before the Equitable Mortgage entry.

29. Another contention of the learned counsel for the petitioner is that the agricultural land was not converted into non-agricultural land at any point of time and therefore the online classification of the said land as Residential Special Type I by the Registration Department is not valid. The procedure for such conversion as stipulated by the Government of Tamil Nadu has certain prerequisites and as such rigid. The land has to be declared unfit for raising crops to become eligible for conversion. Moreover, in order to determine as to whether the land is agricultural land or not, the totality of the facts and circumstances of the case have to be seen and such determination cannot be made solely on the basis of the classification by the valuation committee. The classification of land by the valuation committee under the Rules is only for the purpose of providing a guideline for levy of stamps duty and this would not change the nature or character of the property for other purposes including determination as to whether the land is agricultural land for the purpose of the SARFAESI Act. Thus, a classification of a property as a residential property even by a notification of the governmental authority including the valuation committee does not change the nature and character

of agricultural land and such land will not cease to be an agricultural land, especially, in the absence of any application for conversion of land from agricultural to non-agricultural. It is not the case that the agricultural lands cannot be taken as collateral security. The only bar is that the SARFAESI Act cannot be enforced on such properties. It is not as if the secured creditors have no other remedy to recover the dues. The sale deed in favour of the petitioner shows that the land is an agricultural property. Even in the sale notice the bank has specified the land as an agricultural land. Furthermore, a perusal of adangal extract clearly shows that the following plants were raised: 1) Coconut trees, 2) Sapotta trees, 3) Guava trees, 4) Neem trees 5) Teak trees and 6) Banana trees.

30. Notwithstanding the observations made by this Court in the preceding paragraphs, it has been held by this Court in the following cases:

i) Silicon Valley Auto Components Private Limited and another vs. Indian Bank and another reported in 2014 (5) CTC 764.

ii) M/s.Kaya Infraatech Projects rep. by its partner Mr. Renga Reddy vs. Authorised Officer, UCO Bank, Mid Corporate Unit reported in 2013 SCC Online Mad 32.

iii) D.Ravichandran vs. Manager, Indian Overseas Bank and another reported in 2006 SCC Online Mad 102.

iv) R.Kandasamy vs. The Chief Manager-cum-Authorised Officer, Andhra Bank, Coimbatore Main Branch and another reported in 2014 SCC Online Mad 9459.

v) Kalpesh P.C. Surana vs. Indian Bank, Teynampet Branch, 463, Anna Salai, Teynampet, Chennai - 600 018 reported in 2010 (3) CTC 287.

vi) M/s.S.L.T.Farms (P) Limited vs. The Authorised Officer ASREC (India) Limited Regarding and others reported in 2017 SCC Online Mad 31170.

vii) P.Elango vs. The Official Liquidator as the liquidator of Tan India Limited (In liquidation) and others reported in 2017 SCC Online Mad 27904.

viii) P.P.Yahu vs. The Malappuram District Co-operative Bank Limited and another reported in 2013 SCC Online Ker 19710.

ix) M/s.Sri Venkateswara Modern Rice Mill, Rep. by its Partner Mrs. V. Valli vs. Karnataka Bank Limited Rep. by its Branch Manager and others reported in 2017 SCC Online Mad 32612.

that the aggrieved party cannot approach this court under Article 226 of the Constitution to decide on a disputed question of fact as in the instant case whether the land is agricultural or not without exhausting the remedies under Section 17 of the SARFAESI Act under the forum ie., the Debts Recovery Tribunal.

31. The petitioner in the instant case has approached this Court after failing in the Debts Recovery Tribunal and being

insisted upon by the Debts Recovery Appellate Tribunal for a pre-deposit of Rs.20 Crores. In Neel Madhav Mining (P.) Ltd. v. Authorized Officer, Union Bank of India [2005 (127) Comp. Cas. 846 (AP) (DB)], it was held that

"the question whether the land in question is agricultural land or not requires to be decided on the basis of appropriate evidence to be led in the appeal. But, at the stage of considering interlocutory applications, the Tribunal, while deciding the question whether the creditor can be permitted to take possession of agricultural land or not, cannot totally ignore the plea of the debtor that the land is an agricultural land and impose a condition that such as the one imposed in the impugned order and imposing such a condition tantamounts to placing a premium on the constitutional right of the petitioner under Article 300A of the Constitution of India".

The Andhra Pradesh High Court, in the said decision, taking into consideration the facts and circumstances, modified the conditional order of interim stay by directing the petitioners therein to deposit an amount of Rs.20 Lakhs. Though the writ petitioner has sought for the relief in the form of setting aside the Debts Recovery Appellate Tribunal order of pre-deposit of Rs.20 Crores, the other plea of the party is to invoke Article 226 to go into the disputed question of fact. This Court is presently not inclined to step into the shoes of Debts Recovery Appellate Tribunal on the crucial issues of whether the land is agricultural in nature or not and consequently whether the SARFAESI Act is applicable to the land or not. Prima facie, it appears that the petitioner has a point in their favour. As far as waiver of pre-deposit of Rs.20 crores imposed by Debts Recovery Appellate Tribunal is concerned, it is appropriate to extract Section 18(1) of the Act which confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. Section 18(1) - Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less, provided also that the Appellate Tribunal may, for the reasons

to be recorded in writing, reduce the amount to not less than twenty-five percent of debt referred to in the second proviso. Thus there is an absolute bar for entertaining an appeal under Section 18 of the Act unless, the condition precedent, as stipulated, is fulfilled. The language of the said proviso is clear and admits of no ambiguity. The requirement of pre-deposit under Sub - Section (1) of Section 18 of the Act is also mandatory. As per the notice under Section 13(2) of the SARFAESI Act, the amount due and payable is Rs.54.18 crores. 25% of Rs.54.18 crores works out to Rs.13,54,50,000/- and the petitioner is directed to pay Rs.13,54,50,000/- (Rupees Thirteen Crores Fifty Four Lakhs Fifty Thousand Only) within a period of three months from the date of receipt of a copy of this order.

32. With the above observations, both the writ petitions are disposed of. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

The Debts Recovery Appellate Tribunal,
Chennai.

+2 CC to Mr.S. Elambharathi, Advocate sr 4044, 4043
+1 CC to Mr. Vinod Kumar, Advocate sr 4196.

WP.Nos.31073 and 31082 of 2019
WMP.Nos.31191 and 31201 of 2019

PP(CO)
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