

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

WP.No.9709 of 2019

ORDER :

1. This Writ Petition is filed by the petitioner-Bank assailing the order dt.15.11.2018 in IA.No.757 of 2016 in OA.No.173 of 2002 of the Debt Recovery Tribunal-I at Hyderabad.

2. A reading of the said order shows that on the 1st page thereof it is mentioned that the person present was Sri R.Narender, Registrar, but at page 2 of the order it is mentioned as if the Presiding Officer signed it.

3. We are of the opinion that the Registrar of the Debt Recovery Tribunal is not competent to hear and decide the application for condonation of delay in seeking restoration of the OA or to decide the OA and only the Presiding Officer duly appointed by a Notification issued by the Central Government under Section 4 of the Recovery of Debts and Bankruptcy Act, 1993, is competent to decide the applications or the OAs.

4. Though counsel for the 3rd respondent sought to contend that the petitioner has an alternative remedy of appeal before the Debt Recovery Appellate Tribunal under Section 20 of the said Act, since admittedly there was no Chairman appointed to the Debt Recovery Appellate Tribunal by the Central Government as of date, and the parties are forced to file appeal before the Debt

Recovery Appellate Tribunal, Kolkata and then proceed to the Debt Recovery Appellate Tribunal, Lucknow to secure interim orders, it cannot be said that the remedy of appeal is an affective alternative remedy in the facts and circumstances of the case.

5. Also, when the order is passed by an authority without jurisdiction, as in the instant case, existence of an alternative remedy is not a bar for entertaining the Writ Petition as held in **Whirlpool Corporation v. Registrar of Trademarks**¹.

6. None appears for other respondents for whom notices have been served by way of substituted service through publication in Dinamani Tamil Newspaper and Indian Express English Newspaper having circulation in Chennai.

7. Since the impugned order has not been passed by the Presiding Officer of the Debt Recovery Tribunal, but by its Registrar, apparently it is an order passed wholly without jurisdiction and is liable to be set aside.

8. Accordingly, this Writ Petition is allowed; the dt.15.11.2018 in IA.No.757 of 2016 in OA.No.173 of 2002 of the Debt Recovery Tribunal-I at Hyderabad, is set aside and the said I.A., is remanded back to the Debt Recovery Tribunal-I at Hyderabad; and the Presiding Officer of the said Tribunal is directed to decide the said IA, after issuing notices to both sides, in accordance with law. No order as to costs.

¹ 1998(8) SCC 1

9. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

12th February, 2020.

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