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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

W.P.No.17055 of 2021

Sunrise Chennai Distributors (P) Ltd.,
rep. by Selva Backyaraj, Director,
New No.135, Old No.80,
Habibullah Road,
T.Nagar, Chennai - 600 017.

.. Petitioner

Vs

1. The Registrar,
Debts Recovery Appellate Tribunal,
7th Floor, Additional Office Building,
Shastri Bhawan, Haddows Road,
Chennai - 600 006.
2. IDBI Bank,
rep. by Authorised Officer,
115, Anna Salai,
Opp. to Ashok Leyland,
Saidapet, Chennai - 600 015.
3. R.P.Raja Rajan Associates,
rep. by R.P.Rajarajan, R.Parthiban and P.Usha,
105, Dr.Radhakrishnan Road,
Mylapore, Chennai - 600 004.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records relating to the order dated 05.07.2021 made in AIR (SA) No.117 of 2021 on the file of the Debt Recovery Appellate Tribunal, Chennai, the first respondent herein and quash the same.

For Petitioner

: Mr.G.Vairava Subramanian



ORDER

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

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This is a petition challenging an order dated July 5, 2021 issued by the Debt Recovery Appellate Tribunal at Chennai by which the petitioner herein has been directed to pay court-fees at the rate that the borrower ought to pay when challenging any measure adopted by the respondent secured creditor.

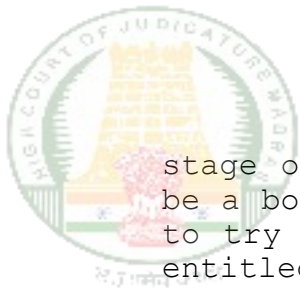
2. It is the petitioner's case that the petitioner was a tenant at the relevant property prior to the security being furnished by the borrower to the secured creditor. However, the petitioner says that the tenancy agreement is unregistered. The petitioner says that the petitioner is required to pay fees on the lines of Rule 13(2)(1)(d) of the Security Interest (Enforcement) Rules, 2002, but the appellate tribunal has treated the petitioner as a borrower and called upon the petitioner to pay at a higher rate.

3. It is evident from the impugned order that the appellate authority found that the petitioner was running a departmental store for eight years. The appellate authority, tentatively, held that the petitioner may have stepped into the shoes of the borrower and observed that any protection given to the petitioner would protect the defaulting borrower.

4. Rule 13 of the said Rules of 2002 specifies the quantum of fees to be paid for applying under Section 17 of the Act or under Section 18 thereof. In the table included as a part of sub-rule (2) of Rule 13 of the said rules, there is a clear distinction made between when the applicant is a borrower and when the applicant is some other aggrieved party. The petitioner says that the tribunal erred in holding that the petitioner should be treated as a borrower and not as some other party interested in the property.

5. The order sought to be challenged before the DRAT is dated March 18, 2021 passed by the Debts Recovery Tribunal-II, Chennai. Such order of the DRT holds that the petitioner cannot be evicted by the secured creditor as long as the petitioner continues to pay the fair rent at Rs.10,00,999/- to the respondent bank from February, 2021. It is in such circumstances that the DRAT, as a matter of fact, perceived the petitioner to be in the position of the borrower and required the higher fees to be paid.

6. An assessment as to the status of the appellant, in the backdrop of the facts, is tentatively made at the receiving



stage of an appeal and, if the appellant is ultimately found to be a bonafide tenant who may not have connived with the borrower to try and prejudice the secured creditor, the tribunal will be entitled to cause refund of the deposit in part or in full.

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7. In such view of the matter, the order impugned does not call for any interference as any perceived wrong occasioned to the petitioner herein is capable of being corrected in course of the appellate proceedings by the appellate tribunal itself.

8. W.P.No.17055 of 2021 is dismissed without entering into the merits of the matter. The petitioner will have to pay the court-fees as sought for the petitioner's appeal to be entertained and carried forward.

There will be no order as to costs. W.M.P.No.18088 of 2021 is closed.

Sd/-
Assistant Registrar (CCC)

// True Copy//

Sub Assistant Registrar

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To:

1. The Registrar,
Debts Recovery Appellate Tribunal,
7th Floor, Additional Office Building,
Shastri Bhawan, Haddows Road,
Chennai - 600 006.
2. The Authorised Officer,
IDBI Bank,
115, Anna Salai,
Opp. to Ashok Leyland,
Saidapet, Chennai - 600 015.

W.P.No.17055 of 2021

RLD(CO)
SU(18/08/2021)