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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.R.P.NO.1690 OF 2021
AND
C.M.P.NO.13086 OF 2021

1. V.Chola
2. V.Oyila

... Petitioners

-Vs-

1. M/s.Asset Reconstruction Company
(India) Ltd., Rep. by its Authorised Officer,
No.1-G, 1st Floor, Century Plaza,
No.560-562, Annasalai, Thenampettai,
Chennai - 600 018.
2. M/s.Puppy's Grand Swim & Slim,
Rep. by its Partner A.Veerabadran @ Sivanesan,
Theni - 625 531.
3. A.Veerabadran @ Sivanesan
4. A.V.Sivagnana Devi

... Respondents

PRAYER:-

Petition under Article 227 of the Constitution of India to set aside the order dated 28.06.2021 made in AIR (SA) 111/2020 on the file of Debt Recovery Appellate Tribunal, Chennai.

For the Petitioner : Mr.R.Kannan

ORDER

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

The petitioners say that the Debt Recovery Appellate Tribunal failed to take appropriate considerations into account while directing a pre-deposit to be made as a condition precedent to entertain the appeal on merits; and, thereafter



arbitrarily rejected the appeal out of hand on the ground that the pre-deposit had not been made.

2. According to the petitioners, they assert rights as one-third holder of an immovable property in respect of which a mortgage has been claimed by the secured creditor. The petitioners submit that, in such circumstances, the DRAT ought to have considered the extent of the petitioners' interest in the property while assessing the quantum of pre-deposit that should have been directed to be made.

3. There may be some basis to the petitioners' assertion in such regard. However, the aspect need not be conclusively pronounced upon, since it appears that such facet of the matter did not engage the attention of the DRAT in course of passing the order impugned dated June 28, 2021.

4. Accordingly, the order impugned dated June 28, 2021 by which AIR (SA) No.111 of 2020 has been dismissed by the DRAT, Chennai is set aside and the matter posted before the DRAT for a fresh consideration by referring to the particular issue that has been canvassed by the petitioners herein and recorded in this order. It is clarified that the observations herein should not influence the DRAT in any manner and the appellate tribunal is left free to indicate reasons even if the plea were to be rejected.

5. Since the merits of the legal issue have not been gone into and this order is made only upon noticing that the relevant aspect was not taken into consideration at all in the order impugned, no previous notice is issued to the first respondent secured creditor. However, the petitioners will be obliged to immediately forward copies of the petition and this order to the first respondent. The DRAT should also ensure that the first respondent is heard before any order is passed upon re-considering the matter in terms of this order.

C.R.P.No.1690 of 2021 is disposed of. C.M.P.No.13086 of 2021 is closed. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra



To

The Debt Recovery Appellate Tribunal
Chennai.

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Copy To:

The Debt Recovery Tribunal,
Madurai.

+2ccs to Mr.R.Kannan, Advocate, S.R.No.42849

C.R.P.NO.1690 OF 2021

SJ(CO)
PBS/01/09/2021