IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.No.21211 of 2024

Mr.M.S.Suburaman .. Petitioner

v.

1. The Registrar
   Debt Recovery Appellate Tribunal
   7th Floor, Shastri Bhavan
   Chennai 600 008

2. The Registrar
   Debt Recovery Tribunal
   Headquartery Road
   Gopalapuram, Coimbatore

3. Authorised Officer
   M/s Tamilnad Mercantile Bank Ltd.,
   Perumanallur Branch
   No.3/40A, Old NH-47
   Opp.to State Bank of India
   Perumanallur

4. Mr.Prabakaran
5. Mr.P.Arulselvam .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Debt Recovery Appellate Tribunal in I.A.No.95 of 2023 in A.IR (SA) 42 of 2023 dated 22.04.2024 and to set aside the said order and thereby direct the 2nd respondent to transfer the sum of Rs.36 lakhs lying to the credit of S.A.No.668 of 2021, on the file of the Debt Recovery Tribunal, Coimbatore, to the credit of A.IR (SA) 42 of 2023 before the DRAT, Chennai and consequentially to further direct the DRAT, Chennai to take the appeal in A.IR (SA) 42 of 2023 on record, to number the same and proceed further with the same in accordance with law.

For Petitioner :: Mr.GK.Muthukumaar

For Respondents :: Mr.A.Arokia Satheesh for R3

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

This writ petition is directed against the order passed by the Debts Recovery Appellate Tribunal, Chennai in I.A.No.95 of 2023 in A.IR (SA) 42 of 2023.

2. The petitioner/borrower, challenging the possession notice and the sale notice issued by the respondent bank, filed two independent sarfaesi applications in S.A.Nos.668 of 2021 & 572 of 2022 before the Debts Recovery Tribunal, Coimbatore. Both the applications were dismissed and

therefore the petitioner filed two independent appeals in A.IR 42 & 43 of 2023 before the Debts Recovery Appellate Tribunal. So far as the appeal filed in A.IR 42 of 2023 challenging the order in S.A.No.668 of 2021, it is the case of petitioner that pursuant to the direction of this Court, since the petitioner has already deposited the amount before the Debts Recovery Tribunal, Coimbatore, the petitioner filed an application in I.A.No.95 of 2023 for waiver of the statutory deposit required under Section 18(1) of the SARFAESI Act for entertaining the appeal by citing the amount that is lying to the credit of the proceedings before Debts Recovery Tribunal in pursuance of the direction of this Court. Originally time was given to the petitioner to seek transfer of deposit lying to the credit of proceedings before the Debts Recovery Tribunal. Since the amount could not be transferred for no fault of the petitioner, the petitioner sought for further time before the Debts Recovery Appellate Tribunal. However, the said request was declined by the impugned order by stating that there is no question of entertaining such plea to pass orders for transfer of the amount lying with the Debts Recovery Tribunal, to the Debts Recovery Appellate Tribunal. The Appellate Tribunal observed that it is not a collecting agent for borrower and therefore it is for the borrower to deposit the money under Section 18(1) of the SARFAESI Act and not for the Appellate Tribunal to collect money lying elsewhere. With the said observation, the waiver application was dismissed by order dated 22.04.2024.

3. This Court is unable to sustain the order passed by the Debts Recovery Appellate Tribunal. Section 18 of the SARFAESI Act reads as follows:-

> "18. Appeal to Appellate Tribunal.--(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under Section 17, may prefer an appeal along with 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.
>
> Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower.
>
> Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent 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 reason to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.
>
> (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."

4. The third proviso of the SARFAESI Act confers power on the Appellate Tribunal to reduce the amount upto twenty-five per cent of debt. In this case, the money is lying to the credit of proceedings before Debts Recovery Tribunal. Therefore, the request of petitioner is only to transfer the amount from the Debts Recovery Tribunal, as the Debts Recovery Tribunal is subordinate to the Appellate Tribunal. At least the Appellate Tribunal ought to have given time for getting an order for transfer of the amount from the Debts Recovery Tribunal to the Appellate Tribunal. The order passed by the Appellate Tribunal dismissing the application will not

stand to legal scrutiny, in view of the equitable principle which the Court or the Tribunal is expected to adopt or follow in matters like this. Therefore, the impugned order of the Appellate Tribunal is set aside and the Appellate Tribunal is directed to dispose of the appeal on merits and in accordance with law as expeditiously as possible, preferably not later than 12 weeks from the date of receipt of a copy of this order. Till such time the appeal is disposed of on merits, the petitioner shall not withdraw the amount lying to the credit of the Debts Recovery Tribunal. It is open to the Appellate Tribunal to pass appropriate orders as regards the deposit lying to the credit of proceedings before the Debts Recovery Tribunal. It is now represented that the bank has proceeded with the sale. It is also open to the petitioner to challenge the sale in the manner known to law. Till such time the appeal is disposed of by the Appellate Tribunal as directed above, the petitioner need not be dispossessed. The writ petition stands disposed of accordingly. Consequently, W.M.P.No.23161 of 2024 is closed. No costs.

Index : yes/no (S.S.S.R.,J.) (N.S.,J.)
Neutral citation : yes/no 31.07.2024
ss

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