THE HONOURABLE SRI JUSTICE BATTU DEVANAND

AND

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION No.3831 of 2024

O R D E R: *(Per Hon'ble Sri Justice Battu Devanand)*

The Writ Petition is filed under Article 226 of the Constitution of India seeking to issue a writ, order or direction more particularly one in the nature of the writ of Certiorari calling for the records in the order, dated 17.01.2024 in Appeal No.51 of 2023 passed by the Debts Recovery Appellate Tribunal at Kolkata declaring the same as arbitrary, unjust, illegal and violative of fundamental rights guaranteed under Articles 14 and 19(1)g of the Constitution of India and consequently, prayed to set aside the order, dated 17.01.2024.

2. **Case of the petitioner-company:**

[i] The petitioner herein is a Company registered under Companies Act, 2013 having its registered office and manufacturing unit at Sy.No.116, Anthakapalli Village, Pondur Road, Rajam, Srikakulam District. The petitioner engaged in manufacture of LTAB cables, Conductors, Merchant Exports/Imports for mineral, metals, textiles, Ferro Chrome etc. The respondent No.2 is the bank.

[ii] The petitioner herein has availed a credit facility from the respondent-bank in the year 2015 to a tune of Rs.23.00 Crores pursuant

to the sanction letter, dated 02.11.2015 and further, the said credit facilities were renewed in the year 2018 for an aggregating amount of Rs.23.00 Crores pursuant to the sanction letter, dated 26.07.2018.

[iii] The petitioner was regular in paying the loan and duly paid the instalments in accordance with the agreed terms and conditions. However, subsequently, due to certain unavoidable circumstances, the petitioner could not pay a few instalments. Consequently, the respondent-Bank classified the petitioner-company's loan account as a "Non-Performing Asset" (NPA).

[iv] The respondent-bank has initiated recovery proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the SARFAESI Act'] and accordingly, issued a notice, dated 07.05.2019 under Section 13(2) of the SARFAESI Act to the petitioner-company to which, the petitioner company has replied on 05.07.2019. Consequently, the respondent-bank issued notice under Section 13(4) of the SARFAESI Act on 20.08.2019 to the petitioner-company notifying the possession of the secured assets mortgaged in favour of the respondent-bank against the loan availed by the petitioner-company.

[v] Consequent to issuance of notice under Section 13(4) of the SARFAESI Act by the respondent-bank, the petitioner-company filed a Securitization Application in S.A.No.333 of 2019 on the file of the Debts

Recovery Tribunal, Visakhapatnam. By its order, dated 13.12.2019, the Debts Recovery Tribunal, Visakhapatnam granted stay on further proceedings pursuant to the notice, dated 20.08.2019 issued by the respondent-bank. Pursuant to the said order, the petitioner-company has paid Rs.5.00 lakhs on 09.01.2020 and Rs.5.00 lakhs on 13.03.2020. The respondent-bank has received the deposits (NFB cash margin FDS liquidation) of the petitioner-company to a sum of Rs.1,33,53,250/-.

[vi] Subsequently, the respondent-bank filed an Original Application vide O.A.No.68 of 2020 on the file of Debts Recovery Tribunal-II, Hyderabad for recovery of outstanding dues of Rs.19,02,81,669.51/- from the petitioner-company and the same is pending for consideration.

[vii] Pending S.A.No.333 of 2019, the petitioner-company filed I.A.No.1562 of 2020 undertaking to pay the outstanding dues in instalments, wherein, the respondent-bank filed its counter substantiating the status of the account, total dues of the petitioner, the earlier non-compliance of the petitioner and accordingly, has disputed the outstanding dues payable to the respondent-bank and sought for dismissal of the I.A.No.1562 of 2020.

[viii] By order, dated 27.11.2020, in I.A.No.1562 of 2020 & S.A.No.333 of 2019, the Debts Recovery Tribunal, Visakhapatnam directed the petitioner-company to pay the outstanding dues of

Rs.19,82,91,697/- along with future interest and expenses incurred under SARFAESI Act in respect of schedule property in 12 instalments from January 2021 payable bi-monthly (i.e., in every 2 months) into respondent-bank. The respondent-bank upon receiving three bi-monthly instalments from the petitioner-company, shall release the item No.2 property as mentioned in Rule 8(6) notice, dated 05.02.2020 which is mentioned in property No.4 of the possession notice, dated 20.08.2019 which is in the name of Smt.G.Susheela and release the title deeds/documents and discharge the mortgage on the property. Subsequently, after receiving another three bi-monthly instalments from the applicants/petitioners, the respondent bank shall release the item No.1 property as mentioned in Rule 8(6) notice, dated 05.02.2020 which is mentioned as property No.3 of the possession notice, dated 20.08.2019, which is on the name of Sri.G.Bhaskara Rao and release the concerned title deeds/documents discharge the mortgage on the property. If the petitioner-company failed to pay any two consecutive instalments (payable bi-monthly) as stated above into the respondent-bank, the stay so granted shall automatically stands vacated and the respondent-bank is at liberty to proceed further in the matter, in accordance with law.

[ix] In compliance of the order, dated 27.11.2020, the petitioner-company paid an amount of Rs.1,66,00,000/- on 27.01.2021, Rs.1,65,25,000/- on 30.03.2021 & Rs.1,64,75,000/- on 23.05.2021 amounting to a total of Rs.4,96,00,000/- and accordingly, requested the

respondent-bank to release the title deeds in respect of the property of Smt.G.Susheela and discharge the mortgage on the subject property. But, the respondent-bank didn't comply with the order, dated 27.11.2020.

[x] Aggrieved thereby, the petitioner-company filed a Miscellaneous Application vide M.A.No.19 of 2021 in S.A.No.333 of 2019 before the Debts Recovery Tribunal, Visakhapatnam, praying to direct the respondent-bank to release the subject property of Smt.Susheela in compliance of the order, dated 27.11.2020. Upon considering contentions of either side, vide its order, dated 16.07.2021 in M.A.No.19 of 2021, the Debts Recovery Tribunal, Visakhapatnam directed the respondent-bank to release the property of Smt.Susheela and to release the title deeds/documents and to discharge the mortgage of the said property.

[xi] Aggrieved by the order, dated 16.07.2021 in M.A.No.19 of 2021, the respondent-bank initially filed W.P.No.18462 of 2021 before the High Court of Andhra Pradesh. Thereafter, pursuant to the final order, dated 06.05.2022, in W.P.No.18462 of 2021 by the High Court of Andhra Pradesh, the respondent-bank preferred an appeal vide Appeal No.51 of 2023 on the file of the Debts Recovery Appellate Tribunal, Kolkota i.e,. the respondent No.1 herein.

[xii] By order dated 17.01.2024, the Debts Recovery Appellate Tribunal, Kolkata, allowed the appeal preferred in Appeal No.51 of 2023 by the respondent-Bank and set aside the order dated 27.11.2020 passed

by the Debts Recovery Tribunal, Visakhapatnam, in M.A.No.19 of 2021, holding that the petitioner-Company had failed to comply with the order dated 27.11.2020.

[xiii] Challenging the order passed in Appeal No.51 of 2023 by the Debts Recovery Appellate Tribunal, Kolkata, the petitioner-company filed the present Writ Petition.

3. **Case of the respondent-bank:**

[a] The respondent-bank stated that initially, the petitioner-company filed S.A.No.333 of 2019 before the Debts Recovery Tribunal, Visakhapatnam, challenging the possession notice, dated 20.08.2019 issued under Section 13(4) of SARFEASI Act. The petitioner-company also filed I.A.No.1911 of 2019 seeking stay of operation of all further proceedings relating to possession notice, dated 20.08.2019. By order, dated 13.12.2019, the Debts Recovery Tribunal, Visakhapatnam granted conditional stay and the conditions therein are not complied with by the petitioner-company. Consequently, the order, dated 13.12.2019 stood automatically vacated.

[b] Surprisingly, the petitioner-company filed another I.A.No.1562 of 2020 in S.A.No.333 of 2019, along with schedule memo, stating that the petitioner-company is ready to pay the outstanding dues as per the schedule, basing on the outstanding mentioned in O.A.No.68 of

2020, which was filed by the respondent-bank before the Debts Recovery Tribunal-II, Hyderabad for an amount of Rs.19,02,81,669.51/-.

[c] In reply to the I.A.No.1562 of 2020 filed by the petitioner in S.A.No.333 of 2019, the respondent-bank filed a detailed counter objecting that the petitioner-company is offering to pay only Rs.19,02,81,669.51/- out of the total liability of Rs.24,11,20,830.44/- as on date of 18.08.2019 without any compromise being arrived or the said amount is settled under O.T.S. and as such, the amount offered by the petitioner-company is unilateral. Thus, the petitioner-company has to pay total liability of Rs.24,11,20,830.44/- along with interest as on 18.08.2019. It is further contended that the petitioner may be directed to deposit an amount of Rs.4.00 Crores into the respondent-bank before seeking the payment schedule to show the *bona fides* of the petitioner and further submits that a mortgaged suit cannot be converted into an instalment decree and contended that the petitioner-company is trying to drag on the matter as much as possible without paying the due amount.

[d] However, without considering the calculation memo filed by the respondent-bank, the Debts Recovery Tribunal, Visakhapatnam, *vide* order, dated 27.11.2020 in I.A.No.1562 of 2020 in S.A.No.333 of 2019 directed the petitioner-company to pay the entire debt amount of Rs.19,82,91,697.84/- along with future interest and SARFAESI expenses including future interest to the respondent-bank in 12 equal nstalments

payable bi-monthly (i.e., payable in every 02 months) into the respondent bank, starting from January 2021 to deposited by the petitioner-company. Further directed the respondent-bank that upon receiving three (3) bi-monthly instalments, shall release the item No.2 property in notice, dated 05.02.2020 as mentioned *supra* and release the title deeds/documents and discharge the mortgage on the property and similarly directed to release remaining properties after receiving the respective bi-monthly instalments. In the meanwhile, the respondent-bank is directed not to take any coercive action under SARFAESI Act. If the petitioner-company failed to pay any two consecutive instalments to the respondent-bank, the respondent-bank is at liberty to proceed further, in accordance with law.

[e] The Debts Recovery Tribunal, Visakhapatnam, without considering the actual amount mentioned in the demand notice issued under Section 13(2) of the SARFAESI Act, erroneously directed the petitioner-Company to pay a sum of Rs.19,82,91,697.84/-, instead of Rs.23,61,18,452.33/-. The said amount appears to have been arrived at by relying upon the plaint in O.A.No.68 of 2020 filed by the respondent-Bank before the Debts Recovery Tribunal-II, Hyderabad, wherein the Bank had sought recovery of Rs.19,02,81,669.51/-, which represented other outstanding amounts payable by the petitioner-Company.

[f] It was observed in the order, dated 27.11.2020 that the petitioner-company has to pay subsequent interest from 01.11.2019 and

SARFAESI expenses including future interest to the respondent-bank and the same was also confirmed by the petitioner-company in its letter, dated 25.05.2021. In compliance with the order dated 27.11.2020, the petitioner-Company paid an amount of Rs.1,66,00,000/- to the respondent-Bank on 27.01.2021. However, the respondent-Bank, vide its communication dated 02.02.2021, informed the petitioner-Company that the instalment payable for January, 2021, as on 27.01.2021, was Rs.2,33,57,109.27/-, and that the petitioner had paid only Rs.1,66,00,000/-, leaving a balance of Rs.67,57,109.27/-, which is contrary to the order, dated 27.11.2020 passed by the Debts Recovery Tribunal, Visakhapatnam.

[g] The petitioner-company without paying the due amount of Rs.67,57,109.27/-, has paid an amount of Rs.1,65,25,000/- towards 2nd bi-monthly instalment even though the 2nd bi-monthly instalment as per the respondent-bank is Rs.2,33,58,929.62/- as on 27.03.2021. Thus, the petitioner committed default in payment of 2nd bi-monthly instalment along with due amount of Rs.67,57,109.27/- to the respondent-bank. The respondent-bank communicated the petitioner-company vide letter, dated 31.03.2021 for which, the petitioner replied on 05.04.2021 stating that the order of the D.R.T., Visakhapatnam, cannot be interpreted with E.M.Is fixed by the banks and refused to pay the difference amount. Thereafter, the petitioner-company paid 3rd bi-monthly instalment of Rs.1,64,75,000/- as against the actual due of Rs.2,21,35,526.04/- as on 27.05.2021 and addressed a letter, dated 25.05.2021 to the respondent-bank requesting

for release of title deeds relating to Smt.G.Susheela. The respondent-bank addressed a letter, dated 27.05.2021 by narrating all the defaults committed by the petitioner-company.

[h] In the meanwhile, the amount is not tallying and the respondent-bank filed an amendment petition in I.A.No.62/2021 in O.A.No.68 of 2020 before D.R.T-II, Hyderabad. Simultaneously, the respondent-bank filed Review Application No.2 of 2021 seeking review of the orders of D.R.T, Visakhapatnam with regard to quantum of amount. The respondent-bank submits that in view of the default of the petitioners and without prejudice to the rights of the respondent-bank to proceed further under SARFEASI Act, and to contest O.As., the respondent-bank sought permission of the D.R.T-Visakhapatnam to withdraw R.A.No.2 of 2021. But, the petitioner-company instead of complying the order, dated 27.11.2020 in I.A.No.1562 of 2020 in S.A.No.333 of 2020 passed by the Debts Recovery Tribunal, Visakhapatnam, filed a Miscellaneous Application vide M.A.No.19/2021 in the S.A.No.333 of 2020, seeking direction to release the documents by the respondent-bank.

[i] The D.R.T., Visakhapatnam, erroneously considered the outstanding amount mentioned in O.A.No.68 of 2020 pending before the D.R.T.-II, Hyderabad, wherein an amendment petition is still pending. Based on the said amount, the Tribunal, by order, dated 16.07.2021 in M.A.No.19 of 2021 in S.A.No.333 of 2019, directed the respondent-Bank

to release Item No.2 property mentioned in the Rule 8(6) notice dated 05.02.2020, which relates to Property No.4 in the possession notice dated 20.08.2019 and stands in the name of Smt. G. Susheela. The Tribunal further directed the respondent-Bank to release the title deeds/documents and discharge the mortgage over the said property forthwith.

[j] Being aggrieved by the order, dated 16.07.2021, in M.A.No.19/2021 in S.A.No.333 of 2019 passed by the D.R.T., Visakhapatnam, the respondent-bank filed a Writ Petition in W.P.No.18462 of 2021 before this High Court. After considering the submissions made by the respondent-bank, this Court on 01.09.2021 granted interim stay of operation of the order, dated 16.07.2021, passed by the D.R.T., Visakhapatnam. Simultaneously, an appeal has also been preferred before the Debts Recovery Tribunal, Kolkata. This Court, by a common order, dated 16.05.2022, in W.P.No.2437 of 2022 & 18462 of 2021, disposed of the Writ Petitions with a direction for expeditious disposal of the Appeal pending on the file of Debts Recovery Appellate Tribunal, Kolkata.

[k] Subsequently, Diary No.542 of 2021 filed by the respondent-Bank before the Debts Recovery Appellate Tribunal, Kolkata, was numbered as Appeal No.51 of 2023. After considering the submissions of the parties and the material available on record, the Debts Recovery Appellate Tribunal, Kolkata, allowed the appeal by its judgment dated

17.01.2024. Consequently, the impugned order dated 16.07.2021 passed by the Debts Recovery Tribunal, Visakhapatnam, in M.A.No.19 of 2021 arising out of S.A.No.333 of 2019, was set aside.

4. A reply affidavit has been filed by the petitioner-company wherein it is stated as follows:

[i] The petitioner-company stated that except the admitted facts made in the counter affidavit, it is denying all the allegations, contentions and statements made in the counter affidavit filed by the respondent-bank.

[ii] It is further submitted that the respondent-Bank challenged the order dated 16.07.2021 passed by the Debts Recovery Tribunal, Visakhapatnam, in M.A.No.19 of 2021 in S.A.No.333 of 2019, before the Debts Recovery Appellate Tribunal, Kolkata. By judgment dated 17.01.2024, only the said order dated 16.07.2021 was set aside. However, the initial order dated 27.11.2020 passed in I.A.No.1562 of 2020 & S.A.No.333 of 2019, whereby the petitioner-Company was directed to pay the outstanding dues of Rs.19,82,91,697.84/- along with future interest and SARFAESI expenses in instalments in proportionate share, was not set aside. Therefore, the said order, dated 27.11.2020 continues to remain in force and has attained finality.

[iii] The petitioner-company submitted that the respondent-bank has erroneously computed and levied interest against each nstalment in

contradiction with the nature and substance of the 'future interest' directed to be paid by the petitioner-company and neither the respondent-bank nor the respondent deponents herein has answered or disclosed the basis of this computation of interest and as such, the demand of interest against each instalment is *per se* erroneous and against the order, dated 27.11.2020 in I.A.No.1562 of 2020 & S.A.No.333 of 2019.

[iv] The petitioner-company further submitted that the Debts Recovery Tribunal, Visakhapatnam would have specifically directed the petitioner to pay only 'interest' instead of directing the petitioner to pay 'future interest', had the Tribunal arrived at a conclusion that the outstanding dues does not include the head of interest accrued as on the date of ascertaining the outstanding dues. Therefore, the stand of the respondent-bank in computing the future interest against each instalment without regards to the nature of interest directed to be paid by the Tribunal, is *per se* unsustainable under law.

[v] The impugned order is set-aside only on the premise that the Tribunal contrary to the initial order, dated 27.11.2020 has directed to recover the future interest in O.A. proceedings pending for adjudication and the Appellate Tribunal has not adjudicated on the nature of future interest, the discharge of instalments by the petitioner-company and other ancillary issues of validity of the initial order, dated 27.11.2020 ascertaining the outstanding dues and therefore, the respondent-bank

shall release the title deeds of the subject property in compliance of the order, dated 27.11.2020, as the petitioner-company already paid three instalments to the respondent-bank.

[vi] The petitioner-company submits that the respondent-bank's actions are aimed at defeating the purpose of instalment facility granted by the Debts Recovery Tribunal, Visakhapatnam vide order, dated 27.11.2020 which was attained finality. Pursuant to the payments made by the petitioner-company, if the properties are not released, the petitioner will be unable to generate funds for subsequent instalments and put the petitioner-company in irreparable loss.

5. Heard M/s.CKR Associates, appearing on behalf of the petitioner-bank and Mr.Sridhar Valiveti, learned counsel appearing on behalf of the respondent-bank. Learned counsel appearing on either side reiterated almost all the averments made in the affidavit, counter affidavit and reply affidavit filed on behalf of respective parties.

6. Learned counsel for the petitioner submits that the respondent-bank has challenged the order, dated 16.07.2021 passed by the Debts Recovery Tribunal, Visakhapatnam in M.A.No.19 of 2021 in S.A.No.333 of 2019 before the Debts Recovery Appellate Tribunal, Kolkata. But, the original order, dated 27.11.2020 passed by the Debts Recovery Tribunal, Visakhapatnam in I.A.No.1562 of 2020 & S.A.No.333 of 2019 is not challenged and the said order attained finality. Learned

counsel for the petitioner submits that in the order, dated 16.07.2021 in M.A.No.19 of 2021 in S.A.No.333 of 2019 passed by the Debts Recovery Tribunal, Visakhapatnam, it is categorically held that with regard to the calculation of future interest and SARFAESI expenses, the respondent-bank may calculate the exact future interest and can claim the same in the O.A. filed before the Debts Recovery Tribunal-II, Hyderabad and as such, the action of the respondent-bank levying interest against each instalment and insisting the petitioner for payment, is illegal and violation of the order, dated 27.11.2020 in I.A.No.1562 of 2020 & S.A.No.333 of 2019, which has attained finality. As such, the learned counsel for the petitioner contends that the order, dated 17.01.2023 passed by the Debts Recovery Appellate Tribunal in Appeal No.51 of 2023, is unsustainable under law and accordingly, the same is liable to be set-aside.

7. Learned counsel appearing for the respondent-bank would submit that the Debts Recovery Tribunal, Visakhapatnam, considered the liability at the rate of Rs.19,82,91,697.84ps and directed the petitioner to pay the outstanding amount along with future interest and SARFAESI expenses to the respondent-bank in 12 equal instalments commencing from June, 2021 as per order, dated 27.11.2020 in I.A.No.1562 of 2020 & S.A.No.333 of 2019. But, the petitioner instead of paying the instalment amount together with interest and SARFAESI expenses, paid only an amount of Rs.1,66,00,000/- and accordingly, committed default in

payment of instalments. He further contends that without complying the order of the Tribunal, dated 27.11.2020 passed by the Debts Recovery Tribunal, Visakhapatnam, the petitioner cannot demand for delivery of the documents. He would further submit that there is no irregularity or infirmity in the order passed by the Debts Recovery Appellate Tribunal, Kolkata, which is impugned in the present Writ Petition and accordingly, sought to dismiss the Writ Petition.

8. Now, the point arises for consideration is:

"1. Whether the respondent bank can challenge the order, dated 16.07.2021 passed by the Debts Recovery Tribunal, Visakhapatnam in M.A.No.19/2020 in S.A.No.333 of 2019, without challenging the order, dated 27.11.2020 passed by the Debts Recovery Tribunal, Visakhapatnam in I.A.No.1562 of 2020 & S.A.No.333 of 2019?

2. whether the petitioner has to pay the instalments as per the statement of account as on 01.11.2019 and the exact future interest is required to be calculated and claimed by the respondent-bank in the O.A. filed before the D.R.T-II, at Hyderabad as directed by the D.R.T., Visakhapatnam, in its order, dated 16.07.2021 in M.A.No.19 of 2020 to release the property document mentioned in Rule 8(6) notice, dated 05.02.2020?"

9. The facts submitted by both sides are not in dispute. The petitioner-company availed credit facility from the respondent bank for an amount of Rs.23.00 crores in the year 2015 which was renewed in the year 2018. As the account was not properly maintained, it was classified

as N.P.A. on 01.05.2019. Accordingly, on 07.05.2019, a notice under Section 13(2) of the SARFAESI Act was issued by following procedure. Aggrieved by the same, the petitioner filed a Securitization Application No.333 of 2019 before the Debts Recovery Tribunal, Visakhapatnam. By its order, dated 27.11.2020, the Debts Recovery Tribunal, Visakhapatnam in S.A.No.333 of 2019 along with I.A.No.1562 of 2020 passed the following order as extracted herein under:

> "*Hence the applicants/petitioners are directed to pay the entire debt due of Rs.19,82,91,697.84ps along with future interest and SARFAESI expenses including future interest to the respondent bank in 12 equal instalments payable bi-monthly (I.e., in every 2 months) into the respondent bank starting from January 2021 to be deposited by the applicants/ petitioners into the respondent bank and the respondent bank upon receiving 3 (three) bi-monthly instalments from the applicants/petitioners, shall release the item No.2 property as mentioned in rule 8(6) notice dated 05.02.2020 which is mentioned as property No.4 of possession notice dt. 20.08.2019 which is the property in the name of Smt.G.Susheela and release the concerned title deeds/documents and discharge the mortgage on the property and subsequently after receiving another 3(three) bi-monthly instalments from the applicants/petitioners, the respondent bank shall release the item No.1 property as mentioned in rule 8(6) notice dated 05.02.2020 which is mentioned as property No.3 of the possession notice, dated 20.08.2019, which is the property in the name of Sri G.Bhaskar Rao and release the concerned title deeds/documents discharge the mortgage on the property and the respondent bank may file part satisfaction Memo in OA.No.68/20 at DRT, Hyderabad on payment of instalments by the applicant. In the meanwhile, the respondent bank is directed not to take any coercive action under SARFAESI Act in respect of schedule mentioned and the respondent bank is further directed to receive the entire outstanding amount plus interest and expenses incurred under SARFAESI Act in respect of schedule property from the applicants/petitioners in 12 instalments commencing from January 2021 payable bi-monthly as stated supra, and after receiving the amounts bi-monthly from the applicants, the respondent bank shall have to release the properties of the applicants/petitioners as stated supra to the applicant/petitioner and discharge the personal mortgage and mortgage of the concerned property and deliver all the documents to the applicants.*
>
> *If the applicants/petitioners failed to pay any two consecutive instalments (payable bi-monthly) as stated above into the respondent bank,*

the stay so granted shall automatically stands vacated and the respondent bank is at liberty to proceed further in the matter in accordance with law.

After payment of the entire dues by the applicants, the respondent bank should withdraw all the cases filed against the applicants after receiving the entire amount."

10. In compliance of the said order, the petitioner paid an amount of Rs.1,66,00,000/- on 27.01.2021 and Rs.1,65,25,000/- on 30.03.2021 and Rs.1,64,75,000/- on 23.05.2021 towards bi-monthly instalments. As the petitioner complied the order of the D.R.T. Visakhapatnam by paying three bi-monthly instalments, the respondent bank should have returned the title deeds as directed by the Tribunal. As the respondent bank did not release the title deeds as directed by the Tribunal, the petitioner filed M.A.No.19 of 2021 in S.A.No.333 of 2019 before the Debts Recovery Tribunal, Visakhapatnam. The said M.A.No.19 of 2021 is decided by the Tribunal vide order, dated 16.07.2021 directing the respondent bank to release the item No.2 property as mentioned in rule 8(6) notice, dated 05.02.2020, which is mentioned as property No.4 in the possession notice, dated 20.08.2019 standing in the name of Smt. G.Susheela and release the concerned title deeds and discharge the mortgage on the said property since the petitioner company has complied with the order, dated 27.11.2020 in I.A.No.1562 of 2020 & S.A.No.333 of 2019.

11. The Tribunal, in its order, dated 16.07.2021 in M.A.No.19 of 2021 clarified that the respondent bank may calculate the future interest and it can claim the future interest in the proceedings in O.A.No.68/2020

pending before the D.R.T., Hyderabad and the SARFAESI expenses incurred can be claimed at the end of the last instalment to be paid by the applicant. As such, it is clear that the intention of the Debts Recovery Tribunal, Visakhapatnam is that the petitioner has to pay the entire due of Rs.19,82,91,697.84ps in 12 equal instalments payable bi-monthly as per the statement of account as on 01.11.2019 and the exact future interest is to be calculated and recovered in the proceedings pending before the D.R.T., Hyderabad in S.A.No.68/2020 and also the SARFAESI expenses has to be recovered from the petitioner at the time of receipt of the last loan instalment payment.

12. In view of the above, it is crystal clear that the respondent bank is not supposed to calculate the future interest and add it with the bi-monthly instalments amounts ought to be paid by the petitioner company in compliance of the order, dated 27.01.2020 in I.A.No.1562/2020 & S.A.No.333 of 2019.

13. Admittedly, the said order has attained finality in view of the reason that it was not challenged by both the parties. If the respondent has any grievance against the said order, the same has to be challenged before the Debts Recovery Appellate Tribunal, Kolkata. The Debts Recover Tribunal, Visakhapatnam has clarified in its order, dated 16.07.2021 in M.A.No.19 of 2021 that the petitioner has to pay the debt due of Rs.19,82,91,697.84ps in 12 equal instalments payable bi-monthly

as per the statement of account as on 01.11.2019, and the respondent bank can claim the exact future interest in the proceedings pending before the D.R.T., Hyderabad in O.A.No.68/2020 and also it is clarified that the SARFAESI expenses incurred should be collected at the end of the last instalment to be paid by the petitioner. Therefore, challenging the said order before the Debts Recovery Appellate Tribunal, Kolkata by filing Appeal No.51 of 2021 is untenable and unsustainable. The Debts Recovery Appellate Tribunal, Kolkata, without considering all these aspects has set-aside the reasoned order, dated 16.11.2021 in M.A.No.19/2021 in S.A.No.333 of 2019 passed by the Debts Recovery Tribunal, Visakhapatnam, erroneously, through the Debts Recovery Appellate Tribunal, Kolkata noted the fact that the order, dated 27.11.2020 passed by the Debts Recovery Tribunal, Visakhapatnam was not challenged by the parties and it has attained finality.

14. The Debts Recovery Appellate Tribunal, Kolkata ought to have considered that the respondent bank misinterpreted the order, dated 27.11.2020 of the Debts Recovery Tribunal, Visakhapatnam and after receipt of three (03) bi-monthly instalments paid by the petitioner in compliance of the said order also and did not release the documents of the property under mortgage as directed in the order, dated 27.11.2020. The Debts Recovery Tribunal, Visakhapatnam clarified the position in order, dated 16.11.2021 and made it clear that the future interest can be calculated and claimed in the proceedings in OA.No.68/2020 pending

before the D.R.T., Hyderabad and SARFAESI expenses to be calculated at the time of payment of the last instalment. In our view, the order, dated 17.01.2024 passed by the Debts Recovery Appellate Tribunal, Kolkata is misconceived and failed to understand the intention of the Debts Recovery Tribunal, Visakhapatnam while passing the order, dated 16.11.2021 in M.A.No.19 of 2021 which is a reasoned order and it was passed to protect the interest of both parties and to meet the ends of justice. It is to be noted that the petitioner is not denying its liability to pay debt to be determined by the D.R.T., Hyderabad with future interest to be calculated by the D.R.T., Hyderabad in the pending proceedings in O.A.No.68 of 2020 and SARFAESI expenses along with the payment of the last instalment.

15. For the above said reasons, in our considered opinion, the order, dated 17.01.2024 in Appeal No.51 of 2023 passed by the Debts Recovery Appellate Tribunal, Kolkata is unsustainable and unjustified and accordingly, it is liable to be set-aside.

16. Accordingly, the Writ Petition is allowed with the following directions:

[i] The order, dated 17.01.2024 passed by the Debts Recovery Appellate Tribunal, Kolkata in Appeal No.51 of 2023 is hereby set-aside and the order, dated 16.11.2021 in M.A.No.19 of 2021 in S.A.No.333 of 2019 passed by the Debts Recovery Tribunal, Visakhapatnam is confirmed.

[ii] The respondent-bank shall return the property documents and release the mortgage deeds as directed by the Debts Recovery Tribunal, Visakhapatnam in its order, dated 16.11.2021 in M.A.No.19/2021 and order dated 27.11.2020 in I.A.No.1562/2020 & S.A.No.333 of 2019, on payment of bi-monthly instalments to be paid by the petitioner in terms of the order, dated 27.11.2020.

[iii] The respondent-bank can claim the future interest and SARFAESI expenses as directed by the Debts Recovery Tribunal, Visakhapatnam in its order, dated 16.11.2021 in M.A.No.19/2021 in S.A.No.333 of 2019.

17. There shall be no order as to costs.

Consequently, miscellaneous applications, pending if any, shall stand closed.

JUSTICE BATTU DEVANAND

JUSTICE TUHIN KUMAR GEDELA

Date: 29/10/2026
PKR

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

AND

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

11

WRIT PETITION No.3831 of 2024

Date: 29/10/2026
PKR