

CASE NO.:
Appeal (civil) 1328 of 2008

PETITIONER:
K. KRISHNA KUMAR

RESPONDENT:
DEBTS RECOVERY TRIBUNAL, ERNAKULAM & ORS

DATE OF JUDGMENT: 15/02/2008

BENCH:
ALTAMAS KABIR & J.M. PANCHAL

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL No.1328 OF 2008
[Arising out of SLP(C)5783 of 2006]

Delay condoned.
Leave granted.

The appellant claims to be interested in the property which was the subject matter of the proceedings before the Debt Recovery Tribunal, Ernakulam. Aggrieved by an order passed by the Recovery Officer, the appellant filed an appeal, being No.2/2005, before the said tribunal, which according to the appellant is the second appeal preferred on account of the fact that the earlier appeal had not been registered. The said appeal was filed with out payment of the requisite court fees, and after considering the submissions regarding the question as to whether such court fees were payable, the tribunal held that the said court fees were payable and, accordingly, dismissed the appeal.

The appellant, thereafter, filed a writ petition before the Kerala High Court questioning the order passed by the tribunal. The High Court without going into the question raised, directed sale of the property at the earliest with observations that if the appellant had any share in the property, he would be entitled to the same from the sale proceeds after such sale.

The said order has been challenged in this appeal, and it appears that by our order dated 3/3/2006, we had recorded that the appellant was ready and willing to pay the court fees as demanded by the Debts Recovery Tribunal, and that the same would be deposited within two weeks from the date of the order. Subsequently, on 24/03/2006 when the matter was taken up, it was submitted that the entire court fees, as demanded had been deposited by the appellant by cheque dated 20/03/2006, which fact is admitted by the bank.

In such circumstances, we are inclined to allow the appeal and besides setting aside the order passed by the High Court, we are also inclined to restore the appeal before the Debts Recovery Tribunal.

Having regard to the above, we allow the appeal and set aside the order passed by the High Court and further direct that Appeal No.2/2005 and any other connected appeal be restored for determination on merits.

There will be no orders as to costs.