

The Housing Finance Institutions Debt Recovery Appellate Tribunal (Procedure) Rules, 2002

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Rule

THE-HOUSING-FINANCE-INSTITUTIONS-DEBT-RECOVERY-APPELLATE of 2002

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1814.

No. G.S.R. 338 (E), dated 8th May, 2002. - In exercise of the powers conferred by Section 54-A of the National Housing Bank Act, 1987 (53 of 1987), the Central Government hereby makes the following rules, namely :

Chapter 1 Preliminary

1. Short title and commencement.

(1) These rules may be called the Housing Finance Institutions Debt Recovery Appellate Tribunal (Procedure) Rules, 2002.,

2. Definitions.

- In these rules, unless there is anything repugnant to the subject or context. (a) "Act" means the National Housing Bank Act, 1987 (53 of 1987); (b) "agent" means a person duly authorised by a party to present application or to give reply on its behalf to the Appellate Tribunal; (c) "appeal" means an appeal made to the Appellate Tribunal under Section 36-S of the Act; (d) "appellant" means a person or an approved institution making an appeal to the Appellate Tribunal under Section 36-S of the Act; (e) "Appellate Tribunal" means an Appellate Tribunal established by Central Government under Section 36-I of the Act; (f) "legal practitioner" shall have the same meaning as assigned to it in the Advocates Act, 1961 (25 of 1961); (g) "Presiding Officer" means the Presiding Officer of an Appellate Tribunal; (h) "recovery officer" means an officer appointed by the Central Government under Section 36-D of the Act; (i) "Registrar" means the registrar of an Appellate Tribunal and includes an officer of such Appellate Tribunal who is authorised by the Presiding Officer to function as Registrar; (j) "Registry" means the Registry of the Appellate Tribunal; (k) all other words and expression used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Sitting of Appellate Tribunal.

- An Appellate Tribunal shall hold its sittings either at headquarters or at such other place falling within its jurisdiction as it may consider convenient.

4. Language of Appellate Tribunal.

(1) The proceedings of the Appellate Tribunal shall be conducted in English or Hindi. (2) No appeal, reference, application, representation, document or other matter contained in any language other than English or Hindi, shall be accepted by the Appellate Tribunal, unless the same is accompanied by a true copy of translation thereof in English or Hindi.

5. Procedure for filling appeals.

(1) A memorandum of appeal shall be presented in the prescribed form by the appellant either in person to the Registrar of the Appellate Tribunal within whose jurisdiction his case falls or shall be sent by registered post addressed to such Registrar. (2) Where the appellant is an approved institution, a memorandum of appeal may be preferred, (a) by one or more legal practitioners authorised by such approved institution; or (b) by any of the officers of such approved institution to act as Presenting Officers, and every person so authorised may present the appeal before the Appellate Tribunal. (3) Where the appellant is other than an approved institution, he may prefer an appeal in person or by his agent or by a duly authorised legal practitioner. (4) An appeal sent by post under sub-rule (1) shall be deemed to have been presented to the Registrar on the day on which it is received in the officer of the Registrar. (5) The appeal under sub-rule (1) shall be presented in four sets in a paper book along with an empty file size envelope bearing full address of the respondent and where the number of respondents are more than one, then sufficient number of extra paper

book together with empty file size envelopes bearing full addresses of each respondents shall be furnished by the appellant.

6. Presentation and scrutiny of memorandum of appeal.

(1) The Registrar shall endorse on every appeal the date on which it is presented under Rule 5 or deemed to have been presented under that rule and shall sign endorsement. (2) If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number. (3) If an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not formal in nature, the Registrar, may allow the appellant such time to rectify the defect as he may deem fit. (4) If the concerned appellant fails to rectify the defect within the time allowed in sub-rule (3), the Registrar may by order and for reasons to be recorded in writing, decline to register such memorandum of appeal. (5) An appeal against the order of the Registrar under sub-rule (4) shall be made within fifteen days of making order to the Presiding Officer concerned in his chamber, whose decision, shall be final.

7. Place of filing memorandum of appeal.

- The memorandum of appeal shall be filed by the appellant with the Registrar of the Appellate Tribunal having jurisdiction in the matter.

8. Payment of Fee.

- Every memorandum of appeal under Section 36-S of the Act shall be accompanied with a prescribed fee and such fee may be remitted either in the form of crossed demand draft drawn on a nationalised bank in favour of the Registrar, Housing Finance Institutions Debt Recovery Appellate Tribunal.....(Place) and payable at the station where the Registrar's office is situated or remitted through a crossed Indian Postal Order drawn in favour of the Registrar, Housing Finance Institutions Debt Recovery Appellate Tribunal.....(Place) and payable in Central Post Office of the station where the Appellate Tribunal is located.

9. Deposit of amount of debt due.

- Where an appeal is preferred by a borrower such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy five per cent of the amount of debt so due from him as determined by the recovery officer under Section 36-F of the Act : Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 36-T of the Act.

10. Contents of memorandum of appeal.

(1) Every memorandum of appeal filed under Rule 5 shall set forth concisely under distinct heads, the grounds of such appeal without any argument or narrative and such grounds shall be numbered consecutively and shall be typed in double line space on one side of the paper. (2) It shall not be necessary to present separate memorandum of appeal to seek interim order or direction if in the memorandum of appeal, the same is prayed for.

11. Documents to accompany memorandum of appeal.

(1) Every memorandum of appeal shall be in quadruplicate and shall be accompanied with two copies (at least one of which shall be certified copy) of the order of the recovery officer against which the appeal is filed. (2) Where the parties to the appeal are being represented by an agent, documents authorising him to act such agent shall also be appended to the appeal: Provided that where an appeal is filed by a legal practitioner, it shall be accompanied by a duly executed Vakalatnama. (3) Where an approved institution is being represented by any of its officer to act as Presenting Officer before the Appellate Tribunal the document authorising him to act as Presenting Officer shall be appended to the memorandum of appeal.

12. Plural remedies.

- A memorandum of appeal shall not seek relief based on more than a single cause of action in one single memorandum of appeal unless the relief prayed for are consequential to one another or arising from the same order of the recovery officer.

13. Endorsing copy of appeal to the respondents.

- A copy of the memorandum of appeal and paper book shall be served on each of the respondents, as soon as they are filed, by the Registrar by registered post.

14. Filing of reply to the appeal and other documents by the respondent.

-(1) The respondent may file four complete sets containing the reply to the appeal along with documents in a paper book form with the Registry within one month of the service of the notice on him of the filing of the memorandum of appeal. (2) The respondent shall also endorse one copy of the reply to the appeal along with documents as mentioned in sub-rule (1), to the applicant. (3) The Appellate Tribunal may, in its discretion on application by the respondent, allow the filing of reply referred to in sub-rule (1), after the expiry of the period referred to therein.

15. Who may join as respondent.

(1) In an appeal by a person other than an approved institution, the approved institution who has to recover any debts from the person under Section 36-E of the Act, before the recovery officer against

whose order the appeal has been preferred, shall be made the respondent to the appeal.(2)In an appeal by an approved institution the other party shall be made the respondent to the appeal.

16. Date and place of hearing to be notified.

- The Appellate Tribunal shall notify the parties the date and place of hearing of the appeal in such a manner as the Presiding Officer may be general or special order direct.

17. Dress Rules for the Presiding Officer and for the Representatives of the Parties.

(1)Summer dress for the Presiding Officer shall be white pant with black coat and a black tie or a buttoned-up black coat. In winter, striped or black trousers may be worn in place of white trousers. In the case of female Presiding Officers, however, the dress shall be black coat over white saree.(2)The dress for the agent of the parties (other than a relative or regular employee of the appellant or respondent) appearing before the Appellate Tribunal shall be the following, namely:(a)in the case of a male, a suit with a tie or buttoned-up coat over a pant or national dress that is a long buttoned-up coat on dhoti or churidar pyjama. The colour of the coat shall, preferably, be black.(b)In the case of female, black coat over white or any other sober coloured saree.(c)Where, however, the agent belong to a profession like that of lawyers or a chartered accountants and they have been prescribed a dress for appearing in their professional capacity before any Court, Appellate Tribunal, Tribunal or other such authority, they may, at their option, appear in that dress, in lieu of the dress mentioned above.(3)All other persons appearing before the Appellate Tribunal shall be properly dressed.

18. Order to be signed and dated.

(1)Every order of the Appellate Tribunal shall be in writing and shall be signed and dated by the Presiding Officer of the Appellate Tribunal.(2)The order shall be pronounced in open Court.

19. Publication of orders.

- The orders of the Appellate Tribunal as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the Appellate Tribunal may lay down.

20. Communication of orders.

- Every order passed on an appeal shall be communicated to the appellant and to the respondent and to the recovery officer concerned either in person or by registered post free of cost.

21. Fee for inspection of records and obtaining copies thereof.

(1) A fee of rupees twenty for every hour or part thereof of inspection subject to a minimum of rupees one hundred shall be charged for inspecting the records of a pending appeal by a party thereto. (2) A fee of rupees five for a folio or part thereof not involving typing and a fee of rupees ten for a folio or part thereof involving typing of statement and figures shall be charged.

22. Orders and directions in certain cases.

- The Appellate Tribunal may make such order or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

23. Working hours of the Appellate Tribunal.

(1) Except on Saturday, Sundays and other public holidays, the officers of the Appellate Tribunal shall, subject to any other order made by the Presiding Officer, remain open daily from 10 a.m. to 6.00 p.m. but no work, unless of an urgent nature, shall be admitted after 4.30 p.m. on any working day. (2) The sitting hours of the Appellate Tribunal shall ordinarily be from 10.30 a.m. and 1.00 p.m. and 2.00 p.m. to 5.00 p.m. subject to any order made by the Presiding Officer.

24. Effect of holiday.

- Where the last day for doing any act falls on a day on which the office of the Appellate Tribunal is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which that office opens.

25. Powers and functions of the Registrar.

(1) The Registrar shall have the custody of the records of the Appellate Tribunal and shall exercise such other functions as are assigned to him under these rules or by the Presiding Officer by a separate order in writing. (2) The official seal shall be kept in the custody of the Registrar. (3) Subject to any general or special directions by the Presiding Officer, the seal of the Appellate Tribunal shall not be affixed to any order, summons or other process, save under the authority in writing from the Registrar. (4) The seal of the Appellate Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.

26. Additional powers and duties of Registrar.

- In addition to the powers conferred elsewhere in these rules, the Registrar shall have the following powers and duties subject to any general or special orders of the Presiding Officer, namely- (1) to receive all appeals and other documents; (2) to decide all questions arising out of the scrutiny of the appeals before they are registered; (3) to require any appeal presented to the Appellate Tribunal to be amended in accordance with the rules; (4) subject to the directions of the Presiding Officer to fix date

of hearing of the appeals or other proceedings and issue notices thereof;(5)direct any formal amendments or records;(6)to order grant of copies of documents to parties to proceedings;(7)to grant leave to inspect the record of Appellate Tribunal;(8)dispose of all matters relating to the service of notices of other process, application for the issue of fresh notice of for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication the notices by way of advertisements in the newspapers;(9)to requisition records from the custody of any Court or other authority.

27. Seal and emblem.

- The official seal and emblem of the Appellate Tribunal shall be such as the Central Government may specify.