

Court No. - 6

Case :- WRIT - C No. - 38939 of 2023

Petitioner :- M/S Pollycool Appliances Pvt Ltd

Respondent :- UCO Bank And 5 Others

Counsel for Petitioner :- Ankur Gupta, Atul Kumar Shahi

Counsel for Respondent :- Ajay Shankar

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Present writ petition has been filed by the petitioner inter alia for the following reliefs:

“a) issue a writ, order or direction in the nature of Certiorari quashing the status quo order passed by the Ld. Debts passed by the Ld. Debts. Recovery Appellate Tribunal, Allahabad in Appeal Diary No. 627 of 2023 vide order dated 30/05/2023.

b) issue a writ, order or direction in the nature of Mandamus commanding the Respondent Bank to deliver the peaceful possession of the property in question to the petitioner in pursuance of the Sale certificate issued by the Respondent Bank.

c) issue a writ, order or direction in the nature of Mandamus directing the Ld. Debts Recovery Appellate Tribunal, Allahabad to dismiss the Appeal Diary No. 627 of 2023 and comply the order dated 30/05/2023.”

2. Brief facts of the case are that respondent no. 3 borrower availed several loan facilities from respondent no. 2 Bank, failed to liquidate the dues, therefore, recovery auction proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002¹. Accordingly, respondent no. 2 had put the immovable property of respondent no. 3 on an auction wherein the petitioner was declared as successful bidder in e-auction and accordingly a sale certificate dated 10.03.2021 has been issued by respondent no. 2.

3. After issuance of e-auction notice dated 20.01.2021, the respondent no. 3 approached the respondent Bank for One Time Settlement and had deposited Rs. 52 Lakh as token money for all three accounts, i.e., M/s Sai Telematics, M/s Raviputram Oil Mills and Housing Loan in the name of

¹ The Act, 2002

respondent no. 4. The respondent Bank adjusted Rs. 52 Lakh in the account of M/s Sai Telematics after obtaining a decree from the Debt Recovery Tribunal, Lucknow².

4. The respondent no. 2 had challenged the entire recovery proceedings in the account of M/s Raviputram Oil Mills only and filed Securitisation Application no. 780 of 2019 before the DRT, Lucknow. The aforesaid application was dismissed on 02.05.2023 after hearing all the parties. The respondent no. 3 filed an appeal before the learned Debt Recovery Appellate Tribunal at Allahabad being Appeal Diary No. 627 of 2023³, under Section 18 of the Act, 2002, which has been entertained and an order dated 30.05.2023 has been passed, which is impugned in the present writ petition.

5. Learned counsel for the petitioner submits that as per Section 18 of the Act, 2002 it is mandatory for the appellate authority to direct borrower to deposit at least 50% amount of debt dues against the secured creditor along with the interest accrued on the date of filing of appeal. Accordingly, the appellate tribunal vide order dated 30.05.2023 directed the respondent no. 3 / borrower to deposit 35% of total dues within four days, otherwise the appeal shall stand dismissed for non-compliance of the order of pre-deposit. The learned Tribunal, before deposition of pre-deposit amount and without giving any opportunity of hearing to all the parties, has proceeded to direct the parties to maintain status quo over the property in question as it existed on the said date.

6. Learned counsel for the petitioner, placing emphasis upon the second proviso to Section 18 of the Act, 2002, submits that no appeal can be entertained unless the borrower has deposited with the appellate authority 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debt Recovery Tribunal,

² DRT

³ M/s Raviputram Oils Mills v. UCO Bank & Ors.

whichever is less. It further stipulates that the appellate authority may, for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt, referred to in the second proviso, i.e., 25% of the amount of debt due from the borrower, as claimed by the secured creditor or determined by the Debt Recovery Tribunal. He further submits that by order dated 30.05.2023 the contention of the appellant, i.e., respondent no. 3 herein has been recorded wherein it has been stated that he has deposited Rs. 52 lakh with respondent Bank and was required to deposit Rs. 52,69,009/- i.e. 25% of the outstanding amount for which he presented a demand draft of Rs. 19,900/- in favour of the Registrar, DRAT, Allahabad. After noting the aforesaid contention the appellate authority has ordered the appellant therein i.e. respondent no. 3 to deposit at least 35% of the demand as raised by the Bank under Section 13 of the Act, 2002 within four days from the said date i.e. by 30.05.2023. The draft deposited was returned and remaining amount of 35% was directed to be deposited consolidatedly within four days from that date. It has also been mentioned that if the said amount is deposited, waiver application would be treated to have been allowed, otherwise the appeal shall stand dismissed for non-compliance of pre-deposit. By the same order, after issuance of notice to the remaining respondents by two modes, the court has proceeded to direct the parties to maintain status quo as it existed on that date.

7. Learned counsel for the petitioner submits that the appeal should not have been entertained unless and until the pre-deposit as required under Section 18 of the Act, 2002 was made by the appellant therein/ respondent no. 3. He further submits that no amount as required under Section 18 of the Act, 2002 has been deposited as the amount of Rs. 52.50 lakh as contended by the borrower before the appellate tribunal to have been deposited was shown in the account of M/s Sai Telematics which is evident from Page-95 of the petition, a letter dated 09.02.2023

written by the Bank to M/s Sail Telematics whose proprietor is respondent no. 4. Thus, in the order dated 30.05.2023 the contention as raised by the appellant/ respondent no. 3 regarding deposit of Rs. 52.50 lakh for the account from M/s Raviputram Oil Mills who had filed the appeal, is incorrect.

8. The learned appellate tribunal by order dated 05.06.2023 holding that the appellant has already deposited Rs. 52.50 lakh with the Bank as mentioned in the order dated 30.05.2023 and has deposited Rs. 21,26,612/- through demand draft on 05.06.2023, thus a total amount of Rs. 73,76,612/- has been deposited against the demand of Rs. 2,10,76,033.46 which is 35% of the amount due as claimed by the Bank in the proceedings under Section 13(2) of the Act, 2002. The matter was listed for 05.09.2023. The afore-finding of the court regarding the deposition i.e. 35% of the amount due as claimed by the Bank is also incorrect in view of the letter placed at Page-95 of the writ petition, as already mentioned. He further submits that even if it is accepted that the borrower has deposited total of Rs. 73,76,612/- as mentioned in the order dated 05.06.2023 passed by the appellate tribunal, 35% of the amount due as claimed by the secured creditor or determined by the DRT has to be calculated not just from the sum specified in the demand notice as raised by the Bank under Section 13(2) of the Act, 2002 alone but the interest agreed thereupon on the date of filing of appeal, needs to be reckoned for working out the amount of pre-deposit in terms of second proviso of Section 18 of the Act, 2002. In support of his submissions, learned counsel for the petitioner has relied upon a judgement of this Court in the cases of **Nathi Lal Rathore v. Debts Recovery Appellate Tribunal And Others**⁴ and a judgement of the Supreme Court in the case of **M/s Sidha Neelkanth Paper Industries Private Limited & Another v. Prudent ARC Limited & Others**⁵.

4 2016(10) ADJ 527

5 AIR 2023 SC 368 : AIR Online 2023 SC 15

Thus, the pre-deposit as required under Section 18 of the Act, 2002 has not been made and thus the appeal should not have been entertained to the extent of passing interim orders in favour of the borrower that too without hearing other parties.

9. The demand notice as sent to the borrower by the Bank dated 11.06.2019 wherein the Bank has directed the borrower to pay a sum of Rs. 2,10,76,033.46 as on 11.06.2019 with further interest and accidental expenses, costs as stated in terms of notice under Section 13(2) of the Act, 2002. In the objections filed by the respondent UCO Bank total outstanding as per notice under Section 13(2) of the Act, 2002 is Rs. 3,70,14,870/-, (interest up to 30.06.2023) and 35% of this amount comes to Rs. 1,29,55,204.50). Thus, in sum and substance, the appeal which is not in existence, as the pre-deposit which is mandatory as per Section 18 has not been deposited by the borrower, therefore, no interim orders in favour of the petitioner could have been passed in a non-existent appeal.

10. Learned counsel for the respondent Bank has agreed with the submissions made by learned counsel for the petitioner, therefore, the same are not being repeated for the sake of brevity.

11. Learned counsel for the respondent no. 3, borrower, has raised an objection regarding maintainability of the writ petition as the petitioner and Bank have already filed stay vacation application and the date has been fixed for hearing of the main appeal. He further submits that possession of the property in question is still with the borrower and as the sale notice has not been served upon the borrower before publication of the same in the newspaper which is a clear violation of Rule 8(6) of the Security Interest (Enforcements) Rules, 2002, interim order has been granted. He further submits that in the order dated 30.05.2023 learned counsel for the borrower contended that the

appellant had already deposited Rs. 52.50 lakh as the same was kept in no lien account and the same has been adjusted in the loan account of M/s Sai Telematics without notice to the petitioner, about which he had no knowledge. Subsequently, in the order dated 05.06.2023 the Court has proceeded to entertain the appeal after holding that the respondent no. 3 borrower, has deposited 35% of the amount due as claimed by the Bank under Section 13(2) of the Act, 2002. Therefore, there is no illegality in the order dated 30.05.2023 which has been confirmed by order dated 05.06.2023 which is under challenge.

12. Learned counsel for the appellant has not prayed for quashing of the entire proceedings of appeal as filed by the borrower. He further submits that the contention of learned counsel for the petitioner that the appeal should not have been entertained without pre-deposit and the order dated 30.05.2023 directing the parties to maintain status quo could not have been passed in the non-est appeal, he has already raised objections by filing stay vacation application on 19.07.2023 and the stay vacation application has also been filed by the respondent Bank on 10.08.2023 thus there was no occasion to file the writ petition before this Court when the main appeal is listed for hearing.

13. Emphasizing upon Page-71 of the writ petition, learned counsel for the respondent no. 3 submits that the details of deposit have already been mentioned in the memo of appeal, after which a report was called wherein urgency application, waiver application, stay application, exemption application were also filed. The scrutiny report, if seen from the records of the case would reveal that the defect regarding condition of pre-deposit is not fulfilled, was not found. Said fact can be verified from the records before the appellate tribunal. He further submits that there was no occasion of filing the writ petition after six months when the date for hearing of the main appeal has been fixed and even otherwise findings of the court regarding pre-deposit as made in the

order dated 05.06.2023 have not been challenged, therefore, it cannot be said that the appeal has not been filed as per the provisions of Section 18 of the Act, 2002.

14. Learned counsel for the respondent no. 3 further submits that the borrower has to deposit 50% of the debt due as claimed by the Bank/ financial institution along with the interest as claimed in the notice under Section 13(2) of the Act, 2002. He next submits that the possession of the property in question was with the borrower and the sale notice was not served upon him which is proved from the records as placed before the appellate tribunal and the valuation of the property as shown in the valuation report was Rs. 2.56 crore and odd but in the sale notice the same was reduced and the property has been sold at a lower price which vitiates the entire proceedings of the Bank, thus, the interest of the petitioner was protected after giving opportunity to deposit 35% of the amount due as claimed by the Bank in the notice under Section 13(2) of the Act, 2002.

15. Learned counsel for the borrower lastly submits that the contention of learned counsel for the petitioner that the pre-deposit has to be worked out in terms of second proviso to Section 18 of the Act, 2002 which includes not just the sum specified in Section 13(2) of the Act, 2002 alone but also the interest accrued thereupon till filing of the appeal. Once the appellate tribunal has recorded that 35% of the debt due has been deposited, there is nothing on record to show that the appeal has been wrongly entertained and no such deposit has been made.

16. Heard Sri Manish Goel, learned Senior Advocate assisted by Sri Ankur Gupta, learned counsel for the petitioner, Sri Ajay Shankar, learned counsel for respondent nos. 1 & 2, and Sri Anoop Trivedi,

learned Senior Advocate assisted by Sri Shadab Alam, learned counsel, who has filed vakalatnama on behalf of respondent nos. 3, 4, 5 & 6.

17. After hearing learned counsel for the parties, this Court finds that the main contention as raised by them is as to whether the pre-deposit as required under Section 18 of the Act, 2002 has been made or not, the same has to be seen from the records which have been placed before the appellate tribunal. In this regard objection has been raised by the petitioner / auction purchaser as well as the respondent Bank by way of filing stay vacation application. As these facts cannot be verified here and it would not be appropriate to call for the records from the appellate tribunal as the entire matter has already been heard after perusal of records, hence this Court thinks fit to send the matter before the appellate tribunal with a direction to the petitioner to move an application placing all documents showing that the appeal should not have been entertained as there was no pre-deposit as required under Section 18 of the Act, 2002, within two weeks from today which shall be decided within 15 days thereafter, after hearing all the parties.

18. With the aforesaid directions, the writ petition is disposed of. It is made clear that the appellate tribunal shall proceed with the hearing of the main appeal only after final orders are passed in the aforesaid application regarding maintainability of the appeal.

19. No order as to costs.

Order Date :- 22.11.2023

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(Justice Manju Rani Chauhan)