

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS  2024:UHC:8340-DB
			WPMB No.478 of 2024 <u>Hon'ble Manoj Kumar Tiwari, A.C.J.</u> <u>Hon'ble Vivek Bharti Sharma, J.</u> Mr. Atul Kumar Bansal, learned counsel, for the petitioner. 2. Mr. Ashish Joshi, learned counsel, for the respondent nos.1 to 3, through video conferencing. 3. Mr. S.S. Lingwal, learned counsel, for the respondent no.4. 4. Petitioner is a borrower, who took a loan from United Bank of India which is now merged in Punjab National Bank. Since petitioner defaulted in repayment of loan, therefore, lending bank invoked the power available to it under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act 2002) and put the secured asset for sale. Petitioner filed a writ petition being WPMS No.147 of 2020, which was dismissed with liberty to petitioner to approach the Debts Recovery Tribunal under section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In the said order, it is observed that the secured asset of the petitioner has been sold in public auction. Thereafter, petitioner approached Debts Recovery Tribunal by filing securitisation application with delay of 433 days. Learned Debts Recovery Tribunal rejected the delay condonation application vide order dated 08.09.2023 by holding that no sufficient cause has been shown. Petitioner thereafter approached the Debts Recovery Appellate Tribunal by filing appeal. His appeal has been dismissed

by learned Debts Recovery Appellate Tribunal vide judgment dated 05.03.2024, due to non compliance of the condition of pre-deposit of 25% of the amount due from him.

5. Learned counsel for the petitioner submits that the orders passed by DRT as well as DRAT are unsustainable in the eyes of law. For challenging the order passed by the DRAT, he has placed reliance upon a judgment rendered by Hon'ble Allahabad High Court in the case of **“Jai Gopal Kansal and another Vs. Indian Bank, Branch Office, Railway Road Hapur”**, reported in **2019 SCC Online ALL 4669**. Paragraph no.26 of the said judgment, on which heavy reliance is placed, is extracted below:-

“26. In the present case, the appeal filed under [Section 20](#) before the Appellate Tribunal was in fact a misc. appeal filed, against an order rejecting an application under Order IX Rule 13 for setting aside an ex parte decree, as such the said misc. appeal was not against any decree, but was against an order. [Section 21](#) of the Act contemplates that the amount of pre-deposit has to be made when the appeal is filed against the amount of debts so due as determined by the Tribunal under [Section 19](#). In the present case, the appeal is not against the order determining the debt due dated 31.08.2009, but is against the order dated 04.09.2013 rejecting the recall application for setting aside an ex parte decree.”

6. We have given a thoughtful consideration to the judgment relied upon by the learned counsel for the petitioner. However, the said judgment is distinguishable on facts. Firstly, in the said judgment, it is held that the appeal filed by borrower under section 20 of Recovery of Debts to Banks and Financial Institutions Act, 1993 was in fact a miscellaneous appeal challenging an order rejecting an application filed by him under Order IX Rule 13 of CPC for setting aside an *ex parte* decree; it was further held that since the miscellaneous appeal was not directed against an order determining the debt, but an order whereby prayer made by borrower for setting aside *ex parte* decree was rejected, therefore, the condition of pre-deposit of 50% of amount mentioned in

section 21 of the aforesaid Act, would not be attracted.

7. The facts of the present case, however, are entirely different. The proceedings under the 1993 Act are instituted by Bank or other financial institutions for recovery of debts, due to them. Thus 1993 Act gives a forum of Debts Recovery Tribunal to the lending banks/financial institutions to institute proceedings which are in the nature of money recovery suit. The SARFAESI Act 2002, however, confers special powers to banks and financial institutions for speedy recovery of their outstanding dues and lending bank/financial institutions are at liberty to invoke the provisions of SARFAESI Act 2002 or Recovery of debts to Banks and Financial Institutions. Under Section 17 of the SARFAESI Act 2002, it is the borrower who approaches the Debts Recovery Tribunal against the steps which are taken by the lending institutions by invoking provisions of SARFAESI Act 2002, therefore, the scheme of these two enactments is entirely different. Although condition of pre-deposit of a certain portion of the amount sought to be recovered while filing appeal against the judgment/order passed by DRT, is there in both enactments, however, the reasoning given by Hon'ble Allahabad High Court for holding that said condition is not attracted in that particular case, is not applicable to the facts of the present case.

8. Here the provision which puts condition of pre-deposit while filing appeal before the Appellate Tribunal is different and the nature of proceedings under the SARFAESI Act 2002 is also not akin to proceedings for recovery of outstanding dues, under Recovery of Debts to Banks and Financial Institutions Act, 1993, therefore, petitioner cannot be given benefit of the judgment relied by him.

9. Mr. S.S. Lingwal, learned counsel, appearing for respondent no.4 refers to para 7, 8 and 9 of the judgment of Division Bench of

Delhi High Court rendered in the case of “**Sanjeev Sikka and another Vs. Reserve Bank of India and others**”, reported in **2018 SCC Online Del 6750**, which is extracted below:-

“7. It is apparent that the learned DRT-1, on an earlier occasion in the challenge by the petitioners to a Possession Notice dated 28.01.2014 of the mortgaged property, directed the petitioners to give an undertaking to vacate the premises within seven days from the date of Demand or Possession by W.P (C) 312/2018 Page 4 the respondents. The petitioners did not honour their undertaking and did not vacate premises. The respondents filed applications bearing Nos. 262/2017 and 1668/2017 for modification of the earlier order dated 10.02.2014 and the learned DRT-1, modified the order to the extent that while maintaining the stay against dispossession, it directed the petitioners to deposit 50% of the amount mentioned as due in the demand notice issued under Section 13(2) of SARFAESI Act. This order was challenged by the petitioners in Appeal No. 498/2017 before DRAT. Under [Section 18](#) of the SARFAESI Act, the appeal against the order of DRT, lies before DRAT. Second Proviso of the said provision which is reproduced as under, for the sake of convenience, clearly debars the entertainment of an appeal by the Appellate Tribunal except on deposit of 50% of the amount of debt due. This amount, however, can be reduced to 25% by the Appellate Tribunal for the reasons to be recorded. [Section 18](#) of SARFAESI Act reads as under:-

"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 an 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:

W.P (C) 312/2018 Page 5 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 reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso."

8. Under this provision, the Appellate Tribunal is permitted to hear the appeal against an order of DRT only upon deposit of 50% or 25% of the debt amount as directed. Admittedly, the petitioners have not complied with the directions of the learned DRAT and failed to deposit the amount of 25% which is a sine qua non for hearing of an appeal against the order of DRT. The Supreme Court in [Narayana Chandra Ghosh vs. UCO Bank and Ors.](#) reported at (2011) 4 SCC 548 held as under:-

"8. [Section 18\(1\)](#) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under [Section 17](#) of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under [Section 18\(1\)](#) is subject to the condition [laid down in](#) the second proviso thereto. The second proviso postulates 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. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. Thus, there is an absolute bar to entertainment of an appeal under [Section 18](#) of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower W.P (C) 312/2018 Page 6 makes, with the Appellate Tribunal, a pre-deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity. It is well-settled that when a Statute confers a right of appeal,

while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of [Section 18](#) of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in [Section 18](#) of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to [Section 18\(1\)](#) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement."

9. In view of the settled proposition of law, we are of the opinion that the impugned order of learned DRAT is in consonance with the powers conferred upon it by [Section 18](#) of the SARFAESI Act. We find no infirmity in the impugned order."

10. We are in respectful agreement with the view taken by Division Bench of Delhi High Court. Appeal is creature of Statute and if the Statute imposes a condition for entertaining an appeal, then such condition has to be fulfilled before passing any order on the appeal. Thus appellate Tribunal's order cannot be faulted.

11. Learned counsel for respondent bank submits that the secured asset mortgaged by the petitioner was sold in public auction held on 16.11.2019 and sale deed was executed in favour of auction purchaser, and it was duly registered on 22.01.2020. Thus, he submits that the auction sale cannot be disturbed now at

the instance of petitioner in proceedings under SARFAESI Act 2002, which were initiated in the year 2021. Thus, he submits that any interference in the matter would not be warranted.

12. This Court finds substance in the submission made by learned counsel appearing for the respondent bank. Since the secured asset has been sold in public auction, held in the year 2019 and sale deed has also been executed in favour of the auction purchaser in the Month of January, 2020, therefore, there is no scope for interference in the matter, after such long lapse of time.

13. Accordingly, the writ petition fails and it is dismissed. No order as to costs.

(Vivek Bharti Sharma, J) (Manoj Kumar Tiwari, ACJ)

11.11.2024

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