THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT PETITION No.19428 OF 2015

ORDER: (Per Hon'ble Sri Justice R. Subhash Reddy)

This Writ Petition is filed questioning the order, dated 08.06.2015, passed in Application No.88 of 2015/385 in Tender No.50 of 2015 by the Debts Recovery Appellate Tribunal, Kolkata.

Respondent No.2 – Bank has initiated proceedings against the petitioners under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), and issued Possession Notice, dated 27.08.2014. From a perusal of the Possession Notice, it is clear that an amount of ` 1,03,49,189-77 paise was due by the petitioners to respondent No.2 - Bank. Petitioners have questioned the said Possession Notice by way of filing an appeal under Section 17 of the Act before the Debts Recovery Tribunal, Hyderabad, on various grounds and the Debts Recovery Tribunal has passed an interim order on 27.02.2015 to defer all further proceedings on condition of petitioners depositing 30% of the amount claimed by respondent No.2 – Bank in the Possession Notice, dated 27.08.2014. As against the same, petitioners carried the matter further in appeal before the Debts Recovery Appellate Tribunal, Kolkata, and moved Application No.88 of 2015/385 seeking waiver of pre-deposit. The appellate Tribunal, by impugned order, dated 08.06.2015, reduced the pre-deposit to twenty five percent of the amount claimed in Possession Notice by accepting the *prima facie* submissions made by the petitioners that they are not financially sound and the condition to pay fifty percent would be a stringent one.

As per second proviso to Section 18 of the Act, no appeal shall be entertained unless the borrower has deposited with the appellate Tribunal fifty percent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. Further, as per third proviso thereto, the appellate Tribunal is conferred with the power to reduce such amount to not less than twenty five percent by recording the reasons in writing.

In this Writ Petition, it is contended by the learned counsel for petitioners that the appellate Tribunal ought to have waived the pre- deposit by restricting it to twenty five percent of the thirty percent as ordered by the Debts Recovery Tribunal in its order, dated 27.02.2015, in view of the language under Section 18 of the Act, which empowers the appellate Tribunal to reduce the pre-deposit to twenty five percent of the amount determined by the Debts Recovery Tribunal.

We are not convinced with the aforesaid submission made by the learned counsel for petitioners because, the ‘determination’ as mentioned in Section 18 of the Act is only the amount determined by the Tribunal by way of final order, but not by way of a condition imposed in the interim order.

Inasmuch as the petitioners have to pay ` 1,03,49,189-77 paise as per Possession Notice, dated 27.08.2014, and as the appellate Tribunal itself has reduced the pre-deposit to twenty five percent of the amount claimed in the Possession Notice by recording reasons, we do not find any merit in this Writ Petition, so as to interfere with the impugned order at this stage.

Accordingly, the Writ Petition is dismissed. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. No costs.

R. SUBHASH

REDDY, J

A. SHANKAR

NARAYANA, J

July 01, 2015

MD