

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

WRIT PETITION No.35543 of 2015

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

The petitioner has filed this writ petition assailing the validity of order dated 18.02.2015 in Appeal No.17 of 2015 passed by the 1st respondent-Debts Recovery Appellate Tribunal, Kolkata.

2. The petitioner has availed a loan of Rs.82,00,000/- in the year 2008 from the 2nd respondent-Finance Company for the purpose of purchase of a Flat. In view of the default committed by the petitioner in repayment of the said loan amount, the 2nd respondent has initiated proceedings and made a demand for payment of Rs.80,07,079/- under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "the SARFAESI Act"). As the said demand was not complied with, when further steps were taken by the 2nd respondent, the petitioner filed S.A.No.23 of 2012 on the file of the Debts Recovery Tribunal, Hyderabad, and the same was dismissed by order dated 31.07.2013. Aggrieved by the said order, the petitioner carried the matter in appeal being Appeal No.17 of 2015 before the Debts Recovery Appellate Tribunal, Kolkata, under Section 18 of the SARFAESI Act.

3. Before the Appellate Tribunal, the petitioner sought for

waiver of pre-deposit amount, in exercise of the powers conferred under Proviso (3) to Section 18 (1) of the SARFAESI Act. The Appellate Tribunal, exercised its discretion and reduced the pre-deposit amount to 25% of the said sum of Rs.80,07,079/- and, after deducting a sum of Rs.7,50,000/-, which was already deposited by the petitioner pursuant to the notice issued under the SARFAESI Act, directed the petitioner to deposit a sum of Rs.12,51,919/- on or before 10.03.2015. Aggrieved by the same, the present writ petition is filed.

4. Heard learned counsel for the petitioner and perused the impugned order dated 18.02.2015.

5. Except pleading financial stringency, no other ground is raised by the petitioner showing any legal infirmity in the impugned order dated 18.02.2015, so as to interfere with the same.

6. From a perusal of proviso (3) to Section 18(1) of the SARFAESI Act, it is clear that the lower Appellate Tribunal is empowered to reduce the pre-deposit to 25% of the debt due, by recording reasons.

7. In view of the reasons recorded by the lower Appellate Tribunal and also in view of the judgment of the Apex Court in NARAYAN CHANDRA GHOSH v. UCO BANK - (2011) 2 DRTC 157 (SC) referred to therein, we do not find any merit in this writ petition, warranting interference by this Court under Article 226 of the Constitution of India.

8. Accordingly, this writ petition is dismissed, at the

admission stage. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

30.10.2015.

Msr

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

WRIT PETITION No.35543 of 2015

30.10.2015
Msr