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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8594/2015 & CM.APPL 18673/2015(stay)

Date of Judgment : 3rd December, 2015

NEELIMA BAGARIA

..... Petitioner

Through : Mr. Pallav Saxena and Ms. Bindu Das,
Advocates.

versus

STANDARD CHARTERED BANK & ANR. Respondents

Through : Mr. Sumit Bansal, Mr. Ateev Mathur,
Mr. Amol Sharma and Mr. A.P.S. Sehgal,
Advocates for R-1.

Mr. Sanjay Bhatt and Ms. Vidhushi
Shubham, Advocate for R-1 & 2.

Mr. Rajiv Kapoor, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Challenge in this writ petition is to the order dated 24th February, 2015 passed by the Debt Recovery Appellate Tribunal (DRAT) by which an application filed by the bank seeking release of the pre-deposit amount deposited by the petitioner herein at the time of hearing the appeal filed by the petitioner has been allowed and the request of the petitioner that the amount be refunded to the petitioner has been declined.
2. The appeal filed by the petitioner was dismissed on 17.09.2014, thereafter the bank had filed an application seeking release of the pre-deposit amount. The objection which was raised by the petitioner herein before the Tribunal against the release of the pre-

deposit amount was that the amount deposited was arranged by the petitioner from her son.

3. Mr. Saxena, learned counsel for the petitioner while relying on Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), submits that the reading of the Section and more particularly proviso would show that there was no intention of the legislature that the amount deposited as a pre-deposit at the time of hearing the appeal, is to be released in favour of the financial institution, upon the dismissal of the appeal. He further submits that the object of introducing the provision for pre-deposit is to ensure that frivolous appeals are not filed and to deter such litigations from filing appeals.
4. Counsel for the respondents have opposed the present petition. It is contended that once the OA is allowed and a certificate has been issued, the amount deposited by the petitioner is to be adjusted towards the decretal amount and cannot be refunded.
5. We have heard the learned counsel for the parties. In this case, in the year 2000 the bank had filed an OA under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 before the Debts Recovery Tribunal for recovery of Rs.7,37,84,093.13 along with pendentelite and future interest thereon @ 17.1% per annum with quarterly interest and costs. An *ex parte* decree was passed on 05.06.2002. It is claimed that the petitioner came to know about the proceedings before the Recovery Officer only on 10.04.2008. Thereafter, the petitioner inspected the court record and made applications for setting aside the *ex parte* final order. Objections raised by the petitioner before the

Recovery Officer were rejected, which led to the filing of an appeal before the Presiding Officer. Meanwhile, to safeguard her rights, various other petitions were also instituted which are not required to be noticed as the short question which arises for consideration is whether the amount (pre-deposit amount) deposited by the appellant is liable to be released in favour of the bank or to the appellant in case the appeal is dismissed. Since in this case the petitioner at the time of filing of an appeal before the DRAT had made a deposit in the sum of Rs.3,68,92,047/-. Subsequently, the bank had made an application seeking release of this amount. The petitioner had objected to the same on the ground that this amount was borrowed by her from her son. The Appellate Tribunal rejected the objections of the petitioner herein and allowed the pre-deposit amount to be released in favour of the bank.

6. Mr. Saxena has urged before this Court that reading of Section 18 of the SARFAESI Act would show that there is no expressed provision for the pre-deposit amount to be released in favour of the bank. He has also submitted that an objective and purpose of such a provision of deposit of pre-deposit is only to deter filing of frivolous appeals. While there is no quarrel to the proposition sought to be urged by Mr. Saxena that one of the objectives of pre-deposit is to deter filing of frivolous appeals, but we are unable to accept the submission made by Mr. Saxena that on dismissal of the appeal, the pre-deposit amount is to be released to the appellant primarily for the reason that at the time of filing of the appeal, there is an adjudication and a certificate has been issued against the petitioner and the liability of the petitioner stands adjudicated.

Once the liability stands adjudicated, it would lead to absurdity that

the pre-deposit amount deposited before the Appellate Tribunal is released and the financial institution is again made to struggle to recover its legitimate dues.

7. At this stage, learned counsel for the petitioner contends that the petitioner was proceeded *ex-parte* and an *ex-parte* decree was passed. Counsel further submits that the petitioner had made an application under Order IX Rule 13 of Code of Civil Procedure and also filed an SA. He further contends that his rights should be protected to the extent that should he succeed, the Tribunal before whom the applications are pending should take into account the amount which stands credited in the account of financial institution either by way of pre-deposit or upon sale of mortgaged property.
8. As far as, this prayer of the petitioner is concerned, we have no hesitation in saying that should the petitioner succeed, the Tribunal would consider the request of the petitioner and pass an appropriate order with regard to the refund of amount paid by the petitioner during the pendency of the proceedings.
9. With these directions, present writ petition along with all pending applications are disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 03, 2015

gr/pst