Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1206 OF 2016

Mr. Bhaskar Ghaisas ...Petitioner
Versus
Indian Bank ...Respondent

Mr. Ismail A. Nasikwala, *for the Petitioner.*
Mr. Sagar Agarkar, *i/b Mr. Santosh J. Pawar, for the Respondent.*

CORAM: S.C. DHARMADHIKARI & G.S. PATEL, JJ.
DATED: 9th February 2016

PC:-

1. After having heard both sides and perusing the order passed by the Debt Recovery Appellate Tribunal ("**DRAT**"), we are of the opinion that the learned Chairperson could not have called upon the Petitioner to deposit a sum of Rs. 50 Lakhs with the Registrar, Debt Recovery Tribunal (“**DRT**”), Pune.

2. The Petitioner admittedly was a borrower. The bank has put up the Petitioner's property, which is a secured asset according to it, for sale. That sale has been challenged by the Petitioner in the proceedings before the DRT, Pune. The Securitization Application is pending.

3. The bank insisted on the entire sum allegedly outstanding being secured and which appears to have weighed heavily with the learned Chairperson. The learned Chairperson ought to have abided by the statutory requirement. The statutory requirement in this case and which has been stipulated by Section 18 of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, particularly the second proviso to sub-Section 1 of Section 18 is that no Appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the debt due from him as claimed by the secured creditor or determined by the Debt Recovery Tribunal, whichever is less.

4. The amount as directed to be deposited is much more than 50% as contemplated by this proviso which came to be inserted by Act No. 30 of 2004 with retrospective effect from 11th November 2004.

5. The learned Chairperson having lost sight of this, we cannot sustain the impugned order.

6. After hearing both sides on the point of entertainment of the statutory Appeal under Section 18, we are of the opinion that going by the second proviso to sub-section 1 of Section 18, the Petitioner shall deposit a sum of Rs. 25 Lakhs with the Debt Recovery Tribunal, Pune within a period of two weeks from the date of receipt of a copy of this order. If that direction is complied with, the Appeal under Section 18 to proceed in accordance with law.

7. The Writ Petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J.) **(S. C. DHARMADHIKARI, J.)**