

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO.78 OF 2015
IN
WRIT PETITION NO.6778 OF 2014**

M/s MRB Roadconst. Pvt.Ltd.	... Petitioner
v/s	
Rupee Co-op. Bank Ltd.	... Respondent

Mr M.K. Shah for the Petitioner.
Mr Pratap Patil for the Respondent Bank.

**CORAM :V.M. KANADE &
B.P. COLABAWALLA JJ.**

**Reserved On : 21st January, 2016
Pronounced On : 5th February, 2016**

Judgment [Per B. P. Colabawalla J.] :-

1. This Review Petition seeks review of the order dated 10th June, 2015 passed by us in the above Writ Petition. On the date when the order under review was passed, none appeared on behalf of the Petitioner. We had perused the order passed by this Court on 21st July, 2014 when this Court had granted time to the Petitioner to deposit the amount of Rs.20,00,000/- in the Debt Recovery Appellate Tribunal (for short, the “**DRAT**”), Mumbai

until further orders. The appeal filed by the Petitioner before the DRAT was still pending. In this view of the matter, we had extended the time granted by the DRAT for a further period of four weeks with a direction that if the said amount of Rs.20,00,000/- was not deposited in the aforesaid time, the appeal filed before the DRAT, Mumbai would stand dismissed. With this direction, the Writ Petition was disposed of. Thereafter, the learned counsel for the Petitioner appeared before us and submitted that this order may be reviewed as he was not heard before passing the said order. Since this order was passed in the morning session, we had stated that the Petitioner was at liberty to apply for review of this order by filing an appropriate application. It is in this light that the Review Petition has been filed before us.

2. Since the grievance of the Petitioner is that he was not heard before passing the order dated 10th June, 2015 and the issues raised by the Petitioner have not been dealt with by us in the said order, we have heard Mr. Shah, the learned counsel for the Petitioner, at length to examine whether the order dated 10th June, 2015 is required to be reviewed by us.

3. The learned counsel appearing on behalf of the Review

Petitioner submitted that the order dated 30th June, 2014 passed by the DRAT, Mumbai in Miscellaneous Application No.237 of 2010 in Appeal No.197 of 2010 was perverse and illegal as it was contrary to the mandate of section 18 of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short, the “**SARFAESI Act**”). We must mention here that the above referred Miscellaneous Application was a waiver application filed by the Petitioner seeking full waiver of deposit. By its order dated 30th June 2014, the DRAT, after hearing the parties, directed the Petitioner to deposit a sum of Rs.20,00,000/- with the Registrar of the DRAT within a period of eight weeks in two equal installments. It was further directed that if the aforesaid deposit was not made, the appeal would stand dismissed. It is the correctness of this order that has really been put in issue before us.

4. Before we deal with the contentions raised by the Petitioner, it would be appropriate to briefly narrate the facts. In the year 2003, the Petitioner - Company had availed of a cash credit facility from the Respondent - Bank to the tune of Rs.75,00,000/- vide Cash Credit Account No.147. The aforesaid

facility was secured by mortgage of immovable as well as hypothecation of movable property. The immovable properties mortgaged was land admeasuring about 32.5R, situated at Survey No.65, Hissa No.5 (old Survey No.829, Hiss No.5) and land admeasuring of 1H and 57.7R situated at Chovishwadi, Taluka Haveli, District Pune (hereinafter referred to as the **“mortgaged properties”**).

5. Admittedly, the Petitioner defaulted in repayment and therefore the Respondent – Bank obtained a Recovery Certificate against the Petitioner under section 101 of the Maharashtra Co-operative Societies Act, 1960. Thereafter in the year 2006, the said Cash Credit Account was transferred to a separate ledger maintained by the Bank for defaulted accounts in which a decree / recovery certificate had been obtained.

6. The Petitioner admittedly did not make any payment to satisfy the recovery certificate issued against it. As on 31st July, 2007 the total outstanding amount due to the Respondent – Bank was Rs.96,14,085.61. In this view of the matter, the Respondent – Bank initiated proceedings under the provisions of the SARFAESI

Act by issuing a notice under section 13(2) thereof on 14th August, 2007. In the said notice the Petitioner was called upon to pay the said sum of Rs.96,14,085.61 (as on 31st July, 2007) together with interest thereon within 60 days of receipt of the said notice failing which the Respondent - Bank would proceed to take measures under section 13(4) of the SARFAESI Act. As the Petitioner did not comply with the requisitions contained in the section 13(2) notice, the Respondent - Bank proceeded to take possession of the mortgaged properties on 15th February, 2008 under section 13(4) of the SARFAESI Act. Being aggrieved by this action of the Respondent - Bank, the Petitioner filed Securitisation Application No.28 of 2008 under section 17 before the Debt Recovery Tribunal (for short, the **"DRT"**), Pune raising several grounds therein. To the aforesaid Securitisation Application, the Respondent - Bank also filed its affidavit in reply inter alia contending that there was no merit in the Securitisation Application and that the same ought to be dismissed. After hearing the parties, the DRT, Pune, by its detailed reasoned order dated 13th January, 2010 dismissed the Securitisation Application filed by the Petitioner.

7. Being aggrieved by this order of the DRT, Pune, the

Petitioner filed an appeal under section 18 of the SARFAESI Act before the DRAT, Mumbai in around 4th March, 2010. Along with the said appeal, the Petitioner also filed a Misc Application for waiver of deposit as contemplated under the 2nd and 3rd provisos to section 18 and sought a full waiver of deposit. It was the contention of the Petitioner that there was no amount determined by the DRT, Pune under section 17 and therefore according to the Petitioner, nothing was due from it as required under section 18 of the SARFAESI Act. In these circumstances, the Petitioner sought a full waiver of deposit. The relevant averments in the said waiver application read as under:-

“That appellant has filed the present appeal challenging the order of the DRT, Pune, dismissing securitization application of the appellant. Therefore, in fact there is no any necessity to deposit any amount as required by law. As there is no any amount determined under sec.17 by DRT there cannot be said any dues. Therefore the said condition of deposit of amount is required to be waived.”

8. After hearing the Petitioner as well as the Respondent – Bank, the DRAT, Mumbai passed its order dated 30th June, 2014 wherein, after giving credit of the amounts already deposited by the Petitioner with the Respondent – Bank, the DRAT directed the Petitioner to deposit a sum of Rs.20,00,000/- within a period of eight weeks in two equal installments, failing which the appeal of

the Petitioner would stand dismissed.

9. For the sake of completeness, it would not be out of place to mention that after the issuance of the notice dated 14th August, 2007 under section 13(2) of the SARFAESI Act, no payments were made by the Petitioner till 28th February, 2012. The outstanding dues of the Respondent - Bank as on 29th February, 2012 was to the tune of Rs.1,65,36,770.61. The Petitioner had deposits with the Respondent - Bank of Rs.5,29,441/- which were forfeited by it on the said date and credit for the same was given to the Petitioner. Thereafter, one of the guarantors to the transaction (Mr K.P. Malkani) sold one of the mortgaged properties with the consent of the Respondent - Bank and the sale proceeds thereof to the tune of Rs.1,18,00,000/- were deposited with the Respondent - Bank on 24th March, 2012. After giving credit for the aforesaid amount, the outstanding dues of the Respondent - Bank as on 24th March, 2012 were Rs.52,24,200.16. It is also common ground before us that after 24th March, 2012 no amount has been deposited/paid by the Petitioner. In the affidavit in reply to this Review Petition, it is the case of the Respondent - Bank that as on 17th July 2015, the total outstanding dues of the Petitioner (after giving credit of all amounts paid/deposited) are to

the tune of Rs.63,48,914.61.

10. Be that as it may, since the outstanding amounts as on 31st March, 2012 were Rs.52,14,200.61, the DRAT, Mumbai took the aforesaid figure into consideration before ordering the Petitioner to deposit a sum of Rs.20,00,000/- for the purposes of entertaining its appeal under section 18 of the SARFAESI Act. Needless to mention that this amount of Rs.20,00,000/- is less than 50% of the figure of Rs.52,24,200.61.

11. In this factual backdrop, Mr Shah, learned counsel appearing on behalf of the Petitioner, submitted that admittedly the Petitioner had deposited a sum of Rs.1,23,29,441/- (Rs.5,29,441/ + Rs.1,18,00,000/-) with the Respondent - Bank against the amount claimed in the section 13(2) notice of Rs.96,14,985.61. He therefore submitted that having deposited amounts with the Respondent - Bank more than what was claimed in the section 13(2) notice, the DRAT ought to have directed full waiver of deposit and not put the onerous condition of a further deposit of Rs.20,00,000/- as was sought to be done in its order dated 30th June, 2014. He submitted that as per the provisions of section 18 and more particularly the 2nd proviso thereto, no appeal could be

entertained unless the borrower had deposited with the DRAT 50% of the amount of debt due from him, as claimed by the secured creditors or determined by DRT, whichever was less. According to Mr Shah, admittedly in the present case, there was no determination of the debt by the DRT. In this view of the matter, Mr Shah submitted that the Petitioner was required to deposit with the DRAT 50% of the amount of the debt due from the Petitioner as claimed by the secured creditor (the Respondent - Bank in the present case). According to Mr Shah, the amount claimed by the Respondent - Bank in the section 13(2) notice was Rs.96,14,085.61. After this, the Petitioner had deposited with the Respondent - Bank a sum of approximately Rs.1,23,00,000/- and therefore the Petitioner was not required to deposit any further amount as stipulated in the 2nd proviso to section 18. To put it simply, it was the argument of Mr Shah that the amount that is to be taken into consideration for the purposes of ordering deposit under section 18 of the SARFAESI Act would be the amount claimed in the section 13(2) notice alone and not the accrued interest on the said sum thereafter. For all the aforesaid reasons, Mr Shah submitted that the order of the DRAT directing the Petitioner to deposit a sum of Rs.20,00,000/- was perverse, illegal and contrary to the statutory mandate as set out in the 2nd proviso to section 18

of the SARFAESI Act. This being the case, Mr. Shah submitted that the order dated 10th June, 2015 passed by us needed to be reviewed and the reliefs sought for in the Writ Petition ought to be granted in favour of the Petitioner and the order of the DRAT dated 30th June, 2014 is required to be quashed and set aside. In support of the aforesaid proposition, Mr Shah relied upon the following decisions:-

- (i) Sivakumar Textiles v/s Debt Recovery Appellate Tribunal, Chennai and others;¹**
- (ii) Poonam Manshani v/s J. & K. Bank Ltd. and another;² and**
- (iii) Narayan Chandra Ghosh v/s UCO Bank and others.³**

12. The short but interesting question posed for our consideration is what sum (claimed by the secured creditor) is to be taken into consideration by the DRAT whilst determining the amount that ought to be deposited by the borrower under section 18 of the SARFAESI Act (before its appeal can be entertained). Would it be (i) on the basis of the amount claimed by the secured creditor in the section 13(2) notice alone or (ii) whether the DRAT also has to take into account the interest accrued on the said sum

¹ AIR 2012 MADRAS 57

² AIR 2010 DELHI 28

³ (2011) 4 SCC 548 : AIR 2011 SC 1913

till the date of filing of the appeal.

13. To understand the present controversy, it would be necessary to refer to the provisions of section 18 of the SARFAESI Act. Section 18 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:

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.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

(emphasis supplied)

14. Section 18(1) provides that any person aggrieved by

any order made by the DRT under section 17, may prefer an appeal to the DRAT within 30 days from the date of receipt of the order of the DRT. The 1st proviso stipulates that different fees may be prescribed for filing an appeal by a borrower and by a person other than the borrower. The 2nd proviso, and which is really germane for our purposes, inter alia stipulates that no appeal shall be entertained unless the borrower has deposited with the DRT fifty per cent of the amount of debt due from him as claimed by the secured creditors, or determined by the DRT, whichever is less. The 3rd proviso gives power to the DRAT to reduce the deposit amount from 50% to 25% provided reasons for the same are recorded in writing by the DRAT. As stipulated in the 3rd proviso, the DRAT has no power to reduce the amount of deposit less than 25% of the debt referred to in the 2nd proviso. Section 18(2) stipulates that save or otherwise provided in the Act, the DRAT shall, as far as may be, dispose of the appeal in accordance with the provisions of the *Recovery of Debts Due to Banks and Financial Institutions Act, 1993* (for short, the “**RDDB Act**”) and the Rules made thereunder.

15. Since the 2nd proviso to section 18 stipulates that the

borrower has to deposit 50% of the amount of debt due from him, it would also be apposite to refer to the definition of the word “debt” appearing in section 2(ha) of the SARFAESI Act and which reads as under :-

“(ha) 'debt' shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act 1993 (51 of 1993);”

16. As can be seen from the definition, the word “debt” shall have the meaning assigned to it in clause (g) of section 2 of the RDDB Act. Section 2(g) of the RDDB Act reads thus:-

“(g) “debt” means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;”

17. On an ex-facie reading of the said definition, it is clear that the word “debt” has been given an extremely wide meaning and means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution during the course of any business activity undertaken by such bank or financial institution under any law for the time being in force, in

cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application.

18. On a plain reading of the 2nd proviso to section 18(1) of the SARFAESI Act read with the definition under the word “debt” as defined in section 2(g) of the RDDB Act, it is clear that before an appeal can be entertained by the DRAT, the borrower has to deposit 50% of the amount of debt due from him as claimed by the secured creditors or as determined by the DRT whichever is less. If there is no determination of the debt by the DRT under the provisions of the RDDB Act, then the borrower would have to deposit 50% of the amount of debt due from him as claimed by the secured creditors. The provision on a plain reading does not in any way exclude taking into consideration the future interest that is accrued on the debt owed by the borrower to the secured creditor. In fact, the definition of the word “debt” means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution. Therefore, if the claim made by the secured creditor in the section 13(2) notice includes future interest, the same would certainly be included in the “amount of the debt due” from the

borrower to the secured creditor as contemplated under the 2nd proviso to section 18(1) of the SARFAESI Act. There is therefore no justification to hold that it is only the figure that is mentioned in the section 13(2) notice that is to be taken into consideration and not the future interest accrued on the said sum, whilst determining the deposit amount under the 2nd proviso to section 18 of the SARFAESI Act. The amount of deposit would have to be determined on the basis of the amount of debt due by the borrower to the secured creditor on the date when the appeal is filed in DRAT. This would not only include the amount mentioned in the section 13(2) notice but also interest accrued thereon till the date of filing of the appeal under section 18 of the SARFAESI Act. To our mind, this is the only interpretation that is possible of the 2nd proviso to section 18 of the SARFAESI Act. If we were to accept the contention of the Petitioner that the amount to be deposited by the borrower [under the 2nd proviso to section 18(1)] would be only on the basis of the sum/figure as mentioned in the section 13(2) notice and not the interest accrued thereon after the date of the said notice, the same would be violating the plain language of the statute. To interpret the 2nd proviso to section 18(1) in this fashion, to our mind, would clearly violate the plain and unambiguous language of the said section.

19. We must mention here that after the issuance of the notice under section 13(2) and before the appeal is filed in the DRAT under section 18 of the SARFAESI Act, if the borrower has made any part payment of the debt due to the secured creditors, then credit for the same would have to be given to the borrower and for the purposes of deposit under the 2nd proviso to section 18(1), the reduced amount (after giving credit) would have to be taken into consideration for determining the amount required to be deposited by the borrower. This is simply because on the date of filing of the appeal, the debt due to the secured creditor would be reduced after giving credit for the amount already paid.

20. In the view that we have taken we are also supported by a decision of another Division Bench of this court in the case of **Godavari Laxmi Co-Op. Bank Ltd. Vs. Union of India and another.**⁴ The facts of the case were that Respondent No. 2 therein was the borrower of the Petitioner – Godavari Laxmi Cooperative Bank Ltd., and had filed proceedings under section 17 of SARFAESI Act consequent to the issuance of a notice under section 13(4) thereof. By judgment and order dated 7-3-2011, the DRT,

⁴ (2012) 4 Mh L J 472

Aurangabad dismissed the Securitisation Application of Respondent No.2. Being aggrieved thereby, Respondent No. 2 preferred an appeal under the provisions of section 18 of the SARFAESI Act before the DRAT, Mumbai along with an application seeking waiver of deposit as prescribed under section 18(1) thereof, on 24-3-2011. By an order dated 27-4-2011 the DRAT allowed the application filed by Respondent No. 2 by observing that Respondent No. 2 cannot be asked to deposit any more amount and no amount is required to be deposited under section 18(1) of SARFAESI Act. In this factual backdrop the Division Bench held as under:-

“7. The learned counsel appearing for respondent No. 2 submits that proceedings were initiated before the Debt Recovery Tribunal, Aurangabad consequent to the notice issued by the petitioner under section 13(4) of the Act, 2002. Section 13(4) of the Act of 2002 relates to the amount claimed by the bank in notice issued under section 13(2) of the Act of 2002. The counsel further submits that in the possession notice, the petitioner bank had referred to outstanding amount of Rs. 45,61,459.54 + interest and the present outstanding amount of Rs. 24,61,985.54 + interest + expenses as on 30-11-2009. It is submitted that even if these two figures of amount claimed are clubbed together, it can be ascertained that the respondent No. 2 having paid 41.50 lakhs in favour of the petitioner bank, the pre condition for entertaining Appeal under section 18 by Appellate Tribunal gets satisfied. In other words, the respondent No. 2 claims that having deposited 50% of the amount due from respondent No. 2 his Appeal filed before Appellate Tribunal shall be entertained without calling upon the respondent No. 2 to deposit any further amount.

8. We have perused the original record and proceedings, the impugned order, reply filed by respondent, and the relevant notice issued by the petitioner to the respondent No. 2. We have perused the judgment cited supra.

9. There is no dispute between the parties that the bank had issued notice under section 13(2) of the Act of 2002 on 11-5-2007. The petitioner-bank had also resorted to measures as prescribed under section 13(4) of the Act of 2002 by issuing a possession notice on 26-12-2009. The bank is entitled under section 13(4) of the Act of 2002 to take recourse to measures provided under the said provisions to recover the secured debt on failure of borrower to discharge his liability in full within the period specified in sub-section (2) of the Act.

10. In the facts of the case and considering the notice issued under section 13(2) of the Act of 2002, we find that the petitioner bank had claimed as present outstanding, an amount of Rs. 24,61,985.54 Ps. and accordingly, the charge was kept upon the subject property by intimating public in general. The bank had described the immovable property over which the charge was kept in the notice issued under section 13(4) on 26-12-2009. Under the provisions of section 17 of the Act of 2002, any person aggrieved by any of the measures referred to in sub section 4 of section 13, is entitled to approach D.R.T. Under the provisions of section 18 of the said Act, any person aggrieved by any order passed by D.R.T. under section 17 may prefer an appeal along with such fees as may be prescribed. The second proviso to section 18 of the said Act provides that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him as claimed by the secured creditor

(emphasis supplied).

11. In the facts of the present case and considering the notice issued by the petitioner bank to respondent No. 2 it is clear that the amount due and claimed by the petitioner from respondent No. 2 for the purposes of entertaining the appeal by Appellate Tribunal would be amount of Rs. 24,61,985.54 Ps.

(emphasis supplied)

21. Applying the principles of law laid down earlier, we will now examine whether the DRAT was justified in ordering the Petitioner to deposit a sum of Rs.20,00,000/-. As set out above, the

section 13(2) notice issued by the Respondent - Bank to the Petitioner was dated 14th August, 2007. In the said notice the amount claimed as due from the Petitioner was Rs.96,14,085.61 together with future interest. From the date of the section 13(2) notice (i.e. 14th August, 2007) to 28th February 2012, admittedly no payments were made by the Petitioner. As on 29th February, 2012 the outstanding dues owed by the Petitioner along with the interest accrued thereon came to Rs.1,65,36,770.61. On the very same date (i.e. 29th February, 2012), the Respondent - Bank forfeited the deposits of the Petitioner lying with it in the sum of Rs.5,29,441/- and gave credit for the same in the loan account. Thereafter, one of the guarantors (viz. Mr K.P. Malkani) sold one of the mortgaged properties with the consent of the Respondent - Bank and the sale proceeds thereof to the tune of Rs.1,18,00,000/- were deposited with the Respondent - Bank on 24th March, 2012. After giving due credit for the aforesaid amounts (Rs.5,29,441/- plus Rs.1,18,00,000/-), the amount outstanding as on 24th March, 2012 was Rs.52,24,200.16. Admittedly, no further payments were made by the Petitioner. The DRAT has taken into consideration this figure of Rs.52,24,200/- for determining the amount that had to be deposited under the 2nd proviso to section 18(1) of the SARFAESI Act. It is pertinent to note that the appeal and the waiver

application preferred by the Petitioner before the DRAT, were filed on 4th March, 2010. On the said date, the outstanding of the Respondent – Bank was in excess of Rs.96,14,085/- as no payments were made by the Petitioner between the date when the section 13(2) notice was issued (14th August, 2007) and the date of filing of the appeal and waiver application (4th March, 2010). However, this waiver application was heard by the DRAT on 30th June 2014. By the time, the DRAT heard the waiver application, the Petitioner had made part payments of Rs.1,23,00,000/- (approximately) towards its debt due to the Respondent - Bank. It is in this view of the matter that the DRAT whilst determining the amount to be deposited under the 2nd proviso to section 18(1) of the Act took into consideration the figure of Rs.52,14,200/-. Looking to these facts and the clear language of the 2nd proviso to section 18(1) of the SARFAESI Act, we do not think that the DRAT committed any error in directing the Petitioner to deposit a sum of Rs.20,00,000/- with the Registry of the Appellate Tribunal within a period of eight weeks from the date of the said order in two equal installments. We find that the said order is not only in conformity with the provisions of section 18 of the SARFAESI Act but does complete justice between the parties as it gives credit for the amounts paid by the Petitioner to the Respondent – Bank before directing the Petitioner

to deposit a sum of Rs.20,00,000/- as a condition precedent to entertaining its appeal. In this view of the matter, we do not think that any case has been made out by the Petitioner for review of our order dated 10th June, 2015.

22. Having said this, we shall now deal with the judgments relied upon by Mr Shah. The first judgment relied upon by Mr Shah was a decision of the Madras High Court in the case of **Sivakumar Textiles**¹. On careful perusal of the aforesaid decision, what can be culled out therefrom is that the amount of “debt due from the borrower as claimed by the secured creditor” would have no other meaning except the amount claimed in the notice under section 13(2). We have no difficulty in accepting the aforesaid proposition. However, the question still remains whether the amount claimed in the 13(2) notice would be inclusive of future interest or otherwise. If the claim for future interest has been made in the notice under section 13(2), then the same would certainly have to be taken into account for determining the figure that would be required to be deposited by the borrower before his appeal can be entertained. This is more so when one looks at the definition of the word “debt” as defined under the SARFAESI Act which means any liability

1 AIR 2012 MADRAS 57

inclusive of interest claimed as due from any person by a bank or financial institution during the course of any business activity undertaken by the said bank or financial institution. We must also mention that on a close scrutiny of the said decision, we do not find any reference being made to the definition of the word “debt” appearing in section 2(ha) of the SARFAESI Act. We therefore find that this decision would not carry the case of the Petitioner any further.

23. The second judgment relied upon by Mr Shah was a decision of the Delhi High Court in the case of **Poonam Manshani**.² It appears from the said decision that the Delhi High Court has taken a view that the expression *“amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less”* would have to be determined ignoring the interest component. On a close scrutiny of the aforesaid decision, we find no reference in the same to the definition of the word “debt” as defined under the provisions of the SARFAESI Act. As mentioned earlier, the word “debt” means any liability inclusive of interest claimed as due from any person by a bank or financial institution during the course of any business activity

² AIR 2010 DELHI 28

undertaken by the said bank or financial institution. When interest is specifically included in the definition of the word “debt”, we see no reason why the same ought to be excluded whilst determining the amount that is to be taken into consideration for the purpose of arriving at the figure to be deposited by the borrower under the 2nd proviso to section 18(1) of the SARFAESI Act. In fact, on a perusal of the said judgment, we do not find any reason given for making such an exclusion. We, therefore, with great respect to the Delhi High Court, are unable to agree with the ratio laid down in the aforesaid decision.

24. The last judgment relied upon by Mr Shah was a decision of the Supreme Court in the case of **Narayan Chandra Ghosh**.³ We find that the reliance placed on this decision is wholly misplaced. The issue before the Supreme Court in the aforesaid decision was whether the DRAT had jurisdiction to exempt the borrower preferring an appeal under section 18 of the Act from making any pre-deposit in terms of the said provision. In other words, the issue before the Supreme Court was whether the DRAT had the power to grant a full waiver or whether it can waive only to the extent of 25% as set out in the 3rd proviso to section 18(1) of the

3 (2011) 4 SCC 548 : AIR 2011 SC 1913

SARFAESI Act. This is clear from paragraphs 7, 8 and 9 of the said decision and which read as under:-

“7. 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 subsection, 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 the entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower 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.

8. 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 subsection (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. The argument of the learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, the appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring an appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third provisos to the said section. At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty-five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining the appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed.”

25. We fail to see how this decision in any way advances the case of the Petitioner. The issue raised before us was not an issue at all before the Supreme Court and therefore the said judgment is wholly inapplicable in the present case.

26. For the reasons stated earlier in this judgment, we do not find anything illegal and / or perverse in order dated 30th June, 2014 passed by the DRAT. Consequently, we do not find any error

in our dated 10th June, 2015 requiring interference in review jurisdiction. The Review Petition is accordingly dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B. P. COLABAWALLA, J.)

(V. M. KANADE J.)