IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 394 OF 2016

Mr. Rohit S. Pushkarna .. Petitioner.
vs.
M/s. Assets Reconstruction
Company (India) Ltd. and anr. .. Respondents.

Mr. R.P. Ojha for the petitioner.
None for the respondents.

CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.
DATE : 30 MARCH 2016.

P.C.:

1] This petition is directed against the order dated 15 December 2015 made by the Debts Recovery Appellate Tribunal at Mumbai (DRAT) in M.A. No. 740 of 2014 in Appeal No. 190 of 2014 requiring the petitioner to deposit a sum of Rs. 3 crores in two equal installments, as a pre-condition for the entertainment of the petitioner's appeal. The impugned order has been made by the DRAT in the exercise of powers conferred upon it under the proviso to section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (said Act).

2] Mr. R.P. Ojha, learned counsel for the petitioner , submitted that the Debts Recovery Tribunal (DRT), in its order dated 23 June 2014, which has been appealed before the DRAT, has restricted the liability of the petitioner only to the extent of value of the property mortgaged by the petitioner. Mr. Ojha submitted that the value of such mortgaged property would be within the range of Rs. 50 lacs to Rs.1 crore. In such circumstances, Mr. Ojha submitted that the DRAT ought to have granted a complete waiver or in any case, directed deposit on the basis that the petitioner's liability was not exceeding Rs. 1 crore.

3] Having heard learned counsel for the petitioner and perused the material on record, we are satisfied that this is not a fit case to interfere with the impugned order in the exercise of extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

4] Section 21 of the said Act provides that where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution, such appeal shall not be entertained by the DRAT unless such person has deposited with the DRAT seventy-five percent of the amount of debt so due from him as determined by the DRT under section 19 of the said Act. The proviso empowers the DRAT, for reasons to be recorded in writing, to waive or reduce the amount to be deposited under this section.

5] The petitioner has instituted appeal against the DRT's order dated 23 June 2014, the operative portion of which reads thus:

ORDER

1. The T.O.A. No. 281 of 2009 is allowed with cost and interest.

2. The Defendant No. 1 to 9 do pay a sum of rs.5,24,77,138/- with future simple interest @ 20% per annum from the date of Suit i.e. 20/12/1998 till realization of the amount from the Defendants, who are jointly and severally liable.

3. The liability of Defendant No. 3 & 5 to 9 is limited to the extent of value property mortgaged by them.

4. If the Defendants fail to pay the decretal amount with interest as above all the available legal modes for recovery under RDDB Act including sale of the mortgaged hypothecated property may be adopted.

5. The amount already recovered by the sale of mortgaged properties to be adjusted against the outstanding dues.

6. Issue Recovery Certificate accordingly.

6] The petitioner is the original defendant no.8 in the proceedings before the DRT. Clause (2) of the aforesaid operative portion of the DRT's order directs, *inter alia,* defendant no.8 to pay a sum of Rs. 5,24,77,138/- with simple interest @ 20% per annum from the date of suit i.e. 20/12/1998 till realization of the amount. No doubt, clause (3) provides that the liability of the petitioner is limited to the extent of value of the property mortgaged.

7] At the stage of consideration of application for reduction or waiver, the DRAT was not entirely unjustified in taking into consideration the circumstance that the amount payable to the respondents, by now, has gone up to over Rs. 24 crores or thereabouts. That apart, even learned counsel for the petitioner, was not at all clear with regard to nature and value of the mortgaged property. Except for a bald statement that such value will be in the range of Rs. 50 lacs to Rs.1 crore, no particulars were produced on record to indicate the value of mortgaged property.

8] In making the impugned order, the DRAT has exercised discretionary powers. There is no arbitrariness or unreasonableness in the matter of exercising of such discretion. The DRAT offered an installment facility to the petitioner, in the matter of deposit of amount of Rs. 3 crores. There is no jurisdictional error in making the impugned order.

9] This petition is therefore, dismissed. There shall be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)