IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 536 OF 2016

M/s. Nova Oleochem Ltd. & Ors. .. Petitioners
versus
State Bank of India .. Respondent

Mr. Mandar Soman with Mr. Tejas Shah for petitioners.
Mr. Ravi Goenka i/b. Goenka Law Associates for respondent.

CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.
DATE : 31 MARCH 2016

P.C.:

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 28 January 2016 made by the Debt Recovery Appellate Tribunal (DRAT) in appeal no. 347 of 2015 instituted by the petitioners questioning DRT's order dated 24 November 2015.

3] The petitioner no. 1, has obtained a loan from respondent State Bank of India (SBI), which was guaranteed by petitioner nos. 2, 3 and 4, who in any case, are the Directors of petitioner no. 1 company. As there was default on the part of the petitioners in the repayment of the loan, SBI, vide notice dated 3 December 2014 issued under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), called upon the petitioners to jointly and severally pay to SBI an amount of Rs.20,10,68,038.72 paise within period of 60 days. The petitioners by their response dated 30 January 2015 made their representation and raised objections to the demand contained in the securitisation notice dated 3 December 2014. The petitioners claim that SBI, without responding to such representation / objections has proceeded to take symbolic possession of the mortgaged properties or resort to measures as contemplated by section 13(4) of the SARFAESI. Based upon such plea, the petitioners instituted securitisation application no. 319 of 2015 before DRT and applied for interim reliefs to restrain SBI from proceeding further with any measures under section 13(4) of the SARFAESI for the purposes of recovery of the loan amount.

4] The DRT, by its order dated 24 November 2015, in fact granted petitioners interim relief subject to condition that the petitioners deposit with SBI a sum of Rs.5 crores by way of two equal instalments within period of six weeks from the date of the order.

5] The petitioners, without deposit of any amount instituted appeal no. 347 of 2015 before the DRAT and applied for interim relief therein. The DRAT without insisting upon compliance with the mandatory provisions contained in section 18 of SARFAESI, vide impugned order dated 28 January 2016 has reduced the amount of Rs.5 crores referred to in DRT"s order dated 24 November 2015 to Rs.3 Crores payable on or before 1 March 2016. The impugned order states that in the event of failure to deposit the amount of Rs.3 crores on or before 1 March 2016, DRT's order dated 24 November 2015 shall stand confirmed.

6] Mr. Mandar Soman learned counsel for the petitioners has submitted that the SBI, in the present case, has acted in a high handed manner in proceeding to take symbolic possession of the mortgaged properties, even before furnishing any response to the representation / objections raised by the petitioners. Mr. Soman submitted that there were serious issues with regard to accounting and unless, the same were sorted out, there is no question of SBI insisting upon proceeding to recover the loan amount.

7] Upon query as to the amounts due and payable by the petitioners to the SBI as per petitioners own calculation and accounts, Mr. Soman submitted that the amount payable would not be Rs.20.10 crores (approx.) as demanded by SBI in section 13 (2) notice but the amount payable would be in the range of Rs.12 crores or thereabouts. Mr. Soman on basis of instructions from the petitioners however submitted that the petitioners are presently not in position to pay any amount to SBI, much less, the amount of Rs.12 crores, which, even according to the calculations and accounts of the petitioners is due and payable to SBI.

8] Mr. Ravi Goenka, learned counsel for the respondent submitted that DRAT in the present case, should have never entertained the petitioners' appeal no. 347 of 2015 without insisting upon the compliance with the requirements contained in section 18 of SARFAESI. Mr. Goenka, relying upon the decision of the Hon'ble Supreme Court in ***Narayan Chandra Ghosh vs. UCO Bank & Ors***.[1] submitted that the requirement of pre-deposit under section 18(1) of SARFAESI is mandatory and in absence of compliance, DRAT cannot entertain appeal. Mr. Goenka also submitted that SBI, vide email dated 4 February 2015 had in fact rejected the petitioners

1 AIR 2011 SC 1913

representation and therefore, there was nothing high handed in the action initiated by SBI. Mr. Goenka submitted that the petitioners are due and payable to SBI amount of over Rs.21 crores and the petitioners are only interested in indulging in multiplicity of proceedings, so as to avoid payment of dues to SBI. Mr. Goenka submitted that on behalf of petitioners, SBI was served with a notice with regard to institution of the present petition and the said notice virtually warned SBI against proceeding with recovery of the loan amount during the pendency of the present petition.

9] The rival contentions now fall for our determination.

10] In the facts and circumstances of the present case, we are satisfied that the petitioners have clearly abused the process of law and their entire objective is to frustrate the recovery proceedings by instituting proceedings before DRT, DRAT and this court, without even complying with mandatory provisions contained in section 18 of SARFAESI. We are also constrained to note that SBI, has not been taking prompt steps in the matters of recovery from the petitioners, even though, limited interim relief granted by DRT or for that matter DRAT, is no longer in operation.

11] The petitioners have really made out no case to interfere with DRT's order dated 24 November 2015 and DRAT's order dated 28 January 2016 is no longer operational. We are in fact of the opinion that the two orders have granted relief to the petitioners in far more generous terms than what the petitioners, in the facts and circumstances of the present case, may be really entitled to. The petitioners, have virtually conceded that even as per their own accounts and calculations, a sum of not less than Rs.12 crores is due and payable to SBI. The objections or the defences raised by the petitioners in response to the securitisation notice under section 13 (2) of SARFAESI are *prima facie* frivolous. In these circumstances, we wonder as to what prompted DRT to grant interim relief to the petitioners, thereby virtually restraining further recovery proceedings upon a condition of deposit of hardly Rs.5 crores and that too by way of two instalments. DRT did not even impose any conditions upon the petitioners in the matter of alienation of mortgaged property on the basis of interim relief granted by DRT. The only ground urged by petitioners before DRT was that their representation / objections were yet to be disposed of by SBI. Learned counsel for SBI has produced before us the response dated 4 February 2015, by which, the petitioners' representation / objections appear to have been disposed of. We wonder, in these circumstances, as to what prevented SBI from producing this very response before DRT, when the DRT made its order dated 24 November 2015. The SBI, is required to be conscious that it is dealing with public monies and therefore, it is expected of SBI to take prompt steps in the matter of recovery of loans or other dues from the defaulters. The zest which is some times demonstrated when it amounts to recovery of small loans, is curiously lacking when it comes to recovery of loans of crores of rupees, as in the present case.

12] Despite generous terms on basis of which the petitioners obtained interim relief from DRT, the petitioners, without complying with the directions of deposit of Rs.5 crores, instituted appeal no. 347 of 2015 before DRAT under section 18 of SARFAESI. The second proviso to section 18 of SARFAESI, in terms, provides that no appeal shall be entertained unless the borrower has deposited with DRAT 50% of the amount of debt due from him, as claimed by the secured creditors or determined by DRT, whichever is less. The third proviso empowers DRAT for reasons to be recorded in writing, to reduce the amount but not less than 25% of the debt referred to in the second proviso.

13] In view of the categoric provisions contained in section 18 of SARFAESI, DRAT, was not at all justified in even entertaining the petitioners appeal without requiring the petitioners to deposit amount of Rs.10 crores (approx.) corresponding to 50% of the debt as claimed by SBI. At the highest, subject to the petitioners making out a good case, DRAT, for reasons to be recorded in writing, it was empowered to reduce the amount of such deposit to Rs.5 crores i.e. 25% as a pre-condition for even entertainment of the appeal. DRAT, in the present case, has proceeded in the matter, as if, the provisions contained in section 18 of SARFAESI do not even subsist upon the statute book. Upon perusing the impugned order, we find that SBI which was represented by an advocate before DRAT has also not raised any objection to the very entertainment of appeal, in view of the provisions contained in section 18 of SARFAESI.

14] In ***Narayan Chandra Ghosh*** (supra), the Hon'ble Supreme Court, whilst holding that the requirement of pre-deposit under section 18(1) is mandatory and an appeal cannot be entertained without directing appellant to comply with such mandatory requirement, has made the following observations at paragraph 8 :

> *"8. 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 sub-section, 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 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 4 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. 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 sub-section (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.”*

15] SBI, has also not bothered to challenge DRAT's order dated 28 January 2016, despite knowledge that the said order is without jurisdiction as DRAT could not have entertained appeal no. 347 of 2015 and made the impugned order dated 28 January 2016 therein, without insisting upon the petitioners complying with mandatory provisions of pre-deposit as contained in section 18 of SARFAESI. In exercise of our supervisory jurisdiction under Article 227 of the

Constitution of India therefore, we consider it our duty to set aside impugned order dated 28 January 2016, as the same is clearly in excess of jurisdiction. Even otherwise, we are satisfied that just as the DRT was not justified in granting interim relief to the petitioners by merely directing them to deposit Rs.5 crores, when the liability even as per the calculations and accounts of the petitioners was in the range of Rs.12 crores or thereabouts, the DRAT was certainly not justified in reducing this amount from Rs.5 crores to Rs.3 crores. DRAT has assigned no real reasons whatsoever for such unwarranted indulgence.

16] Whilst, we are not too much surprised by the conduct of the petitioners in launching multiple proceedings and thereafter, protracting the same for the purposes of avoiding payment of dues to SBI, we are both surprised and pained at the lackadaisical approach of SBI, in the matter of recovery of its dues, which, we emphasize are public monies. Similarly, DRT and the DRAT also appear to have missed the very purpose and objective of enactment of SARFAESI or Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Once it is realised that defaulter, on basis of frivolous defences, is indeed interested in abusing the legal process, there is no question of DRT and DRAT indulging such parties. In this case, DRAT was not at all justified in making the impugned order, without insisting upon the compliance with the condition of pre-deposit under section 18 of SARFAESI. The petitioners have failed to avail even the generous terms on basis of which they secured interim relief from DRT and DRAT. As of today, there is no interim relief in operation in favour of the petitioners. Although the petitioners do not deserve any relief in the present case, we set aside DRAT's impugned order dated 28 January 2016 and restore DRT's order dated 24 November 2015. In case, the petitioners, are indeed serious about challenging DRT's order dated 24 November 2015, we grant the petitioners four weeks time to deposit before DRAT 50% of the amount of debt due from them as claimed by SBI in its securitisation notice dated 3 December 2014. In case, this amount is deposited within a period of four weeks from today, DRAT may entertain the petitioners appeal no. 347 of 2015. If however, such amount is not deposited within a period of four weeks from today, the petitioners appeal no. 347 of 2015 shall stand disposed of for non compliance with the provisions contained in section 18 of SARFAESI.

17] In the facts and circumstances of the present case, we dispose of the Rule in the aforesaid terms. The petitioners shall pay costs of Rs.25,000/- (Rupees Twenty Five Thousand) to SBI within period of four weeks from today.

18] A copy of this order shall be directly served by the registry upon the Managing Director of SBI at their head office in Mumbai

CHIEF JUSTICE

(M.S.SONAK, J.)

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