# IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3791 OF 2016

[Satish Vilas Narharshettiwar and one .vs. Union of India and others]

| Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders | Court's or Judge's orders |
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Shri R.H. Chandurkar, counsel for the petitioners,
Shri A.M. Joshi, counsel for respondent nos.1 and 2,
Shri P.D. Meghe, counsel for respondent no.3.

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CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JULY 13, 2016.

By this writ petition, the petitioners challenge the order of the Registrar, Debts Recovery Appellate Tribunal, Mumbai, dated 27.6.2016, asking the petitioners to deposit a sum of Rs.49,250/- towards the court fees.

The respondent no.3-Bank provided financial assistance to the petitioners, who are engaged in the business of Real Estate, Land Development and Construction. Since there was a default in payment of the loan, the respondent no.3-Bank served a notice on the petitioners under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'Act' for the sake of brevity). Since the loan amount was not paid by the petitioners, the respondent no.3-Bank issued the notice under Section 13 (4) of the Act and the District Magistrate passed the order under Section 14 of the Act to ensure that the possession of the secured assets could be secured by the respondent no.3-Bank. On 17.3.2016, the respondent no.3-Bank issued a notice of sale of the property by auction. The action on the part of the respondent no.3-Bank was challenged by the petitioners in an appeal under Section 17 of the Act. Along with the appeal, an application was filed by the petitioners for grant of stay to the auction proceedings initiated by the respondent no.3-Bank. The application of the petitioners for grant of stay was rejected by the order dated 25.4.2016, as no *prima facie* case was made out. The said order of rejection of stay, dated 25.4.2016 was challenged by the petitioners in an appeal under Section 18 of the Act before the Debts Recovery Appellate Tribunal. At the time of scrutiny of the memorandum of the appeal, as required by the provisions of Rule 6 of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994 the Registrar found that the petitioners had paid inadequate fees of Rs.200/- only, though the petitioners were required to pay the court fees of Rs.49,250/-. The Registrar of the Appellate Tribunal refused to register the appeal filed by the petitioners before the Appellate Tribunal. The petitioners have challenged the action on the part of the Registrar of the Appellate Tribunal in asking the petitioners to pay the court fees of Rs.49,250/-.

Shri Chandurkar, the learned counsel for the petitioners submitted that the Registrar did not have jurisdiction to hold that the petitioners were liable to pay the court fees of Rs.49,250/- at the time of presentation-filing of the appeal. It is stated that a sum of Rs.49,250/- was paid by the petitioners at the time of filing the appeal before the Debts Recovery Appellate Tribunal under Section 17 of the Act. It is stated that, while filing an appeal, against the order rejecting the stay under Section 18 of the Act, it would not be necessary for the petitioners to deposit the court fees, as are provided by clauses (a) & (b) in the chart-appended to Rule 13 of the Security Interest (Enforcement) Rules, 2002. It is stated that clauses (a) to (d) in the chart would not apply to the case of the petitioners and the petitioners would be liable to pay the court fee of Rs.200/-, as per clause (e), as if it is an application made by the petitioners. It is submitted that the action on the part of the Registrar to refuse to register the appeal filed by the petitioners on the ground of payment of deficit court fee is bad in law and is liable to be set aside. The learned counsel relied on the judgment of the Single Bench of the Allahabad High Court, reported in <u>2013 (2) DRTC 647 [Allahabad High Court] in the case of Jyoti Extraction Private Limited and another .vs. State of U.P. and others</u> to substantiate his submission.

Shri Ambarish Joshi, the learned counsel for the respondent nos.1 and 2, has supported the action of the part of the Registrar in refusing to register the appeal filed by the petitioners under Section 18 of the Act, as the petitioners had not paid the court fees, as required by the provisions of Rule 13 of the Security Interest (Enforcement) Rules, 2002. It is stated that the case of the petitioners would be governed by Clause (b) of Item No.1 in the chart appended to Rule 13 (2) of the Rules. It is submitted that when an appeal is preferred before the Appellate Authority against any order passed by the Debts Recovery Tribunal under Section 17 of the Act and where the appellant is a borrower and the amount of debt is more than Rs.10 Lakhs, the appellant would be required to pay the court fees, as prescribed by Clause (b) of Item No.1 in the Schedule-Chart appended to under Rule 13(1) of the Rules. It is stated that the petitioners were required to pay Rs.5,000+Rs.250/- for every Rs.1 Lakh or part thereof in excess of Rs.10 Lakhs, subject to a maximum of Rs.1,00,000/-. It is stated that considering the fact that the amount due against the petitioners was Rs.1,86,55,651/-, the Registrar of the Appellate Tribunal rightly directed the petitioners to deposit a sum of Rs.49,250/- towards the court fees. It is stated that the case of the petitioners would not be governed by Clause (e), as submitted on behalf of the petitioners, as the said clause is referable to any other simple application made by a party or any other person in the proceedings. It is stated that Clause (e) would be applicable, if an application for permission to produce documents is filed, an application for grant of stay is filed, an application for bringing the legal heirs of a party on record is filed and/or similar applications are filed. It is stated that in this case the application made by the petitioners for grant of stay to the auction proceedings has been rejected by the Debts Recovery Tribunal and since the said order is challenged in the appeal under Section 18 of the Act, it was necessary for the petitioners-borrowers to have paid the court fees, either as per clause (a) or clause (b) in the schedule. It is stated that clause (b) would be applicable, as the amount due and payable by the petitioners is more than Rs.10 Lakhs. The learned counsel sought for the dismissal of the writ petition.

Shri Meghe, the learned counsel for the respondent no.3, made submissions like the ones advanced by the learned counsel for the respondent nos.1 and 2 and submitted that clause (b) of Item no.1 in the chart-schedule to Rule 13 would be applicable in the case of the petitioners.

On hearing the learned counsel for the parties and on a perusal of the provisions of the Security Interest (Enforcement) Rules, 2002 and specially Rule 13 thereof, we find that the Registrar of the Appellate Tribunal was justified in asking the petitioners to deposit a sum of Rs.49,250/- towards the court fees. The petitioners had filed an appeal under Section 17 of the Act, as they were aggrieved by the action on the part of the respondent no.3-Bank of putting the secured assets for sale, as per the auction notice. While filing the appeal under Section 17 of the Act, the petitioners had deposited a sum of Rs.49,250/- as per clause (1) (b) in schedule-chart appended to Rule 13 of the Security Interest (Enforcement) Rules, 2002. Along with the appeal under Section 17 of the Act, an application for grant of stay was also filed. While filing the application for stay, clause (e) of Item no.1 in the schedule-chart appended to Rule 13 was rightly applied, as it was a miscellaneous application made in the proceedings where the court fees were deposited as per clause (b) in the chart-schedule. The application made by the petitioners for grant of stay was rejected on merits, as also the conduct of the petitioners. The said order of the Debts Recovery Tribunal was challenged by the petitioners before the Debts Recovery Appellate Tribunal. Item no.2 of the schedule-chart appended to Rule 13 of the Rules, refers to the court fees that are payable when an appeal is filed to the Appellate Tribunal against <u>any order</u> passed by the Debts Recovery Tribunal under Section 17 of the Act. Item no.2 further provides that the same fees, as provided by clause (a) to (e) of Item no.1 of the said rules would be applicable. The petitioners had not filed any miscellaneous application before the Debts Recovery Appellate Tribunal and it is an appeal under Section 18 of the Act. When an appeal is filed before the Debts Recovery Appellate Tribunal against <u>any order</u> passed by the Debts Recovery Tribunal under Section 17 of the Act, the same court fees would be required to be paid, as are liable to be paid at the time of filing of the application under Section 17 of the Act. The submission made on behalf of the petitioners that clause (e) would be applicable to the facts of the case and the petitioners would be required to deposit the court fees of only Rs.200/- as are payable on any other application by any person is ill-founded and is liable to be rejected. Before the Debts Recovery Appellate Tribunal, the petitioners have not filed any application in the first place. They have filed a substantive appeal before the Debts Recovery Appellate Tribunal, against the order of the Debts Recovery Tribunal, rejecting an application filed by the petitioners for staying the auction proceedings initiated by the respondent nos.2 and 3. Every order of the Debts Recovery Tribunal is appealable under Section 18 of the Act, be it an interlocutory order or a final order. While filing an appeal before the Debts Recovery Appellate Tribunal under Section 18 of the Act, specially an appeal like the one in this case, the appellants would be required to deposit the court fees, if they are borrowers, as provided by clauses (a) and (b) of Item-sr.no.1 by considering, whether the amount of debt is less than Rs.10 Lakhs or more than Rs.10 Lakhs, respectively. In stead of depositing the court fees that the petitioners were liable to deposit in view of the provisions of Rule 13 of the Rules, the petitioners have challenged the order of the Registrar, in our view, with a view to delay the auction proceedings. The petitioners would be required to pay Rs.200/- towards court fees, if they file an application for grant of stay in the proceedings filed before the Debts Recovery Appellate Tribunal under Section 18 of the Act. However, while presenting an appeal under Section 18 of the Act, the petitioners would be required to pay the regular court fees, as they are borrowers, as prescribed by clauses (a) and (b) of Item no.1 in the schedule-chart appended to the provisions of Rule 13 of the Security Interest (Enforcement) Rules, 2002. The judgment reported in 2013 (2) DRTC 647 [Allahabad High Court] in the case of Jyoti Extraction Private Limited and another .vs. State of U.P. and others and relied on by the counsel for the petitioners cannot be made applicable to the facts of this case.

In the circumstances of the case, we dismiss the writ petition, with no order as to costs.

At this stage, Shri Chandurkar, the learned counsel for the petitioners, states that the petitioners would deposit the court fees of Rs.49,250/- in the Debts Recovery Appellate Tribunal on 18.7.2016 and the respondents may not proceed with the auction proceedings for a period of one week. Shri Meghe, the learned counsel for the respondent no.3-Bank, fairly states, as per the request made on behalf of the petitioners, the respondent nos.3-Bank would not conduct the auction proceedings till 21.7.2016. We accept the statements made on behalf of both the parties.

Order accordingly.

JUDGE JUDGE

Gulande