

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.32890 of 2016
W.M.P.No.28453 of 2016

1. M/s.Shreyas, a Partnership Firm,
rep. by its Managing Director,
P.Valsaraj
 2. P.Valsaraj
 3. B.Jayanthi
 4. Neeraj Valsaraj
- ... Petitioners

-vs-

1. The Authorised Officer
SBT, Stressed Assets Resolution Centre,
SBT Bhavan, Eranakulam,
Ponampally Nagar, Kochi 682 036.
 2. The Deputy General Manager,
SBT, Zonal Office, SBT Bhavan,
Panapally Nagar, Kochi 682 036.
 3. The Chief Manager,
State Bank of Travancore,
Thoppumpady Branch, Kochi 682 036.
 4. The Registrar,
Debts Recovery Appellate Tribunal,
Indian Bank Building, 4th Floor,
Ethiraj Salai, Chennai 600 002.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari, to call for the records, pertaining to order, dated 26.08.2016, made in A.I.R.(SA) 707 of 2015, on the file of the 4th respondent and quash the same.

For appellant : Mr.D.Duraiaraj
For respondents 1 to 3 : Mr.M.Devaraj
For 4th Respondent : Tribunal

ORDER

(Order of this Court was delivered by S.MANIKUMAR, J.)

The order impugned in this writ petition, dated 26.08.2016, reads as follows:

"Heard the learned counsels for the parties in the waiver application.

The appellants have preferred the present appeal under Section 18(1) of the SARFAESI Act, 2002, against the order, dated 25.08.2015, passed by the DRT, Ernakulam, wherein the I.A.No.1134/2014, filed by the appellants in S.A.No.450 of 2012, was dismissed.

The appellants have been served a demand notice dated 14.11.2011 under section 13(2) of the SARFAESI Act, 2002, wherein the respondent-Bank has demanded a sum of Rs.2,63,30,093/- along with interest.

Learned counsel for the appellants submits that the appellants are ready and willing to deposit 25% of the demand raised by the respondent-Bank amounting to Rs.2,63,30,093/- within a period of four weeks from today. Learned counsel for the appellants further submits that the appellants shall deposit Rs.25.00 lacs within 10 days from today and the balance of 25% of demand within four weeks from today.

In view of the submission of the learned counsel for the appellants and the law laid down by the Hon'ble Supreme Court of India in Narayan Chandra Ghosh Vs. UCO Bank and others, AIR 2011 SC 1913, it is directed that the appellants shall deposit 25% of the demand amounting to Rs.2,63,30,093/- within four weeks from today, out of which Rs.25.00 lacs will be deposited by the appellants within 10 days from today and the balance of 25% within four weeks from today. The said amounts shall be deposited by the appellants in the form of demand draft in the name of the Registrar, DRAT, Chennai, who shall keep the same in the shape of FDR in the Nationalized Bank for a period of six months in auto renewal scheme.

Heard the learned counsels for the parties in the interim relief.

It has been submitted by the learned counsel for the appellants that the final hearing of the Securitization Application is fixed on 6.9.2016 before the DRT, Ernakulam. It was prayed that the hearing of the said S.A. before the Tribunal below be stayed till the final decision of the present appeal.

The learned counsel for the respondent-Bank has controverted the submission of the learned counsel for the appellants and has submitted that the appellants are not entitled to any interim relief at this stage.

In the facts and circumstances of the present case and in the interest of justice, I deem it just and proper to direct that the further proceedings in

the Securitization Application No.450/2012 before the DRT, Ernakulam, be stayed, till the next date.

It is made clear that if the appellants fail to deposit the aforesaid amounts as directed above under section 18(1) of the SARFAESI Act, 2002 within the stipulated period as mentioned in the preceeding paragraph, the interim order shall stand automatically vacated.

List this case at DRAT, Chennai on 7.11.2016 as jointly prayed."

2. Having sought for time to make the deposit and having expressed that the petitioners were ready and willing to deposit 25% of the demand raised by the respondents-Bank, amounting to Rs.2,63,30,093/-, within a period of four weeks from the date of passing of the impugned order, the writ petitioners have raised grounds, against the Chairperson of the Debts Recovery Appellate Tribunal, stating that the Chairperson, without considering their financial hardship and the request of two months' time for compliance of the conditional order of 25% of the demand amount, made by the respondents-Bank, directed the petitioners to pay a sum of Rs.25 Lakhs, within 10 days, from the date of passing of the order and balance 25% within four weeks, from the date of passing of the impugned order, which is onerous.

3. The abovesaid contention cannot be countenanced at any stretch of imagination, on the appellant's own pleading before the Tribunal. Auction is stated to be fixed on 05.10.2016. The petitioners plead before this Court that it is the residential property, which is brought for auction and despite their best efforts, funds could not be generated for payment, as agreed before the Tribunal. The petitioners only seek a further period of four weeks, to make the deposit of 25% of the demand, raised by the respondents-Bank, amounting to Rs.2,63,30,093/-.

4. Mr.M.Devaraj, learned counsel appearing for the respondents-Bank submitted that there is a default in making payments and in such circumstances, the writ petitioners are not entitled to any indulgence.

Heard the learned counsel appearing for the parties and perused the materials available on record.

5. Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act, 2002), deals with an appeal before the appellate tribunal and the same reads hereunder,

"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 alongwith such fee, as may be prescribed to the 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."

6. In *Narayan Chandra Ghosh vs. Uco Bank & Ors.* reported in AIR 2011 SC 1913, the question posed before the Hon'ble Apex Court was, whether the requirement of the pre-deposit under Section 18(1) is mandatory or not? Going through Section 18 of the SARFAESI Act, 2002 and the provisos therein, the Hon'ble Apex court, at paragraph No.8 of the said judgment, held as follows:

"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 percent 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 percent 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 percent 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. 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."

7. Admittedly, the petitioner has not deposited the amount. However, considering the fact that the subject property mortgaged with the respondents-Bank, is a residential property and when the petitioners have come forward to safeguard the property, subject to the issues raised before the Tribunal, this Court is of the view that in the interest of justice, some time can be granted, so as to enable the petitioners to make the deposit of 25% of the demand, raised by the respondents-Bank, amounting to Rs.2,63,30,093/-, within a period of four weeks, from today, failing which, the appeal in A.I.R.(SA) 707 of 2015, would stand dismissed. It is made clear that if the petitioners fail to honour the assurance made before this Court, based on which, indulgence is granted, no further extension would be granted.

8. Impugned order, dated 26.08.2016, made in A.I.R.(SA) 707 of 2015, on the file of the Chairperson, Debts Recovery Appellate Tribunal, Chennai, is set aside, on the abovesaid condition. The respondents-Bank shall not proceed with the auction, till the time stipulated by this Court.

9. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

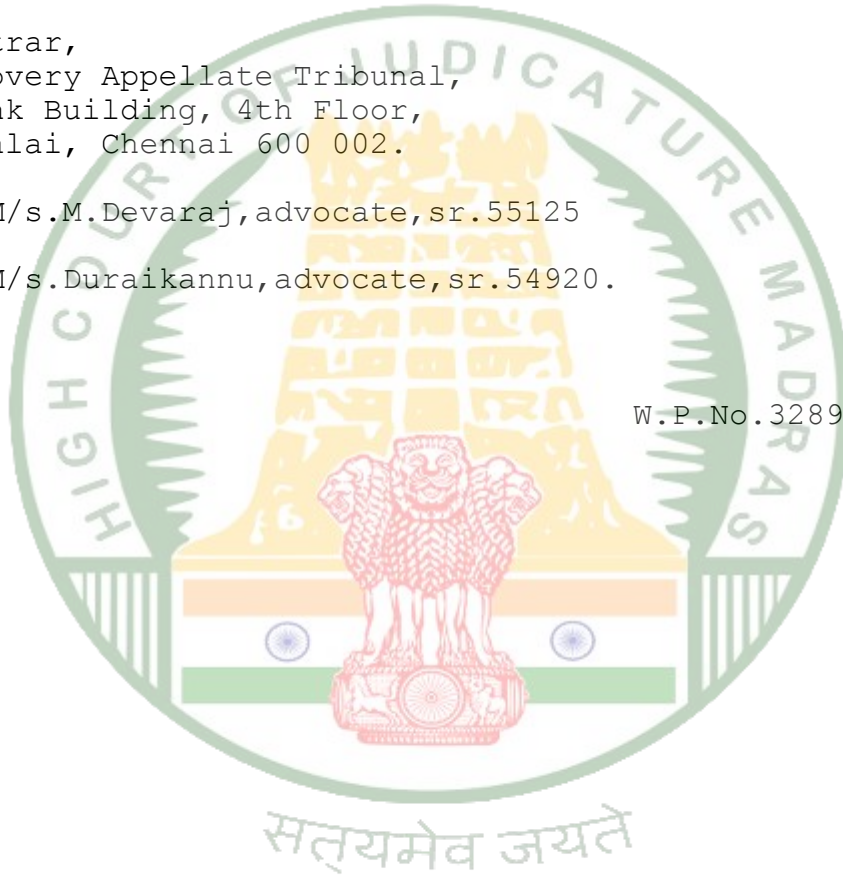
The Registrar,
Debts Recovery Appellate Tribunal,
Indian Bank Building, 4th Floor,
Ethiraj Salai, Chennai 600 002.

+1 cc to M/s.M.Devaraj,advocate,sr.55125

+1 cc to M/s.Duraikannu,advocate,sr.54920.

mp(co)
krd 28/9

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