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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1244/2016

AJOY KHANDERIA ..... Petitioner

Represented by: Mr.Kanish Ahuja, Adv.

versus

BARCLAYS BANK & ANR ..... Respondent

Represented by: Mr.R.P.Agrawal, Ms.Priyadarshini Verma, Advs.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% **16.02.2016**

CM 5449/2016

Exemption allowed subject to just exceptions.

W.P.(C) 1244/2016

1. Counsel as above appears for respondent No.1 on advance copy of the writ petition being filed.

2. Issue being short, we are of the opinion that counter affidavit is not warranted.

3. Heard learned counsel for the parties.

4. The writ petitioner is aggrieved by the order dated December 23, 2015 requiring the petitioner to deposit 25% of the amount determined by the Debts Recovery Tribunal as per the decision dated August 29, 2013.

5. Concededly the Debts Recovery Appellate Tribunal has the power to waive condition of pre-deposit or limit the amount to be deposited in an

appeal challenging determination of a claim filed by a bank or a financial institution before the Debts Recovery Tribunal.

6. Seeking waiver it was pleaded by the petitioner before the Debts Recovery Appellate Tribunal that merely because he was the Managing Director of the respondent No.2 company, decree against him could not be joint and several.

7. We note that while decreeing claim of the bank pursuant to OA No.60/2011 filed, in paragraph 3 and 4 of the decision the Debts Recovery Tribunal has noted that the writ petitioner, as a Managing Director of the principal borrower, had pledged his two lakh shares in the company.

8. The decision nowhere notes that the writ petitioner stood guarantee or signed any document taking upon himself the responsibility to clear the debts of the company.

9. After the claim was decreed, the petitioner filed a review before the Debts Recovery Tribunal which was registered as RA No.02/2014. We note that the Debts Recovery Tribunal noted the contention but did not deal with it. Moving at a tangent, the Debts Recovery Tribunal noted that the appellant had issued cheques on behalf of the company. The decision dismissing review petition holds that there is no error apparent on the face of the record.

10. We do not wish to comment upon the said decision inasmuch as Debts Recovery Appellate Tribunal is seized of the main appeal. In the writ petition our concern is with the interim order passed directing petitioner to deposit 25% of the decretal amount.

11. Suffice it to state that the liability is that of a principal borrower concerning a debt. The liability can be jointly shouldered or it can also be

shouldered in severality, if somebody stands guarantee. Prima facie there is no guarantee furnished by the petitioner for the debts of the company of which the petitioner was a managing director.

12. We accordingly dispose of the writ petition setting aside the impugned order dated December 23, 2015. We allow the interim application filed by the appellant seeking full waiver of the pre-deposit as a condition of hearing the appeal filed by the petitioner.

13. Appeal filed by the petitioner shall be heard by the Debts Recovery Appellate Tribunal on merits without any pre-deposit being made.

14. No cost.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 16, 2016
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