IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.(NPD).No.2086 of 2017
C.M.P.No.9979 of 2016

M/s.Al-qalam Educational Trust,
Rep., by Power of Attorney,
K.Samiudeen .. Petitioner

versus

1. Indian Bank,
   Thiruvottiyur Branch,
   Chennai-19.

2. M/s.R.S.Construction Company,
   A Partnership Firm,
   Rep., by its Managing Partner,
   V.Selvaraja Sekar,
   23, Anna Nagar I Street,
   Sathuma Nagar, Chennai-19.

3. V.Selvaraja Sekar
4. V.Gnanasigamani
5. Saroja Venkataramani
   S.M.Gopal Chettiar (deceased)
   A.Arunachalam (deceased)

6. A.R.Suseela .. Respondent



Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 01.06.2017, in I.A.No.1013 of 2015 in R.A.No.14 of 2013, on the file of the Debts Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.V.Bhiman
for M/s.Sampathkumar and Association

For Respondent : Mr.P.V.Muralidhar

**ORDER**

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

Civil Revision Petition is filed against the order, dated 01.06.2017, in I.A.No.1013 of 2015 in R.A.No.14 of 2013, on the file of the Debts Recovery Appellate Tribunal, Chennai.

2. O.A.No.500 of 2007, has been filed by the Indian Bank, Chennai, against M/s.R.S.Construction Company and others, for recovery of Rs.26,99,420/-, amount due under the secured loan facility availed by the 1st respondent, together with interest thereon, at contract rate with quarterly rests from the date of application, till date of payment in full. M/s.Al-qalam Educational Trust, Represented by its Power of Attorney, Mr.K.Samiudeen, has been impleaded in the said Original Application, vide I.A.No.526 of 2009, dated 03.04.2012.

3. Pending disposal of O.A., defendants 5 and 6 therein died. Except M/s.Al-qalam Educational Trust, 8th defendant therein/petitioner, others remain ex parte. On adjudication, in O.A.No.500 of 2007, the Debts Recovery Tribunal-III, Chennai, vide order, dated 12.10.2012, has passed final orders, as follows:

(a) The applicant Bank is entitled for recover certificate, against the defendants 1 to 7 for a sum of Rs.26,99,420/- (Rupees Twenty Six Lakhs Ninety Nine Thousand Found Hundred and Twenty only) together with future interest at the rate of 12% p.a., from the date of filing of the OA till realization.

(b) It is further ordered that in case of default of payment as determined above, the applicant bank is at liberty to sell the OA schedule mentioned properties, which shall form part of this order and appropriate the sale proceeds towards the amount due. The applicant bank is entitled to get the Court fee paid.

(c) The Registry is directed to issue recovery certificate in favour of the applicant bank in terms of the final order."



4. Being aggrieved by the same, the petitioner has filed a regular appeal in R.A.No.14 of 2013, on the file of the Debts Recovery Appellate Tribunal, Chennai. In R.A.No.40 of 2013, the petitioner has filed I.A.No.1013 of 2015, for waiver of deposit, under Section 21 of the SARFAESI Act. The

petitioner has also sought for an interim stay of the entire proceedings. Though the Bank has not filed any counter, the prayers sought for, have been opposed. After hearing the learned counsel appearing for both the parties, vide order, dated 01.06.2017, the Debts Recovery Appellate Tribunal has ordered hereunder:

> "Heard on I.A.No.1013 of 2015, application for waiver. The appellant has challenged the order, dated 12.10.2012, of the Hon'ble DRT-III, Chennai passed in O.A.No.500 of 2017, by which, OA of Bank is allowed for recovery of a sum of Rs.26.99 Lakhs. The Ld. Counsel for respondent submits that one of the properties has been made as subject matter of mortgage despite the fact that he is neither the borrower nor the mortgagor. On the other hand, the Ld. Counsel for respondent bank submits that DRC has been issued in the year 2013 for recovery of about Rs.77 Lakhs. Without making any comments on merits of the case of the parties of this appeal, I considered the debt amount as 26.99 Lakhs. In view of the fact that DRAT cannot entertain any application without ensuring any pre-deposit of 50% which cannot be reduced less than 25% in any case, I hereby direct the appellant to make a pre-deposit of Rs.13.50 Lakhs, out of which Rs.10 Lakhs to be paid within four weeks and another Rs.3.50 Lakhs to be paid within next four weeks thereafter.
>
> List on 29.06.2017 for confirmation of 1st instalment of Rs.10 Lakhs of pre-deposit, along with connected case."

5. Being aggrieved by the same, the instant civil revision petition has been filed.

6. Record of proceedings shows that on 29.06.2017, while ordering notice to the respondents, returnable by 12.07.2017, a Hon'ble Division Bench of this Court has granted interim stay of the impugned order made in I.A.No.1013 of 2015, dated 01.06.2017, on condition that the petitioner deposits a sum of Rs.5 Lakhs with the respondent-Bank, towards the subject account, on or before 03.07.2017.

7. On this day, when the matter came up for further hearing, Mr.V.Bhiman, learned counsel appearing for the petitioner submitted that out of Rs.13.50 Lakhs, directed to be deposited by DRAT, Chennai, as pre-deposit, the petitioner has already paid Rs.5 Lakhs with the Bank and having regard to the fact that the petitioner is an educational trust, this Court may direct the petitioner to make a further deposit of Rs.5 Lakhs and accordingly, modify the order of DRAT, Chennai. According to him, a sum of Rs.10 Lakhs would represent 25% of the debt due to the Bank, i.e., Rs.26,99,420/- and that the petitioner would also make a representation to the Indian Bank, Chennai, to arrive at a settlement, in respect of the property, which he had purchased from the 5th defendant therein.

8. Mr.P.V.Muralidhar, learned counsel appearing for the respondent-Bank is agreeable for the further deposit of Rs.5 Lakhs and submitted that if any representation/proposal is submitted by the petitioner, the same would be considered.

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

9. Perusal of the order, dated 01.06.2017, shows that DRAT, Chennai, has considered the debt amount of Rs.26.99 Lakhs. Section 18 of the SARFAESI Act, 2002, enables any person, aggrieved by any order made by the Tribunal, under Section 17, to prefer an appeal along with such fee to the appellate forum. As per the 3rd proviso to the said Section, the appellate Tribunal may for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt referred to in the 2nd proviso.



10. The petitioner/8th defendant, who is the subsequent purchaser of the property, has been directed to pay Rs.13.50 Lakhs. 50% of the Debt amount works out to Rs.13,49,710/-. For the reasons recorded in writing, the Debts Recovery Appellate Tribunal, Chennai, has got powers to reduce the amount,

but not less 25% of the amount, referred to in the 2nd proviso. The Tribunal has exercised the powers under the 2nd proviso, directing deposit of Rs.13.50 Lakhs of the amount debt.

11. 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."





12. The petitioner is stated to be an Educational Trust to establish and

administer educational institutions, hospitals and dispensaries, orphanages, homes for the aged, institutions for the blind and mentally retarded without any distinction on the basis of caste, community or creed. Having regard to the above indisputed fact and in the interest of justice, we hereby reduce the pre-deposit amount to Rs.10 Lakhs, instead of Rs.13.50 Lakhs, fixed by the DRAT, Chennai. The order of the DRAT, Chennai, dated 01.06.2017, is modified, as indicated above.

13. A sum of Rs.5 Lakhs has already been deposited and therefore, the remaining Rs.5 Lakhs has to be deposited on or before 28.07.2017, the date on which, R.A.No.14 of 2013, is slated for hearing. On such deposit within the stipulated time, DRAT, Chennai, is directed to process the appeal and number the same, if it is otherwise in order.

14. Mr.P.V.Muralidhar, learned counsel appearing for the 1st respondent-Bank submitted that a sum of Rs.10 Lakhs, directed to be deposited, as pre-deposit, be permitted to be appropriated, against the debt, for which, Mr.V.Bhiman, learned counsel appearing for the petitioner has no objection. Placing the same on record, Rs.10 Lakhs directed to be deposited, as pre-deposit, shall be apportioned towards the loan.



15. With the above directions, the Civil Revision Petition is disposed of.

No costs. Consequently, connected Miscellaneous Petition is also closed.

(S.M.K., J.) (V.B.S., J.)

20.07.2017

**Note to Office:**

Issue order copy on 24.07.2017
skm

To

The Debts Recovery Appellate Tribunal,
Chennai.

**S.MANIKUMAR, J.**
**AND**
**V.BHAVANI SUBBAROYAN. J.**

skm

**C.R.P.(NPD).No.2086 of 2017**



**20.07.2017**