

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(NPD) Nos.285 & 286 of 2017
and CMP Nos.1251 & 1252 of 2017

Mr.S.Ramesh

.. Petitioner in both CRPs.

versus

1. The Authorised Officer,
State Bank of India,
SME Ekkaduthangal Branch,
No.5, 2nd Floor, Jawaharlal Nehru Road,
Ekkaduthangal,
Chennai - 600 032.

2. M/s.Keerti Shoes (India) Pvt. Ltd.,
Rep. by its Managing Director Mr.S.Ramesh .. Respondents in both CRPs.

Prayer in CRP (NPD) No.285 of 2017: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 20.12.2016 passed by the Debts Recovery Appellate Tribunal at Chennai in I.A.No.372 of 2015 in A.I.R.S.A.No.346 of 2015.

Prayer in CRP (NPD) No.286 of 2017: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 30.11.2016 passed by the Debts Recovery Appellate Tribunal at Chennai in I.A.No.372 of 2015 in A.I.R.S.A.No.346 of 2015.

For Petitioner : Mr.Jesus Moris Ravi
in both CRPs.

COMMON ORDER

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

CRP (NPD)No.285 of 2017, is filed to set aside the order dated 20.12.2016 passed by the Debts Recovery Appellate Tribunal at Chennai, in I.A.No.372 of 2015 in A.I.R.S.A.No.346 of 2015, in and by which, the petitioner herein has been directed to deposit Rs.1.10 Crores, in the name of the Registrar, DRAT, Chennai, within one month from the date of passing of the order, failing which, Application viz., I.A.No.372 of 2015 shall stand dismissed, resulting in the Appeal in A.I.R.S.A.No.346 of 2015, being rejected.

2. CRP (NPD)No.285 of 2017, is filed to set aside the order dated 30.11.2016 passed by the Debts Recovery Appellate Tribunal, at Chennai, in I.A.No.372 of 2015 in A.I.R.S.A.No.346 of 2015.

3. After making submissions on the challenge to the orders made, in instant Civil Revision Petitions viz. CRP (NPD) Nos.285 & 286 of 2017, Mr.P.Jesus Moris Ravi, learned counsel for the revision petitioner fairly conceded that both the Revision Petitions be dismissed as withdrawn. He further submitted that inasmuch as the Debts Recovery Appellate Tribunal, Chennai, has fixed 31.01.2017, as the last date for deposit of Rs.1.10

Crores, in the name of the Registrar, DRAT, Chennai, failing which, application I.A.No.372 of 2015, would stand dismissed, resulting in the appeal viz., AIR (SA) No.376 of 2015, being rejected, having regard to the financial constraint and hardship faced by the guarantor / petitioner, whose assets have been secured for availing loan, this Court may grant a months time from today, to deposit the abovesaid amount in the name of the Registrar, Debts Recovery Appellate Tribunal, Chennai.

4. 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."

5. As per the third proviso to Section 18 of the SARFAESI Act, 2002, 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.

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. Guarantor is on appeal before DRAT, Chennai. Material on record shows that DRAT, Chennai, has exercised its discretion and granted reduction in deposit and as per the decision of the Hon'ble Supreme Court in ***Narayan Chandra Ghosh's case***, no further reduction is permissible. Considering the difficulties expressed before us and taking note of the consent of Mr. Jesus Moris Ravi, learned counsel for the petitioner, on instructions from his client viz., Mr. S. Ramesh, present in the Court, and in exercise of extraordinary jurisdiction under Article 226 & 227 of the Constitution of India, while dismissing the Civil Revision Petitions as withdrawn, we hereby grant one month time from today i.e. upto

27.02.2017, to the Civil Revision Petitioner to deposit a sum of Rs.1.10 Crores, in the name of the Registrar, DRAT, Chennai. We make it clear that in default, application I.A.No.372 of 2015, for waiver would stand dismissed, resulting in rejection of AIR (S.A.) No.346 of 2015, on the file of the DRAT, Chennai. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

[S.M.K., J.] [M.V.M., J.]
27.01.2017

Note to office:
Issue order copy by 30.01.2017.

Index: Yes/No.
Internet: Yes
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S. MANIKUMAR, J.
AND
M.V.MURALIDARAN, J.

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