

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE S. MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No.18770 of 2017
W.M.P.No.20294 of 2017

Ms.Shoba,Proprietrix
M/s.Banyan Tree Family Salon
Spa @ Academy,
No.1, East Road,
West CIT Nagar,
Chennai 600 035.Petitioner

v.

The Oriental Bank of Commerce,
Adyar Branch,
No.57, L.B.Road,
Adyar, Chennai-20. Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the record pertaining to order, dated 27.06.2017 in AIR.No.147 of 2017, on the file of the Debt Recovery Appellate Tribunal, Chennai and quash the same as illegal and unlawful.

For Petitioner : Mr.S.Sethuraman

O R D E R

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

Writ Petition is filed to quash the order, dated 27.06.2017 in AIR.No.147 of 2017, on the file of the Debt Recovery Appellate Tribunal, Chennai, directing the petitioner to deposit Rs.9 Lakhs with the Tribunal, within four weeks.

2. It is the case of the petitioner that the respondent-bank had filed an O.A.No.293 of 2014, before the Debt Recovery Tribunal-II, seeking a decree or order, directing her to pay the bank, a sum of Rs.33,36,902.22 with further interest at the rate of 13.40% per annum, from the date of filing till date of payment and for other reliefs. According to the petitioner, in

the said application, summons were not served on her and on 02.07.2015, an ex parte order has been passed by the Debts Recovery Tribunal. She came to know about the ex-parte order, only after the CBI raid, during November 2015 and immediately thereafter, she filed M.A.No.91 of 2016 in O.A.No.293 of 2015, for condonation of delay, in filing the petition to set aside the ex parte decree, dated 02.07.2015. The said petition was opposed by the respondent-bank, by filing a counter, stating that after due publication in Newspapers, an ex-parte order was passed against her. After hearing both parties and observing that the summons were not served on the petitioner, the Debt Recovery Tribunal has condoned the delay, on condition to deposit a sum of Rs.10 Lakhs, on or before 14.11.2016. Aggrieved by the said order, she preferred an appeal before the Debt Recovery Appellate Tribunal in AIR.No.147 of 2017. Upon hearing the parties, the Debt Recovery Appellate Tribunal, by order, dated 27.06.2017, has directed her to deposit Rs.9 Lakhs as pre-condition for hearing the appeal, in terms of Section 21 of the RDB Act. The said order is under challenge.

3. The petitioner has contended that both the orders passed by the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal, are not in consonance with the provisions of Recovery of Debts Due to the Banks and Financial Institutions Act, 1993 and the Tribunals have failed to consider the fact that FIR is registered by CBI against Bank Manager and several other persons, including her for the alleged offences of Section 120B r/w. 409 and 420 of IPC and also Section 13(2) read with Section 13(1) (D) of PC Act. Even in the bail application in CrI.O.P.No.28577 of 2015, this Court, vide order, dated 11.01.2016, has directed her to deposit a sum of Rs.15 Lakhs, to the credit of R.C.M.A-1-215-A-045, on the file of 9th Additional Judge, CBI Court Chennai.

4. The petitioner has further submitted that the abovesaid deposit has been made, only to satisfy the debt due to the bank, when more than 25% of the amount has been deposited to protect the interest of the bank in a collateral proceeding, that should be taken into account for the purpose of Section 21 of the RDB Act. According to her, the Debt Recovery Appellate Tribunal has failed to appreciate the object behind Section 21 of the abovesaid Act, which protects not only the interest of the bank, but also the borrower.

5. The petitioner has further submitted that the Hon'ble Supreme Court, in various cases, has held the pre-deposit of the debt due, is to entertain an appeal and in the event of the appellant, succeeding in the appeal, the pre-deposit has to be refunded and therefore, she contended that the pre-deposit is not an amount to be credited to the account straight away. She therefore submitted that the Debt Recovery Appellate Tribunal,

Chennai, without taking consideration, the aforesaid aspects, had passed impugned order in a routine and mechanical manner. Hence, she prayed for the relief, as stated supra.

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

6. 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."

7. 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."

8. Though the petitioner has contended that a sum of Rs.15 Lakhs, has been deposited, as per the orders of this Court, dated 11.01.2016 in Crl.O.P.No.28577 of 2015, to the credit of R.C.M.A-1-215-A-045, on the file of 9th Additional Judge, CBI Court, Chennai and that said deposit made in a collateral proceedings, should be taken into consideration, for the purpose of Section 21 of the RDBI Act, this Court is not inclined to accept the said contention, for the reason that as per the

decision of the Hon'ble Supreme Court in Narayanan Ghosh's case (cited supra), pre-deposit under sub-Section (1) of Section 18 of the SARFAESI Act, 2002, is mandatory. Direction to deposit Rs.15 Lakhs made by this Court in Crl.O.P.No.28577 of 2015, for enlargement of bail, cannot be treated as pre-deposit, under the abovesaid Section.

9. As per the 2nd proviso to Section 18 of the said Act, 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. 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 twenty-five per cent of debt referred to in the second proviso.

10. In the case on hand, O.A.No.293 of 2014, has been filed on 22.10.2014, for recovery of Rs.33,36,902.22 with further interest at the rate of 13.40% per annum, from the date of filing till the date of payment. The petitioner has remained exparte. Considering the material on record, the DRT-II, Chennai, vide order, dated 02.07.2015, held that the Bank is entitled for recovery of the abovesaid sum, with interest at the rate of 12% from the date of Original Application, till the date of realisation.

11. When M.A.No.91 of 2016 in O.A.No.293 of 2015, has been filed to condone the delay of 310 days, in filing the petition to set aside the exparte decree, dated 02.07.2015, the Tribunal, vide order, dated 14.10.2016, has allowed the said M.A., on condition to deposit a sum of Rs.10 Lakhs, on or before 14.11.2016, failing which, M.A., would be dismissed. When the writ petitioner has filed an appeal in AIR.No.147 of 2017, before the Debt Recovery Appellate Tribunal, Chennai, again, there was a delay of 87 days in preferring an appeal against the order, dated 14.10.2016, made in M.A.No.91 of 2016 in O.A.No.293 of 2015. The Debt Recovery Appellate Tribunal, by order, dated 27.06.2017, by considering the debt amount as Rs.33,36,902.22, directed the petitioner to make a deposit Rs.9 Lakhs, which is slightly above 25% of the debt amount, determined by the Tribunal.

12. As the condition of pre-deposit is mandatory under sub-Section (1) of Section 18 of the SARFAESI Act, 2002 and following the decision of the Hon'ble Apex Court in Narayanan Ghosh's case (cited supra), we are of the view that the order impugned in this writ petition, cannot be interfered with.

13. For the reasons, stated supra, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

skm

To

The Debt Recovery Appellate Tribunal,
Chennai.

Copy to:

The Oriental Bank of Commerce,
Adyar Branch,
No.57, L.B.Road,
Adyar, Chennai-20.

+1cc to Mr.S.Sethuraman, Advocate in sr.no.50132

W.P.No.18770 of 2017

MG(CO)
NR 29/08/2017



WEB COPY