

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS.JUSTICE J.UMA DEVI

WRIT PETITION No.36447 OF 2017

O R D E R

(Per Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the order dated 04.09.2017 passed by the Debts Recovery Appellate Tribunal, Kolkata, in Tender No.71 of 2017/470/524. By the said order, while condoning the delay in the presentation of the appeal, the Appellate Tribunal directed the appellant to deposit Rs.40,00,000/- having considered its waiver application. Aggrieved by this condition, the appellant is before this Court.

Sri N.Chandradhar Rao, learned counsel for the petitioner, would contend that the initial liability of the petitioner/appellant was to the tune of Rs.28,13,107.30 Ps. and that the waiver application ought to have been considered by the Appellate Tribunal in the context of the original liability.

Sri Manohar Reddy Nandyala, learned counsel for the UCO Bank, Secunderabad, would however point out that the initial liability of the petitioner/appellant would continue to gather interest owing to the default committed and state that the outstanding liability as on date would be over Rs.1.00 crore.

Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (now renamed 'the Recovery of Debts and Bankruptcy Act, 1993') (for short, 'the Act of 1993') provides for appeals to the Appellate Tribunal. Section 21 of the Act of 1993 posits that in the event of any person preferring an appeal before the Tribunal, such appeal should not be entertained unless such person deposits with the Appellate Tribunal 50% of the amount of the debt due from him as determined by the Debts Recovery Tribunal concerned under Section 19 of the Act of 1993. The proviso to

Section 21 of the Act of 1993 however permits the Appellate Tribunal to reduce the amount to be deposited by such amount as may, for reasons to be recorded in writing, be considered proper subject to the condition that it should not be less than 25% of the amount of the debt which is due.

Given the fact that the direction of the Tribunal required deposit of Rs.40.00 lakhs and even according to the learned counsel for the bank, the dues as on date would be over Rs.1.00 crore, Sri N.Chandradhar Rao, learned counsel, was asked to ascertain as to whether his client would be willing to pay at least Rs.30.00 lakhs. However, Sri N.Chandradhar Rao, learned counsel, informs us today that his client is unable to make such payment.

As discretion to reduce the amount under the proviso to Section 21 of the Act of 1993 is fettered by the condition that it cannot be below 25% of the amount due and as the petitioner/appellant seems to be unable to make a deposit in terms of this statutory mandate, we find no reason to interfere with the order under challenge.

The writ petition is devoid of merit and is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

J.UMA DEVI ,J

7TH NOVEMBER, 2017

PGS