IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CIVIL REVISION No. 8019 of 2016 (O&M)
DECIDED ON: FEBRUARY 13, 2017

DINKAR DOGRA AND ANOTHER

.....PETITIONERS

VERSUS

HDFC BANK AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Anoop Verma, Advocate
for the petitioners.

None for respondent No.1.

Mr. Manjit Singh Ahluwalia, Advocate
for respondents No. 3, 4 and 5.

Mr. Zorawar Singh, Advocate
for respondent No.6.

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JASPAL SINGH, J

CM No. 24126-CII of 2016

Application is allowed, as prayed for.

CR No. 8019 of 2016

By virtue of instant petition preferred under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure (for short 'Code'), petitioners have sought the modification of the orders dated

September 16, 2016 vide which learned Debt Recovery Tribunal-I, Chandigarh (for short 'DRT') has declined to grant interim stay as well as the modification of order dated October 24, 2016 whereby, learned Debt Recovery Appellate Tribunal has issued the notice of motion subject to deposit 25% of the amount mentioned in the notice of demand issued under Section 13 (2) of the SARFAESI Act, 2002 (for short 'Act').

The facts giving rise to the instant petition are that petitioners moved an application before the Debt Recovery Appellate Tribunal (for short 'DRAT') against the interim order dated September 16, 2015 (declining the stay of proceedings under Section 13 of the Act) passed by learned DRT alongwith application of waiver of the condition prescribed under Section 18 of the Act (pre-deposit of 50% of the amount as claimed by secured creditors or determined by the DRT, whichever is less) as the said condition of pre-deposit is only for the filing of an appeal before the learned Debt Recovery Appellate Tribunal against the final order of the learned DRT and not against the interim orders. But the learned DRAT has wrongly dismissed the application of waiver whereas, S.A. of the petitioner is still pending before the learned DRT and petitioner has filed an appeal only against an interim order passed by learned DRT. In fact, for filing of an appeal against the interim order, Section 18, which requires pre deposit of some of the amount, is not attracted.

Moreover, a close scrutiny of the provisions contained in Section 18, particularly, the second proviso to it, makes it abundantly clear that depositing of 25% of the amount shall be only in final appeals i.e. final order under Section 17, where the rights of the parties and the liability of the borrower has already been determined by learned DRT. In the instant case, the matter is still subjudised before learned DRT and the petitioners had approached the learned Appellate Tribunal against the interim order vide which the prayer for stay of proceedings under Securitization Act, had been declined.

While referring to the judgment delivered by Hon'ble Apex Court in the case of ***Mardia Chemicals Limited etc. vs. Union Bank of India & others; 2004 (4) SCC 311;*** it has been submitted by learned counsel for the petitioners that term "appeal" which has been used in the Section 17 of the Act has wrongly been used and the proceedings under Section 17 are more of in the nature of a civil suit. Hence, a remedy under Section 18, as in the present case, against an interim order can never be termed as an appeal. Therefore, imposition of condition to deposit 25% of the amount is not applicable in the facts and circumstances of the case in hand.

Learned counsel for the petitioners has further contended that even otherwise requirement of deposit of 25% of amount just for the entertainment of appeal against an interim order, is an oppressive, onerous and arbitrary one. Otherwise, also it would not be possible for a borrower to raise funds to make deposit of the huge amount of demand, once he is deprived of the possession/management of the property namely i.e. secured assets. Therefore, the condition of deposit is a condition of impossibility which renders the remedy made available before the DRT as nugatory and illusory. Moreover, such a provision is made to regulate the exercise of the right of an appeal conferred upon a person. The purpose is that right of appeal may not be abused by any recalcitrant party and there may not be any difficulty in enforcing the order appealed against if ultimately it is dismissed. Since, the matter in controversy is yet to be determined by DRT, thus, imposition of pre-deposit of the amount just for entertainment of appeal against an interim order whereby, while issuing notice of motion a direction has been issued to deposit 25% of the amount of ₹3,00,16,876/- i.e. ₹75,04,219/-, is highly exorbitant and amounts to taking away the right of the petitioners to seek remedy against an interim order.

On the other hand, learned counsel for respondents have supported the impugned orders and have submitted that imposition of condition to deposit 25% of the amount outstanding against the petitioner before the entertainment of appeal against an interim order is legally and factually justified. Moreover, there is no provision of filing of an appeal against any order passed by DRT except Section 18. Moreover, as per Section 18, if any person aggrieved by any order made by the DRT makes it crystal clear that any order made interim or final, appeal is to be preferred under Section 18 and for that reason a party is to abide by all the terms and conditions to be imposed under the provisions of the afore-said Act. Thus, there is no illegality, infirmity or perversity in the impugned orders. As such, instant petition being devoid of merits is liable to be dismissed.

After bestowing due consideration to the rival submissions made by learned counsel for the parties as well as scrutinizing the impugned order, this Court is of the considered view that the impugned orders are absolutely in consonance with the legal proposition of law, which governs the matter in controversy.

The judgment relied upon by the petitioner is not applicable to the facts and circumstances of the case in hand and is distinguishable. Petitioner cannot derive any benefit from the observation made therein.

From the reading of judicial pronouncement referred to above relied upon by learned counsel for the petitioners, the inevitable conclusion is that right of appeal is a creature of a statute and it being a statutory right can be conditional or qualified. If the statute does not create any right of appeal, appeal can not be filed. Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi-judicial adjudications. Thus, it can be safely concluded that while granting this right, the legislature can impose condition for exercise of such right. There is no constitutional or legal impediment to imposition of such a condition. The requirement about the deposit of the amount claimed as a condition precedent to entertain an appeal does not nullify the right of appeal. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The condition to deposit of 25% of the amount cannot be said to be either unconstitutional or illegal. Rather, such a condition is imposed just to struck the balance in between the parties. It does not amount to negate or nullify the right of appeal, as has been observed by this Court in the case of ***Punjab State Power Corporation Limited vs. State of Punjab and others;* 2016 (2) RCR (Civil) 559.**

Here, it would also be pertinent to mention that a case involving similar issue came up for hearing before a Division Bench of this Court in the case of ***<u>M/s Shiv Shakti Medical Society vs. Debts Recovery Appellate Tribunal and others; CWP No. 26162 of 2014;</u> decided on July 24, 2015.*** In the said case, challenge was to the order passed by Debts Recovery Appellate Tribunal, on the ground that discretion vested in the Tribunal to reduce the pre-deposit amount to 25% of the amount claimed has not been exercised. In the said case, a direction was given to deposit 50% of the amount claimed and after having discussed the entire matter and keeping in view the fact that major amount was already deposited, petition was disposed of with a direction to petitioner to deposit a further sum of ₹1 crore within a specified time as a condition precedent to the maintainability of the appeal. In the instant petition a condition to deposit 25% of the amount in question was imposed. Moreover, petitioner could not point out as to under which provision an appeal has been preferred against an interim order, if not under Section 18 thereof but nothing specific could be pointed out.

As a sequel of afore-said discussion, this Court does not find any merit in the instant petition. As such the same is dismissed.

No order as to costs.

JASPAL SINGH
JUDGE

FEBRUARY 13, 2017
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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*