

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 18720 of 2017 (O&M)

Date of decision : 13.12.2017

Aman Bhalla

.. Petitioner

versus

Debts Recovery Appellate Tribunal and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Gurvinder Singh Gill**

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Gaurav Mankotia, Advocate, for the petitioner.

Mr. R. S. Bhatia, Advocate, for respondent no. 2.

Rajesh Bindal, J.

The petitioner has approached this Court challenging the order dated 17.3.2017 passed by the Debts Recovery Appellate Tribunal, New Delhi (for short, 'the Tribunal'), whereby second application filed by the petitioner for entertainment of the appeal without pre-deposit of 50% of the amount was dismissed and consequently the appeal was also dismissed.

Learned counsel for the petitioner submitted that the petitioner is a society, which is running educational institutions imparting technical education. Number of students from Backward Classes are studying in the institutions of the petitioner. Challenge made before the Debts Recovery Tribunal was to the action initiated by the bank under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), seeking to recover ₹ 12,43,75,120/-.

After the issuance of notice, the petitioner deposited ₹ 4.60 crores. Application filed under Section 17 of the SARFAESI Act was wrongly dismissed by the Debts Recovery Tribunal. Along with the appeal before the Tribunal, application was filed for entertainment thereof without any further deposit in terms of Section 18 of the SARFAESI Act, as the petitioner had already deposited more than 37% of the amount demanded. However, while declining the application, even the appeal has also been dismissed. The petitioner is in financial difficulty for the reason that about ₹ 7.50 crores are to be received by the petitioner from State of Punjab for imparting education to the students of Scheduled Castes and Backward Classes for the last 3-4 years. Moment the amount is received, the same shall be deposited with the bank.

On the other hand, learned counsel for the bank submitted that repayment of loan was not a pre-condition that the same shall be re-paid only after any amount is received by the petitioner from the State. The installments of the loan raised are required to be paid on time. Receipt of any amount by the petitioner from the State is his own responsibility. The bank has no role to pay in this. The petitioner having failed to comply with the condition of pre-deposit of the amount before entertainment of appeal, the appeal has rightly been dismissed.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, as claimed by the petitioner against the amount as mentioned in the notice issued under Section 13(4) of the SARFAESI Act i.e. ₹ 12,43,75,120/-, the petitioner claimed that he has already deposited ₹ 4.60 crores, which according to him, comes out to about

37% of the amount claimed in the notice. For seeking entertainment of appeal without any further deposit plea was sought to be raised that the petitioner is to get about ₹ 7.50 crores from the State of Punjab on account of fee for the students belonging to Scheduled Castes and Backward Classes studying in its institutions. That cannot be said to be one of the conditions on which re-payment can be delayed or the appeal should be entertained without any further deposit. But still considering the fact that Section 18 of the SARFAESI Act provides for deposit of 50% of the amount as pre-condition for hearing of appeal on merits by the Tribunal which can be reduced to 25% and the petitioner has already deposited 37% thereof, in our opinion, ends of justice will be met in case the petitioner deposits further ₹ 1 crore with the bank to comply with the condition for entertainment of appeal before the Tribunal. Accordingly, the impugned order dated 17.3.2017 is set aside. It is directed that in case the petitioner deposit ₹ 1 crore within one month from today, the appeal filed by the petitioner shall be heard on merits. On failure, the order passed by the Tribunal dated 17.3.2017 will stand.

The writ petition stands disposed of accordingly.

(Rajesh Bindal)
Judge

13.12.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/ No