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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2872/2017 & CM No. 12567/2017 (stay)

SUSHIL KUMAR JOLLY ..... Petitioner

Through Ms. Wamika Trehan, Proxy counsel with petitioner in person

versus

CHOLA MANDLAM INVESTMENT AND FINANCE COMPANY LTD AND ORS ..... Respondents

Through Mr.L.S.Bindra, Proxy counsel with Mr. Gaurav Dahiya, AR of the respondent company

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON’BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% 31.03.2017

The Lawyers are abstaining from work today.

This writ petition is directed against an order dated 14th March, 2017 of the Debts Recovery Appellate Tribunal, Delhi whereby an interim order has been passed directing that the petitioner shall not be dispossessed from the first floor of the property bearing no. F-1082, Chitranjan Park, New Delhi, subject to his making a deposit of Rs. 3 crores with the Registrar of the Tribunal in the form of bank draft before the next date.

The order appears to have been passed in Misc. Appeal No. 125/2017 filed by the petitioner against an order of the Debts Recovery Tribunal rejecting his Special Application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the Securitisation Act.

The amount of Rs.3 crores directed to be deposited by the petitioner, is about 50% of the amount claimed to be outstanding from the borrower to the Respondent Bank. The petitioner states that he has not borrowed any money from the bank. The petitioner has apparently not executed/signed any loan/guarantee agreements.

Section 18 of the Securitisation Act which provides for appeal to the Debts Recovery Appellate Tribunal is set out herein below for convenience:-

> "(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."

A perusal of Section 18 makes it amply clear that any person aggrieved by an order under Section 17 may appeal whether he be a borrower within the meaning of Section 2(1) (f) or not. In this case, the petitioner is apparently not the borrower. The petitioner has not signed any documents.

It is, however, contended on behalf of the respondents that the petitioner and the borrower carry on business under the name and style of Jolly Enterprises Private Limited. Finance has been disbursed for the business of Jolly Enterprises Pvt. Ltd.

The petitioner denies having any interest in the business of Jolly Enterprises and at this stage there are no documents to show that the petitioner has at any time been director or shareholder, or has any other interest in Jolly Enterprises.

The petitioner claims that the petitioner had paid a substantial part of the consideration for the property which had been purchased in the name of the mother of the petitioner. The petitioner states he incurred expenses of construction on the understanding that the 1st floor of the property would formally be transferred to him by his mother. The petitioner has also relied on a document in writing purportedly executed by his mother. According to the petitioner, loan documents were executed behind the back of the petitioner. The truth or otherwise of these allegations is to be decided in the appeal. Whether or not the petitioner has any interest in Jolly Enterprises, whether he was the beneficiary of the loan or not, are all matters which are to be decided in the appeal before the Appellate Tribunal.

However, the second proviso of Section 18 makes it amply clear that the liability to make pre-deposit is of the borrower which includes even a guarantor or a mortgagor or a pledge or otherwise given property as security as per the definition of borrower, but not others.

If the petitioner is not the beneficiary of the loan, the petitioner cannot be called upon to make a pre-deposit.

A reading of Section 18 (1) along with first proviso makes it amply clear that not only borrowers, but also persons other than borrowers, aggrieved by an order of the Debt Recovery Tribunal under Section 17 have been conferred the right to appeal. The first proviso thus, provides for prescription of different fees for appeals by borrowers and appeals by persons other than borrowers.

The second proviso prohibits an appeal from being entertained unless the borrower has deposited with the Appellate Tribunal, 50% of the amount of debt due from him, as claimed by the secured creditor or determined by the Debt Recovery Tribunal, whichever is less. Under the third proviso, the Appellate Tribunal may for reasons to be recorded in writing reduced the amount of pre-deposit, but not less than 25% of the debt referred to in the second proviso.

The expression ‘no appeal’ in the second proviso to Section 18 is to be construed as ‘no appeal of the borrower’ as otherwise the right of appeal conferred on persons other than borrowers would be rendered nugatory by refusal of the borrower to deposit.

The appeal should be heard and decided without calling upon the petitioner to make a pre-deposit. For a period of four weeks from date, status-quo with regard to the first floor of the property in question shall be maintained. The proceedings before the Debts Recovery Appellate Tribunal may continue in the meanwhile. It will be open to the Debts Recovery Appellate Tribunal to extend the order of status-quo, if it deems appropriate to do so.

The writ petition and the pending application are disposed of with the above observations.

A copy of this order be given Dasti under the signatures of Court Master.

INDIRA BANERJEE, J

YOGESH KHANNA, J

MARCH 31, 2017
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