IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.03.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.7433 of 2018
and WMP No.9232 of 2018

Smt.E.Rukmini ... Petitioner

vs.

1. Canara Bank,
Hombegowda Nagar Branch,
No.211/62, 11th Cross,
Wilson Garden,
Hombedgowda Nagar,
Bangalore,
Represented by its Chief Manager,
Sri.P.M.Kushalappa

2. Sri.B.Perumal Swamy

3. Sri.C.Jayappa Reddy

4. Sri.H.S.Devaraj ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, to call for the records relating to the impugned order dated 07.03.2018 made in I.A.No.1780 of 2017 in A.I.R. No.704 of 2017 on the file of Debt Recovery Appellate Tribunal, Chennai by directing the petitioner to pay a sum of Rupees Forty Lakhs within a period of four weeks and to quash the same and consequently direct the learned Debts Recovery Appellate Tribunal, Chennai, to decide the appeal on merits without insisting the petitioner to make the pre deposit along with R.A.No.127 of 2017 jointly within the stipulated time.

For Petitioner : Mr.C.Prabakaran

ORDER

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

Order impugned in this writ petition by the guarantor is the proceedings of the Debts Recovery Appellate Tribunal, Chennai made in AIR No.704 of 2017 dated 07.03.2018 and the same is extracted hereunder:

"Ld. Counsel Mr.Anandhasayanan for Appellant present and files Memo of Vakalat of M/s.ML.Ganesh for R1.

Ld. Counel Mr.Angamuthu for R4, 5 present.

None for R2 today.

R4, 5 counsel files statement of objections today.

Appellant counsel is directed to file copies of paper book and typed set of papers to R4, 5 counsel.

Heard IA 1779/2017, which is an application filed for condonation of delay of 88 days in filing.

Considering the averments made in IA, delay appears to be unintentional, hence delay is condoned and IA is allowed and disposed of.

Heard IA 1780/17, which is an application for waiver.

Appellant has challenged the order dated 10.07.2017, passed by DRT-II, Bangalore in TA 199/2017, by which TA of Respondent Bank was decreed for a sum of Rs.1.27 Crores together with further interest thereon.

Appellant counsel submits that the property in question was not mortgaged to the Respondent Bank, but title deed were deposited in bank, hence bank, as prima facie has no right of recovery on the basis of the said property in question.

Respondent counsel submits that title deeds are kept by the bank only for security purposes, whether with mortgage or without mortgage and further submits that DRAT cannot entertain an Appeal filed by any aggrieved person unless and until the Appellant complies with the formalities on pre-deposit upto 50% of debt amount, which can be reduced to 25%, but not less than 25% in any case.

Whatever has been averred by the parties shall be considered and decided at the time of final hearing of the case, however on the basis of the decreed amount of Rs.1.27 Crores, I hereby direct the Appellant to make pre-deposit of Rs.40 lakhs with the Registrar of this Tribunal within a period of four weeks from today.

In the event of failure in complying with the order on pre-deposit, the Appeal shall stand dismissed automatically without any reference by this Tribunal. IA is disposed of.

List for confirmation of pre-deposit of Appellant by 04.04.2018."

2. Though Mr.C.Prabakarn, learned counsel for the petitioner contended that order of the tribunal is per se illegal and that, in the abovesaid circumstances, liability fastened on the

petitioner to make pre deposit of 25%, ought not to have been made by the Debts Recovery Appellate Tribunal, Chennai, we are not inclined to accept the said submission, for the reason that in Narayan Chandra Ghosh vs. Uco Bank & Ors. reported in AIR 2011 SC 1913, at paragraph No.8 of the judgment, the Hon'ble Supreme Court has categorically held that pre deposit contemplated in Section 18 of the SARFAESI Act, 2002 is mandatory and on the facts and circumstances of the said case, further observed that the appellate tribunal had erred in entertaining the appeal without directing the appellant therein to comply with the said mandatory requirement.

3. We deem it fit to extract paragraph No.8 of the judgment in Narayan Chandra Ghosh's case [cited supra].

> "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."

4. Having regard to the categorical pronouncement of the Hon'ble Supreme Court, as regards pre deposit, we cannot find fault with the order of the appellate tribunal, which has directed pre deposit of only 25% of the decreed amount of Rs.1.27 Crores.

5. For the abovesaid reasons, the instant writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

6. After the dismissal of the writ petition, Mr.C.Prabakaran, learned counsel for the petitioner seeks for extension of time by four weeks from today to make pre-deposit of Rs.40 lakhs, with the Registrar of Debts Recovery Appellate Tribunal, Chennai.

7. Considering the request of the petitioner, we extend the time to make pre-deposit by four weeks from today.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Chief Manager,
Canara Bank,
Hombegowda Nagar Branch,
No.211/62, 11th Cross,
Wilson Garden, Hombedgowda Nagar,
Bangalore.

2.The Registrar
Debt Recovery Appellate Tribunal Recovery
Chennai

+1 cc to Mr.C.S.Saravanan Advocaate sr 24147

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