IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/02/2018

C O R A M

The Honourable Mr.Justice S.Manikumar
a n d
The Honourable Mrs.Justice V.Bhavani Subbaroyan

C.R.P. (PD) No.243 of 2018
a n d
C.M.P.No.1391 of 2018

Mr.P.Murugan ... Petitioner

Vs

1.The Authorised Officer
Indian Bank
Asset Recovery Management Branch
Ethiraj Salai, Chennai - 600 105

2.S.R.Raja ... Respondents

Petition filed under Article 227 of the Constitution of India to set aside the order dated 04.01.2018 made in I.A. No.331 of 2017 in R.A. (S.A.) No.49 of 2013 on the file of Hon'ble DRAT, Chennai directing the Hon'ble Chairperson, DRAT, Chennai, to take on file the appeal bearing R.A. (S.A.) No.49 of 2013 without any pre-condition and dispose it of in accordance with law.

For petitioner : Mr.M.Arunkumar

For Respondent No.1: Mr.Kalyanaraman,
for Aiyar & Dolia

ORDER

(Order of the Court was made by S.Manikumar, J.)

By consent of parties, civil revision petition is taken up for final disposal.

**2.** On 25.01.2018, we passed the following order:

*"Loan amount sought to be recovered is Rs.25 lakhs.*

*2. Section 18 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, reads as follows:-*

*"(1). Any person aggrieved, by any order made by the Debts Recovery Tribunal (under Section 17, may prefer an appeal along with 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."*

*3. As per third proviso to Section 18 of the Act, for the reasons to be recorded in writing, the appellate Tribunal, may reduce the amount to not less than 25%, of debt referred to in second proviso.*

*4. Petitioner has contended that the existing mortgage with Indian Bank, first respondent, he has purchased the property. Contention has been made that when the Appellate Tribunal is conferred with the jurisdiction, to order pre-deposit of 25% of the debt amount, without adverting to the above, Appellate Tribunal has directed Rs.10 lakhs, as pre-deposit, with the Registrar of the Appellate Tribunal. According to Mr.V.Bhiman, for M/s. Sampathkumar and Associates, learned counsel for the petitioner, Rs.6 lakhs being 25% of the loan amount would be deposited and adequate time be granted.*

*5. For entertaining an appeal, under Section 18 of the SARFAESI Act, 2002, pre-deposit is mandatory. R.A.(SA) No.49 of 2013, appears to have been filed in the year 2013, with the Miscellaneous Application for waiver on 4th April 2013. Though the learned counsel for the petitioner submitted that as there was no Presiding Officer, I.A was numbered only in the year 2017 and thus orders have been passed, directing deposit of Rs.10 lakhs, with the Registrar of the Appellate Tribunal, and sought for a further time of* *two weeks from today, to make deposit of Rs.6 lakhs, being 25% of the debt amount, this Court is not inclined to grant time beyond 1/2/2018, as ordered by the Appellate Tribunal. There shall be an interim order, permitting the writ petitioner, to deposit Rs.6 lakhs (Rupees Six lakhs only), on or before 1/2/2018. Order of this Court be placed before the Appellate Tribunal, on the next hearing date, i.e., 1/2/2018.*

*6. Post on 2/2/2018.*

*7. It is made clear that if the amount ordered by this Court is not deposited, on or before 1/2/2018, order of this Court made today would be rescinded."*

**3.** Subsequently, on 01.02.2018, we passed the following order:

*" Earlier, on 25/1/2018, after hearing the learned counsel for the petitioner, we directed the petitioner to make deposit of Rs.6 lakhs, being 25% of the loan amount, to be deposited with the Appellate Tribunal, on or before 1/2/2018. Direction has been complied with by the Bankers cheque No.404806, drawn on State Bank of India, Indira Nagar Branch, dated 29/1/2018, in favour of the Registrar, Debts Recovery Appellate Tribunal, Chennai and accordingly, memo, dated 29/1/2018 has been filed before the Appellate Tribunal. In the instant Civil Revision Petition also, the petitioner has filed a memo, dated 2/2/2018, with the proof deposit.*

*2. Learned counsel for the petitioner is* *directed to take notice through Court and privately returnable by 13/2/2018. Interim order to continue, till then."*

**4.** Final order passed in R.A. (S.A.) No.49 of 2013 on the file of the Debts Recovery Appellate Tribunal, Chennai, shows that in I.A. No.331/2017 filed for waiver of predeposit, after considering the debt amount as Rs.24,00,000/- (Rupees twenty four lakhs only), Debts Recovery Appellate Tribunal, Chennai, has directed predeposit of Rs.10,00,000/- as a condition precedent for entertaining the appeal.

**5.** DRAT, Chennai, has directed the matter to be listed on 01.02.2018. Before the said date fixed for confirmation of predeposit, petitioner has filed the instant civil revision petition to set aside the order dated 04.01.2018 made in I.A. No.331 of 2017 in R.A. (S.A.) No.49 of 2013 on the file of Hon'ble DRAT, Chennai and also prayed for a direction to the Hon'ble Chairperson, DRAT, Chennai, to take on file the appeal bearing R.A. (S.A.) No.49 of 2013 without any pre-condition and dispose it of in accordance with law.

**6.** Upon hearing the learned counsel for the parties, on 25.01.2018, we directed the petitioner to make a predeposit of Rs.6,00,000/- with the Registrar, DRAT, Chennai and that the same has been done. The third proviso to Section 18 of the SARFAESI Act, 2002, reads thus:

> *"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."*

Reading of the above makes it very clear that the Appellate Tribunal, has power to order pre-deposit of 25% of the debt amount for the reasons to be recorded in writing. In the case on hand, petitioner has purchased the land from Mr.C.N.Embar and Mr.A.S.Ramanujam, both represented by their respective Power of Attorneys V.Balasubramanian and M/s.Blue Jagers Estates Limited and it is also the case of the petitioner that he is not aware of the loan borrowed by M/s.Blue Jagers Estates Limited. He is neither a borrower nor a guarantor.



**7.** To protect the property purchased, he was constrained to file S.A. No.95 of 2009 on the file of the Debts Recovery Tribunal - III, Chennai, challenging the Sale Certificate dated 13.01.2009. However, vide order dated 14.03.2013, S.A. No.95 of 2009 has been dismissed and that the same has been challenged in R.A. (SA) No.49 of 2013.



**8.** Debts Recovery Appellate Tribunal, Chennai. DRAT, Chennai, which is conferred with the jurisdiction to reduce the amount of predeposit but not less than 255 of the debt referred to in the second proviso for the reasons to be recorded in writing, has not exercised its discretion. On the other hand, directed the petitioner to deposit Rs.10,00,000/- out of Rs.24,00,000/-, debt claimed in the Notice under Section 13(2) of the SARFAESI Act, 2002, which is nearly 41.66% of the debt amount.

**9.** It is pertinent to note that, right of appeal is statutory, but at the same time, as per the decision of the Hon'ble Supreme Court, in **Narayan Chandra Ghosh vs. Uco Bank & Ors.** reported in **AIR 2011 SC 1913**, pre deposit is mandatory. The Hon'ble Supreme Court in **State of U.P., v. Manohar** reported in **2005 (2) SCC 126, Chairman, Indore Vikas Pardhikaran v. Pure Industrial Coke & Chemicals Ltd.**, reported in **2007 (8) SCC 705** and **Dev Sharan v. State of U.P.** reported in **2011 (4) SCC 769,** held that right to property is a constitutional right under Article 300-A of the Constitution of India. In the light of the above decisions and considering the statutory right of the appellant under Section 18 of the SARFAESI Act, 2002, we are of the view that the petitioner should be given an opportunity of pursuing the appellate remedy and for that purpose, he has deposited a sum of Rs.6,00,000/-, as directed. On the facts and circumstances of this case, we deem it fit to exercise the powers under the third proviso to Section 18 of the SARFAESI Act, 2002, and accordingly, restrict the pre-deposit as Rs.6,00,000/-. Now that the said amount has been deposited.

**10.** While setting aside the order made in I.A. No.331 of 2013 in R.A. (SA) No.49 of 2013, on the file of Debts Recovery Appellate Tribunal, Chennai, Registry of Debts Recovery Appellate Tribunal, Chennai, is directed to process the appeal, assign regular appeal number and place it before Debts Recovery Appellate Tribunal, Chennai.

**11.** With the above directions, the civil revision petition is disposed of. No costs. Consequently, the connected civil miscellaneous petition is closed.

(S.M.K.,J) (V.B.S.,J)

14.02.2018

asr

Index : yes

Internet : yes

To

The Registrar
Debts Recovery Appellate Tribunal
Chennai

S.MANIKUMAR,J

A N D

V.BHAVANI SUBBAROYAN,J

asr.



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14/2/2018