

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.4540 & 4550 OF 2018

COMMON ORDER:

Heard.

It is the main submission of the learned counsel for the petitioner that the amounts in both these Petitions are already secured by an equitable mortgage as a collateral security covered by Ex.P-5, of all the properties are under the cover of mortgage and the imposition of condition to deposit 1/4th of the fine/compensation amount by the lower appellate Court, pending disposal of the Appeal, is untenable. Even the lower appellate Court, at Para 10, referred to the judgment of the Apex Court in ***Dilip S.Dahanukumar Vs. Kotak Mahindra Company Limited***¹. Though even going into the facts therein, for the cheque amount of Rs.15,00,000/- ordered to be deposited is Rs.1,00,000/- that represents nearly 1/15th and such an imposition of condition without going into the details of the judgment is untenable.

A perusal of the judgment, in fact, on the facts though applied, in directing to deposit Rs.1,00,000/- out of Rs.15,00,000/-, discretion is given to exercise reasonably and not to impose the same as an yardstick of in every case only 1/15th of the fine/compensation amount to be ordered to be deposited. Once such is the case, the learned lower appellate Judge is entitled to exercise its discretion but for only thing to consider whether the direction to deposit 1/4th of the amounts that too when the properties are covered by equitable mortgage security for recovery and there is already Arbitration Award passed to enforce the same for its executability. Hence, the same is reduced to 1/8th from 1/4th but for that there is nothing to

¹ 2007 (6) SCC 528

interfere; accordingly, modified by granting time of one month. If the said amounts are deposited, the respondent-complainant is entitled to withdraw the same without furnishing security but for giving of undertaking to retribute in the event of any reversal.

Accordingly, with the above modification, both the Criminal Petitions are allowed in part.

In consequence, miscellaneous petitions, if any, pending in these Petitions shall stand closed.

Date: 06.06.2018.
Dsh

Dr. B.SIVA SANKARA RAO, J



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