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

%	**Decided on: 15 .01.2018**

+	**<u>W.P.(C) 312/2018, CM APPL. 1314/2018 (Stay) and CM APPL. 1315/2018 (exemption)</u>**

SANJEEV SIKKA AND ANR.	..... Petitioners

Through: Mr Vivek Kohli, Ms Prerna Kohli and Mr Sunil Tyagi, Advs.

versus

RESERVE BANK OF INDIA AND ORS.	..... Respondent

Through: Mr H.S. Parihar and Mr K.S. Parihar, Advs for R-1.
Mr Sanjeev Sagar, Adv for R-2.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>HON'BLE MS. JUSTICE DEEPA SHARMA</u>

1.	In this writ petition, the petitioners have challenged the order dated 08.01.2018 of learned Debt Recovery Appellate Tribunal (hereinafter referred to as 'DRAT'), Delhi dismissing their Misc. Appeal No. 498/2017, for failure to make the pre-deposit of minimum amount of 25% of the amount of debt in question.

2.	The brief facts of the case are that the petitioners took loan from the respondent No. 2/Bank under a Loan Agreement and mortgaged the property bearing no. B-550, New Friends Colony, New Delhi on 11.01.2007. The petitioners, on 29.06.2013 received notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), for an amount of Rs. 9,48,93,933/- only. On 10.09.2013, a notice under Section 13 (4) of the SARFAESI Act was issued by the Bank calling upon the petitioners to handover the peaceful symbolic possession of the said property on or after 20.09.2013 for recovery of the outstanding amount. On 19.09.2013 and 21.09.2013, petitioner No. 1 wrote letters for One Time Settlement, to the Bank. On 28.10.2013, petitioner No. 2 also wrote a letter to the respondent No. 2/Bank giving proposal of Rs. 6,25,00,000/- for settlement of the loan amount only. This proposal, however, was rejected by respondent No. 2 on 05.11.2013. On 07.11.2013, the petitioners sent a formal request letter for One Time Settlement for Rs. 7,00,00,000/-. On 28.01.2014, the Possession Notice was issued to the petitioners by the Court Receiver appointed at the behest of respondent No. 2. On 03.02.2014, the petitioners filed the Securitization Application No. 19/2014 before the Debts Recovery Tribunal – 1 (hereinafter referred to as "DRT"), New Delhi for setting aside the Possession Notice dated 28.01.2014. Vide order dated 10.02.2014, the

DRT-1 granted interim protection to the petitioners *qua* the said property and directed the petitioners to file an affidavit cum undertaking to hand over the possession of the property as and when demand is raised by respondent No. 2 within seven days, after the sale. During the pendency of S.A. No. 19/2014, when the matter was listed for final hearing, respondent No. 2 filed two interim applications bearing Nos. 262/2017 and 1668/2017 praying for the modification of the interim order, thereby directing the petitioners to vacate the said property immediately and to allow the respondent No. 2 to take physical possession of the said property.

3. Learned DRT-1 vide its order dated 23.10.2017 continued the interim protection granted vide its order dated 10.02.2014 subject to the petitioners depositing 50% of the amount mentioned in the Demand Notice under section 13 (2) of the SARFAESI Act within 30 days from the date of the said order, failing which the respondent No. 2/ Bank shall take possession of the mortgaged property.

4. Against the said order dated 23.10.2017, the petitioners preferred the appeal bearing Misc. Appeal No. 498/2017 before DRAT. On 29.12.2017, petitioners received a Possession Notice issued by Court Receiver appointed vide order dated 11.12.2017 by learned Chief Metropolitan Magistrate, at

the behest of respondent No. 2. The petitioners filed an application bearing I.A No. 15/2018 before the learned DRAT seeking stay of the said Possession Notice and extension of date for handing over possession of the said property, after 15 days from the date of conclusion of CBSE Examination of the children of petitioner No. 1 i.e. by the end of April 2018. The said I.A. was dismissed vide the impugned order dated 08.01.2018 on the ground that the petitioners refused to pre-deposit 25% of the total amount in question.

5. We have heard the arguments of the learned counsel for the petitioners and have given thoughtful consideration.

6. In this writ petition, the challenge is to the order dated 08.01.2018 which was passed in I.A No. 15/2018, moved by the petitioners in their pending appeal no. 498/2017 against an order dated 23.10.2017 passed by DRT-1, directing the petitioners to deposit 50% of the amount mentioned in the Demand Notice issued under Section 13 (2) of SARFEASI Act.

7. It is apparent that the learned DRT-1, on an earlier occasion in the challenge by the petitioners to a Possession Notice dated 28.01.2014 of the mortgaged property, directed the petitioners to give an undertaking to vacate the premises within seven days from the date of Demand or Possession by

the respondents. The petitioners did not honour their undertaking and did not vacate premises. The respondents filed applications bearing Nos. 262/2017 and 1668/2017 for modification of the earlier order dated 10.02.2014 and the learned DRT-1, modified the order to the extent that while maintaining the stay against dispossession, it directed the petitioners to deposit 50% of the amount mentioned as due in the demand notice issued under Section 13(2) of SARFEASI Act. This order was challenged by the petitioners in Appeal No. 498/2017 before DRAT. Under Section 18 of the SARFAESI Act, the appeal against the order of DRT, lies before DRAT. Second Proviso of the said provision which is reproduced as under, for the sake of convenience, clearly debars the entertainment of an appeal by the Appellate Tribunal except on deposit of 50% of the amount of debt due. This amount, however, can be reduced to 25% by the Appellate Tribunal for the reasons to be recorded. Section 18 of SARFAESI Act reads as under:-

> *"18. Appeal to Appellate Tribunal.—*
> *(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 an 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."

8. Under this provision, the Appellate Tribunal is permitted to hear the appeal against an order of DRT only upon deposit of 50% or 25% of the debt amount as directed. Admittedly, the petitioners have not complied with the directions of the learned DRAT and failed to deposit the amount of 25% which is a *sine qua non* for hearing of an appeal against the order of DRT. The Supreme Court in ***Narayana Chandra Ghosh vs. UCO Bank and Ors***. reported at *(2011) 4 SCC 548* held as under:-

"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 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. 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 per cent 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 per cent 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."

In view of the settled proposition of law, we are of the opinion that the impugned order of learned DRAT is in consonance with the powers conferred upon it by Section 18 of the SARFAESI Act. We find no infirmity in the impugned order.

9. It is not out of place to note that on the last date when the petition was heard, the petitioners sought an opportunity to submit an undertaking before this Court indicating the date on which they shall vacate the subject property and hand over the possession without demur. The petitioners apparently filed the said undertaking before this Court. Learned counsel for the

respondents, to whom the advance copy of it was admittedly supplied, has submitted that the said undertaking is not acceptable to the respondents for two reasons. Firstly, that the plea of the petitioners to give them 15 days time after the completion of board exams of the children, was considered and time was granted by DRT-1 vide its order dated 10.02.2014, subject to deposit of 50% of the debt amount and the petitioners have failed to comply with the said directions of learned DRT-1 passed vide its order dated 23.10.2017, rather they challenged the said directions before DRAT in Misc. Appeal No. 498/2017, which was dismissed and the said dismissal order is impugned before this Court, and that the petitioners cannot seek the same relief unconditionally without first complying with the directions given to them by the Court of competent jurisdiction. Secondly, it is submitted that the petitioners' conduct is not trustworthy. They are playing smart which is apparent from the fact that while the impugned order is challenged by both the petitioners, this undertaking is filed only by one of the petitioners and Mr. Rajeev Sikka, has not filed any undertaking. Since the said undertaking, for the reasons as submitted, is not acceptable to respondent No. 2, the Court cannot accept the said undertaking, more so when the same issue i.e. giving them further time for vacation unconditionally was also raised in the appeal before the DRAT by the petitioners, which was dismissed for non-compliance of directions issued under Section 18 of SARFAESI Act. Their remedy was before DRAT which they have failed to avail. The petitioners cannot bypass an equally efficacious remedy which was available to them before DRAT.

10. No grounds to interfere with the impugned order are made out. The petition along with the pending applications, is dismissed.

DEEPA SHARMA
(JUDGE)

SIDDHARTH MRIDUL
(JUDGE)

JANUARY 15, 2018
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