

#176

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 16.02.2018

W.P.(C) 1458/2018

M/S ANAND AND ASSOCIATES AND ORS

..... Petitioners

versus

BANK OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Muneesh Malhotra, Advocate with Ms. Sonali Rastogi, Advocate

For the Respondent : Mr. Vipin Jai, Advocate with Mr. R.K. Jain, Chief Manager, BOI

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

CM No.6018/2018 (Exemption)

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

W.P.(C) 1458/2018 & CM No.6017/2018 (Stay)

1. The present petition under Article 226 of the Constitution of India, assails, *inter alia*, an order dated 09.02.2018, passed by the learned Debt Recovery Appellate Tribunal (for short 'DRAT') in Miscellaneous Appeal No.37/2018 (hereinafter referred to as 'the said appeal') arising out of S.A.

No.279/2017, whereby the petitioners were directed to make pre-deposit of 50% of the amount of debt in question, as was being claimed by the respondent bank in its notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act').

2. The said appeal essentially assails an order dated 10.01.2018, passed in said SA No.279/2017, which has not been placed on record in the present petition. However, a true typed copy thereof has been handed over in Court today.

3. A perusal of the said order dated 10.01.2018 reflects that the petitioners had instituted an application, being I.A. No.2102/2017 (hereinafter referred to as 'the said application'), in said SA No.279/2017, before the learned Debt Recovery Tribunal (for short 'DRT'); praying for a direction to be issued to the respondent bank to accept the offer of the petitioner's son for the subject property, which has been mortgaged by the petitioners to the respondent bank. It further discloses that vide order dated 08.12.2017, the DRT had granted interim relief to the petitioners, inasmuch as, subject to deposit by the latter a sum of Rs.20 lakhs before 15.12.2017, and another sum of Rs.80 lakhs, within a period of 30 days from the date of

the said order i.e. 08.12.2017; the respondent bank/court receiver was restrained from taking physical possession of the subject property.

4. However, admittedly the petitioners did not deposit the said amount in compliance of the said order dated 08.12.2017 and, instead, filed the said application seeking a direction to the respondent bank to accept the offer made on behalf of the petitioner's son.

5. The learned DRT vide the said order dated 10.01.2018 had issued notice on the said application and directed the respondent bank to file its reply to the same, whilst listing it for hearing on 26.02.2018.

6. The petitioners aggrieved by the said order dated 10.01.2018, carried the same by way of the said appeal before the learned DRAT, which has resulted in the passing of the order impugned in the present petition.

7. In **Narayana Chandra Ghosh vs. UCO Bank and Ors.,** reported as **(2011) 4 SCC 548**, the Hon'ble Supreme Court founded on the scope and ambit of the provisions of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') 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.”

8. A perusal of the above extracted paragraph clearly reflects that pre-deposit under sub-section (1) of Section 18 of the said Act is mandatory,

although, the Tribunal has been vested with the power to reduce the amount for reasons to be recorded in writing to not less than 25% of the debt referred to in the second proviso of the said provision. Thus, there is an absolute bar to entertainment of an appeal under Section 18 of the said Act unless the condition precedent, as stipulated, is fulfilled. The Appellate Tribunal cannot entertain an appeal till such time that a pre-deposit of 50% of the debt due from him is made by the borrower.

9. In view of the facts and circumstances elaborated hereinabove and in view of the settled proposition of law, we are of the view that the impugned order of the learned DRAT is in consonance with the powers conferred upon it by Section 18 of the SARFAESI Act.

10. Consequently, we find no ground to interfere with the impugned order. The petition is devoid of merit and is accordingly dismissed. The pending application also stands disposed of.

SIDDHARTH MRIDUL
(JUDGE)

DEEPA SHARMA
(JUDGE)

FEBRUARY 16, 2018/dn