

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Decided on: 24.04.2018

+

W.P.(C) 4066/2018, CM Nos.16015/2018, 16016/2018

USHA JOHRI

..... Appellant

Through: Mr Rahat Bansal, Adv. along with
appellant in person.

Versus

SYNDICATE BANK & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

SIDDHARTH MRIDUL, J. (ORAL)

1. The present writ petition under Article 226 and 227 of the Constitution of India prays as follows:-

“a. Allow the present writ petition and issue an appropriate writ in the nature of Certiorari quashing the order dated 14.12.2017 passed by the Hon’ble Debt Recovery Appellate Tribunal, Delhi in Appeal No.356 of 2016 and order dated 27.06.2016 passed by the Hon’ble Debt Recovery Tribunal-III, Delhi in O.A. No.189 of 2011.”

2. The facts as are necessary for the adjudication of the present writ petition are adumbrated hereinbelow:-

a. The respondent/Bank filed an OA No.189/2011 on 16.05.2011 before the learned Debt Recovery Tribunal (hereinafter referred to as

‘the DRT’) *inter alia* arraying the petitioner as defendant No. 2 therein. It was the case of the respondent/Bank that in order to secure a loan facility extended to Respondent No.2 Mr Ashok Singhal, the proprietor of M/s Ashok Kumar Aman Kumar, the petitioner acting as a guarantor for R-2 created an equitable mortgage on the property being Land and Building situated at 125, measuring 351 sq. mtrs., Block-C-1, Janak Puri, New Delhi (hereinafter referred to as ‘the subject property’) on 23.02.2009, by way of deposit of title documents. It was further averred on behalf of the respondent/Bank that the petitioner also confirmed the creation of mortgage by depositing the title deeds with the Respondent/Bank vide letter dated 23.02.2009.

b. In response thereto, it was the case of the petitioner that firstly, she had never approached the Bank to become a guarantor for respondent No.2; secondly, that she had never executed the guarantee agreement; thirdly, that the Conveyance Deed of the respondent/Bank is forged and fabricated; fourthly that she was not in India in the year 2008 and came back from the United States of America only in early 2009 and; fifthly the photograph on the Conveyance Deed is not that of the petitioner’s. In other words, it was essentially urged on behalf of the petitioner that the said Conveyance Deed was forged and did not bear her signatures.

c. Subsequent thereto, the respondent/Bank had produced a Police Report in FIR No.242/2010, dated 13.10.2010 under Section 420 read with Section 34 of the Indian Penal Code 1860 as well as, the relevant records of Civil Suits being CS(OS) No.1996/2010 and CS(OS)

2547/2010, instituted against the petitioner to urge that, the latter had executed as many as 12 registries/sale deeds in respect of the subject property and was being enquired into for the offence of cheating.

d. In order to prove its case against the petitioner, the Chief Manager and the Assistant General Manager of the respondent-bank duly exhibited *inter alia* the guarantee agreement, the letter regarding confirmation of the deposit of title deeds, the affidavits and the title documents.

3. Having examined the evidence led on behalf of the parties and after hearing the counsel representing them, the pleas urged on behalf of the petitioner were found untenable and the OA No.189/2011 instituted on behalf of the respondent/Bank was allowed by the DRT with the following order:-

“(i) I allow this OA and direct the respondents no.1 and 2 to pay to the applicant bank, within 30 days, jointly or severally a sum of Rs.3,00,91,260.13 (Rupees Three Crores Ninety One Thousand Two Hundred Sixty and Paise Thirteen only) together with costs, charges and future interest at the rate of 13% simple from the date of filing of this O.A. till the date of realization; falling which the aforesaid amount shall be recovered from the sale of the hypothecated goods/assets and the mortgage property being Land and Building situated at 125, measuring 351 sq. mtrs; Block C-1, Janakpuri, New Delhi and in case of short fall the same may be recovered from the movable and immovable properties of the defendants.

(ii) The recovery certificate be issued forthwith and be sent to Recovery Officer, Debts Recovery Tribunal-III, Delhi.

(iii) Parties are directed to appear before the Recovery Officer-DRT-III, Delhi on 02.08.2016.

(iv) XXX XXX XXX

4. Aggrieved thereby, the petitioner instituted an appeal being Appeal No.356/2016 before the learned Debt Recovery Appellate Tribunal Delhi (hereinafter referred to as 'the DRAT').

5. It seems that by way of an order, the learned DRAT had directed the petitioner to pre-deposit 25% of the amount of debt determined by the DRAT to be recoverable from her, as a pre-condition for hearing the said appeal. It would be pertinent at this stage to point out that neither has the said order been placed on record or mentioned in the present petition, nor has the same been assailed in the present proceedings. What has been assailed, however, is the subsequent order dated 14.12.2017 passed by the learned DRAT, whereby, upon the petitioner's failure to comply with the direction given to her for making a pre-deposit of 25%, the appeal had been dismissed as not maintainable for want of pre-deposit.

6. Learned counsel appearing on behalf of the petitioner would urge that the relevant provision of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as 'the Said Act') which obtained at the time of the extension of loan facility would apply to the present proceedings and, in view thereof, the learned DRAT had the power to waive the condition of pre-deposit entirely, which it has failed to exercise in the present proceedings. No other submissions have been made in relation to the scope and import of the provision of the said

Act and, in particular Section 21 thereof, which stipulates pre-deposit of a minimum amount of 25% of the debt due as a condition for the entertainment of the appeal.

7. In **Narayana Chandra Ghosh vs. UCO Bank and Ors.** reported as (2011) 4 SCC 548, the Supreme Court 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.”

8. In view of the foregoing, the petitioner cannot be heard to say that the DRAT had erred in law in imposing a condition precedent for entertainment of her appeal. Even otherwise, it is trite to state that any amendment or change in the law applies to all proceedings that are being adjudicated upon at that point of time. It is also relevant to mention that the petitioner has not assailed the order of the learned DRAT directing the appellant to pre-deposit 25% as a condition precedent for the entertainment of her appeal in the present petition.

9. In view of the foregoing, the present petition is devoid of any merit and the same is accordingly dismissed.

**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

APRIL 24, 2018

bg