

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: November 14, 2018

Judgment delivered on: December 12, 2018

+ W.P.(C) 4237/2018

INDIABULLS HOUSING FINANCE LTD

..... Petitioner

Through: Mr. Ashwini Kumar Mata, Sr. Adv.
with Ms. Aastha Lumba, Adv.

versus

VAIBHAV JHAWAR AND ORS.

..... Respondents

Through: Mr. S.L. Gupta, Mr. N. Raja Singh,
Ms. Manisha Chaudhary and Mr.
Mithlesh Pal, Advs. for R1 to R5.
Mr. Gaurav Gupta and Mr. Jaspal
Singh, Advs. for R7 to R12 and R15 to
R18.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to the order dated March 14, 2018 of the Debt Recovery Appellate Tribunal (for short 'Appellate Tribunal') in Misc. Appeal No. 72/2018 whereby the learned Appellate Tribunal has rejected the objection of the petitioner herein insisting on the pre-deposit of half of the

amount, which had been claimed by the petitioner under Section 13(2) of the SARFAESI Act for entertaining the appeal of the respondent.

FACTS:-

2. The borrower M/s Surya Construction Pvt. Ltd. (respondent No.6), had mortgaged the property J-14, Community Centre, Rajouri Garden, New Delhi in favour of the petitioner. On its failure to honour the terms of the Loan Agreement, the petitioner initiated action under the SARFAESI Act by issuing a notice under Section 13(2) of the SARFAESI Act to the said respondent.

3. It is the case of the petitioner that it took symbolic possession of the secured asset on January 05, 2015. On July 24, 2017, a sale notice was issued for recovery of ₹4,16,04,827/-. The DRT-I set aside the sale notice dated July 24, 2017 on the ground that the complete description of the property had not been given. The petitioner again issued a demand notice for recovery of an amount of ₹12,33,78,319/- along with future interest. It is the case of the petitioner that it took symbolic possession of the secured asset for non-compliance of demand notice by the

borrower. It appears, a sale notice of the secured asset was issued by the petitioner with auction date of October 30, 2017.

4. An SA titled *Vaibhav Jhawar and Ors. v. Indiabulls Housing Finance Ltd. bearing No. 244/2017* was filed before the DRT by respondent Nos.1 to 5. It is the case of the petitioner that the respondent Nos. 1 to 5 are neither the owners of the property nor do they have any interest in the said property. On October 30, 2017, the DRT-1 rejected the interim relief application and directed that the auction sale shall remain subject to the final outcome of the SA. On December 05, 2017, an application under Order 7 Rule 11 CPC was filed by the petitioner seeking dismissal of the SA on the grounds that the respondent Nos.1 to 5 have no locus to prefer a securitization application challenging the SARFAESI action of the petitioner against the said property. The secured asset was auctioned on October 30, 2017 and sale was confirmed. A sale certificate was issued on January 03, 2018 in favour of the auction purchaser against the payment of entire sale consideration of Rs.25,04,10,000/-.

5. On February 17, 2018, the learned DRT, New Delhi allowed the application under Order 7 Rule 11 CPC of the petitioner and dismissed the SA. On February 27, 2018,

respondent Nos. 1 to 5 preferred an appeal before the DRAT impugning the order dated February 17, 2018 passed by the learned DRT, New Delhi. The DRAT vide the impugned order, entertained the appeal without directing the respondent Nos.1 to 5 to make pre-deposit as required under the SARFAESI Act. The case of the respondent Nos.1 to 5 before the Ld. DRAT was that they have invested a sum of ₹5.71 crores with the borrower-respondent No.6 M/s Surya Construction Pvt. Ltd. The said loan was without any interest clause. The grievance of the respondent Nos.1 to 5 in the SA was that the property has been sold at much lower price. In other words, the grievance of the respondent Nos.1 to 5 was that, had the property been sold at a fair market value, it would have fetched much more than what was recoverable from the borrower and in that way, the dues which the borrower owes to the respondent Nos.1 to 5 would have also been recovered and the circumstances give the appellant, a locus standi to challenge the action of the petitioner.

6. We may state here that the DRAT while rejecting the objection of the petitioner herein relied upon a judgment of this Court in the case of *Manju Devi and Ors v. M/s RBL Bank Ltd.*

and Ors. W.P.(C) No. 11766/2016 decided on February 01, 2017 to reject the plea on behalf of the petitioner challenging the *locus standi* of the respondent nos. 1 to 5, herein, before it.

7. Mr. Ashwini Kumar Mata, learned Senior Counsel appearing for the petitioner submitted that the instant petition has been filed by the petitioner against the order dated March 14, 2018 passed by the Presiding Officer, Debts Recovery Appellate Tribunal (hereinafter referred to as “DRAT”) wherein the Appeal filed by the respondents 1 to 5 has been entertained and notice has been issued without calling upon the respondents No. 1 to 5 to make the mandatory pre-deposit in terms of the proviso to Section-18 (1) of the SARFAESI Act. The impugned order, according to Mr. Mata, as such, is prima facie in violation of the statutory provision of Section-18, SARFAESI Act and its interpretation by the Supreme Court of India and various High Courts.

8. It is stated that the respondent Nos. 1 to 5 herein are alleged to be the shareholders of M/s. Surya Constructions Pvt. Ltd. (respondent No.6) i.e., the borrower of the petitioner and have approached the DRAT against an order passed by the DRT-I vide which the Securitization Application filed by the

respondents was dismissed while deciding the application filed by the petitioner Under Order 7 Rule 11 of the CPC.

9. He submitted, the Supreme Court of India has categorically interpreted Section-18 of SARFAESI Act along with its proviso in the case titled “***Axis Bank v. SBS Organics Private Ltd. and Anr.***”(2016) 12 SCC 18. According to him, the aforementioned judgment of the Supreme Court clearly interprets the provision of pre-deposit and provides that any “*aggrieved person*” which includes borrowers, guarantors and any third party, against an order passed by the DRT under Section 17 is entitled to prefer an appeal. For the purpose of preferring an appeal, a fee is prescribed for the Tribunal, however, to entertain to said appeal the aggrieved person has to make a deposit of 50% of the amount.

10. According to him a similar view has been taken by the Supreme Court in the case titled as ***Narayan Chandra Ghosh v. UCO Bank & Ors. Civil Appeal No. 2681 of 2011***. Similarly, in a decision of this Court in ***Sanjeev Sikka and Anr. vs. Reserve Bank of India and Ors. W.P.(C) No. 312/2018***, this Court has held that the Appellate Tribunal can hear appeals against an order of DRT only upon compliance of requirement of pre-deposit.

According to him, in view of the above, any aggrieved person is liable to make pre-deposit before an appeal is heard by the DRAT, as a precondition, under Section 18 of the SARFAESI Act.

11. He submitted, various other High Courts including High Court of Madras and Gujarat have time and again interpreted Section 18 with respect to the pre-deposit to be made by third parties. He relied on the judgments of the High Court of Madras titled as ***K. Kalpana v. The Authorised Officer, State Bank of India and Ors W.P. No. 21560/2014***, ***P. Murugan V. The Registrar, Debts Recovery Appellate Tribunal and Ors. W.P. No. 28528/2014***. He submitted, in a similar judgment titled ***Biren Harish Vakharia v. State Bank of India Special Civil Application No. 15547/2011***, the Division Bench of High Court of Gujarat held that third parties are liable to make pre-deposit before the Appellate Tribunal for an appeal against an order of DRT.

12. It is further submitted that a third party when initially approaching the DRT, it does so with a strangeness, however, once an application of interim relief is either granted or denied, a jural nexus is established between the said party and the dispute

at hand and thereafter when the securitisation application is either allowed or dismissed, there arises a liability on the part of the third party to make a pre-deposit in consonance with the provisions and legislative intent of the Act.

13. Additionally, he submitted that the reliance placed by the DRAT on the judgment of this Court in *Manju Devi (supra)* is misfounded since the facts and issues involved in the instant petition and the aforesaid case are completely different wherein the Appellate Tribunal had called upon each one of the Appellants to make a deposit of 50% of the amount in question, which total deposit would have far exceeded the amount due and payable by the borrowers.

14. He also submitted, the securitization application filed by the respondent was *per se* not maintainable under Section 17 of the SARFAESI Act as the respondents 1 to 5 are not aggrieved by any measures under Section 13 of the SARFAESI Act. Therefore, the appeal under Section 18 of the SARFAESI Act is not maintainable and the notice issued by the DRAT should be set aside.

15. On the other hand, Mr.S.L. Gupta, learned counsel for respondent Nos.1 to 5 would support the order passed by the

learned Appellate Tribunal by stating that the same is in conformity with the provisions of Section 18 of the SARFAESI Act, 2002.

16. Having heard the learned counsel for the parties, the issue falls in a very narrow compass, whether respondent Nos.1 to 5, who were neither the borrowers nor the guarantors are liable to make pre-deposit of half of the amount of the debt, which has been claimed by the petitioner herein under Section 13(2) of the SARFAESI Act. To answer this issue, it is necessary to reproduce Section 18 of the SARFAESI Act, 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.—(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.*

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

17. Having seen the relevant section, we may state, the provision of pre-deposit has been prescribed in second proviso to Section 18(1) of the SARFAESI Act. The said proviso clearly states that “*no appeal shall be entertained unless the borrower has deposited with the Arbitral Tribunal 50% of the amount of debt*”. It must be noted that even though the appeal under Section 18(1) can be filed by “*any person*” aggrieved, as it starts with those words, but when it comes to pre-deposit with the Arbitral Tribunal for entertaining the appeal, reference is made to “*borrower*”. The borrower has been defined in Section 2(f) of the SARFAESI Act, which reads as under:-

2(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial

assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

18. On a reading of the aforesaid definition of “*borrower*”, the same would include a guarantor as well but not a person other than borrower / guarantor. The only interpretation given to second proviso to Section 18(1) shall be that if a person other than borrower / guarantor files an appeal before the Arbitral Tribunal then the stipulation of the pre-deposit of 50% (or 25%) of the amount of debt due from him as claimed by the secured creditors or determined by the DRT shall not be insisted upon. This is the only interpretation, which can be given to second proviso to Section 18(1) read with Section 2(f) of the SARFAESI Act.

19. It is a settled position of law, in the process of interpreting a statute or a provision, it should also be kept in mind that it is the duty of the Court to conceive and perceive the true intention of the Legislature and in the words of Hon'ble Justice G.P. Singh, in his Book, "Interpretation of Statutes", *"how far and to what extent each component / part of the statute influences*

the meaning of the other part, would be different in each given case". Justice G.P. Singh states in Principles of Statutory Interpretation (Eighth Edition, 2001),

"It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after construing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed....

In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things' as it may be presumed 'that the Legislature should have used the word in that interpretation which least offends our sense of justice'.

"The courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative 'on the principle expressed in the maxim: ut res magis valeat quam pereat'."

"If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results."

*In the words of Tindal, C.J., in **Sussex Peerage** case, "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves so alone in such cases best declare the intent of the lawgiver.*

20. In **Nairin v. University of St. Andrews** reported in 1909

AC 147, the Apex Court held that,

"Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice."

21. In **Ram Rattan v. Parma Nand** reported in AIR 1946 PC

51, the Hon'ble Mr. Justice S.R. Das, held as follows:

"The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."

22. In **Kanai Lal Sur v. Paramnidhi Sadhukhan** reported in

AIR 1957 SC 907, the Supreme Court held that,

"it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.

It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct."

23. In ***State of W.B., v. Union of India reported in AIR 1963 SC 1241***, the Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.

24. In ***S. Narayanaswami v. G. Panneerselyam reported in AIR 1972 SC 2284***, the Apex Court held that "where the statute's meaning is clear and explicit, words cannot be interpolated."

25. In *C.I.T., Madras v. T. Sundram Iyengar (P) Ltd.*, reported in 1976 (1) SCC 77, the Supreme Court held that, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

26. If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In *Ku. Sonia Bhatia v. State of U.P., and others reported in 1981 (2) SCC 585 : AIR 1981 SC 1274*, the Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

27. It is a well settled law of interpretation that "when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. In this regard, reference is made to the decision of the Apex Court in *Nelson Motis v. Union of India* reported in *AIR 1992 SC 1981*.

28. In *M/s. Oswal Agro Mills Ltd., v. Collector of Central Excise and others reported in 1993 Supp (3) SCC 716 : AIR*

1993 SC 2288, the Apex Court held that, where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation, which are merely presumption in cases of ambiguity in the statute. The Court would interpret them as they stand.

29. In **Nasiruddin v. Sita Ram Agarwal reported in (2003) 2 SCC 577**, the Supreme Court held as follows:

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. But the intention of the legislature must be found out from the scheme of the Act."

30. In **Vemareddy Kumaraswamy Reddy v. State of A.P., reported in (2006) 2 SCC 670**, the Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous."

31. In **A.N. Roy Commissioner of Police v. Suresh Sham Singh** reported in AIR 2006 SC 2677, the Apex Court held that,

"It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

32. In **State of Haryana v. Suresh** reported in 2007 (3) KLT 213, the Supreme Court held that,

"One of the basic principles of Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say

lies heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

33. In ***Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.***, reported in (2008) 4 SCC 755, the Supreme Court, at Paragraphs 52 held as follows:

"52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd."

34. In ***Mohd. Shahabuddin v. State of Bihar***, reported in (2010) 4 SCC 653, the Supreme Court held that,

*"179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal Properties & Industries Ltd. v. State of Haryana* [MANU/SC/0113/2009 : 2009 (3) SCC 553]*

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of

language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision."

35. In ***Satheedevi v. Prasanna reported in (2010) 5 SCC 622***,

the Hon'ble Supreme Court held as follows:

"12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise-- Kanai Lal Sur v. Paramnidhi Sadhukhan [MANU/SC/0097/1957 : AIR 1957 SC 907]

13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct

the defect or supply the omission - Union of India v. Deoki Nandan Aggarwal [MANU/SC/0013/1992 : 1992 Supp (1) SCC 323] and Shyam Kishori Devi v. Patna Municipal Corpn. [MANU/SC/0191/1966 : AIR 1966 SC 1678]"

36. Having noted the position of law, we must hold that there is no ambiguity in the provisions of Section 18 of the SARFAESI Act. The provisions of Section 18 of the SARFAESI Act, are determinative of the fact that the legislature intended that it is only the borrower and the guarantor, who should be under obligation to make the pre-deposit. The same is clear on a literal and grammatical meaning of the words "borrower" and "any person aggrieved" as found mentioned in Section 18 and 2 (f) of the Act. There is no inconsistency within the provision of Section 18(1) of the Act.

37. It must be held that the only way, second proviso to Section 18(1) can be interpreted is that it is either the borrower or the guarantor, who is liable to make pre-deposit on an appeal filed by him / her against the order of the DRT. The DRAT has rightly rejected the contention made on behalf of the petitioner for the pre-deposit to be made by the respondent.

38. Mr. Mata had relied upon the judgment of the Supreme Court in the case of *Axis Bank (supra)*. In the said judgment, the

question arose as to what shall be the fate of pre-deposit on the disposal of the appeal. It was in that context, the Supreme Court made observations as relied upon by Mr. Mata that an appeal can be entertained only if the borrower deposits 50% of the amount determined by the DRT. Suffice it to state, the observations of the Supreme Court made have to be read in that context in which the issue has arisen in the said case. The said judgment has no applicability in the facts of this case.

39. Even the judgment in the case of **Narayan Chandra Ghosh** (*supra*) shall not be applicable as the issue was whether the pre-deposit is a mandatory provision. The Supreme Court held in the affirmative.

40. Insofar as the reliance placed by Mr. Mata on the judgment of the Madras High Court in the case of **K. Kalpana** (*supra*) is concerned, there the petitioner was the owner of the property, which was mortgaged with the respondent No.1 Bank. The SA filed by the petitioner was dismissed by the DRT-III, Chennai. In an appeal before the DRAT, the appeal was not entertained because the petitioner therein had failed to make pre-deposit. It was contended on behalf of the petitioner therein that the petitioner is neither the borrower nor the guarantor and

therefore, there is no necessity for filing any waiver application before the DRAT. The High Court relied upon the judgment of the Supreme Court in **Narayan Chandra Ghosh (supra)**. The High Court considered Section 18(1), which inter-alia contemplates that any person aggrieved by the order passed by the DRT may file an appeal before the DRAT, there should be compliance of pre-deposit as contemplated in the said Section. A perusal of the judgment would reveal that the High Court has not considered the effect of the second proviso to Section 18(1) of the SARFAESI Act, which according to us shall be a relevant provision to interpret the substantive portion of Section 18(1) as well. The said judgment is *per incuriam*.

41. Insofar as the judgment of **P. Murugan (supra)** relied upon by Mr. Mata is concerned, the same has no applicability as the issue which fell for consideration in the said case was with regard to payment of deficit Court fee.

42. As regards the judgment in the case of **Biren Harish Vakharia (supra)** of the Gujarat High Court is concerned, the said judgment has no applicability as the facts reveals that the petitioner therein was a borrower, who had challenged the order

of the DRAT, whereby he was directed to pay an amount of ₹5 Crores by way of pre-deposit. As stated above, there is no dispute nor can it be said that a borrower is not required to make pre-deposit.

43. We may clarify here that our conclusion above must not be construed as an expression on the merit of the controversy in the appeal filed by the respondents 1 to 5 including their *locus standi*.

44. In view of our discussion above, we do not see any merit in the petition. The same is dismissed. No costs.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 12, 2018/ak