$~45

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

\+ W.P.(C) 9282/2018, CM No. 35925-35926/2018

RAJ KUMAR KARANWAL AND ORS.

..... Petitioner

Through: Mr. Rajat, Adv.

versus

CORPORATION BANK

..... Respondent

Through: Mr. R.P. Aggarwal, Adv. with Mr. Samarendra Kumar & Ms. Manisha Aggarwal, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% **05.09.2018**

<u>CM No. 35926/2018</u>

Exemption allowed subject to all just exceptions.

Application stands disposed of.

<u>W.P.(C) 9282/2018</u>

1. The present petition has been filed by the petitioners challenging the order dated April 11, 2018 passed by the Debt Recovery Appellate Tribunal (for short 'Tribunal') in Miscellaneous Appeal No. 312/2014 (for short 'miscellaneous appeal') whereby the Tribunal has directed the petitioners to pre-deposit 50% of the debt in question for entertaining the appeal filed by the petitioners.

2. It is the submission of the learned counsel for the petitioners that the miscellaneous appeal was filed by the petitioners challenging the order dated June 03, 2018 passed by the Debt Recovery Tribunal in an application filed by the petitioners for transferring the Recovery Certificate to DRT, Lucknow. He states the said application was filed on the administrative side of the Tribunal. The dismissal of such application would not attract the provisions of pre-deposit while filing the appeal. He contends that the recovery proceedings before the Recovery Officer are corum non-judice as the properties against which a decree has to be executed are all outside the jurisdiction of Delhi.

3. He would rely upon the following judgments in support of his contention:-

(i) Amish Jain & Anr. V. ICICI Bank Ltd. ILR (2012) 6 Delhi 377;

(ii) M/s Sikka Papers Ltd. & Anr v. Indian Overseas Bank & Ors W.P.(C) No. 9636/2015;

(iii) Harshad Chiman Lal Modi v. DLF Universal Ltd. And Anr. (2005) 7 SCC 791.

4. On the other hand, Mr. R.P. Aggarwal, who appears for the respondent Bank opposes the appeal by contending that earlier vide order dated February 19, 2018, the Appellate Tribunal had directed the petitioners herein to make a pre-deposit of minimum amount of 25% of debt in question. According to him, the said order having been passed and not challenged in these proceedings, the challenge in this petition to the order dated April 11, 2018 is totally misconceived. He justifies the order passed by the DRAT.

5. Having heard the submissions made by the learned counsel for the

parties, we may state here that the appeal filed by the petitioners is under Section 20 of The Recovery of Debts and Bankruptcy Act, 1993 (for short 'Act of 1993'). Section 20 and 21 of the Act of 1993 read as under:-

20. Appeal to the Appellate Tribunal*—(1) Save as provided in sub section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.*

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

21. Deposit of amount of debt due, on filing appeal*—Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent of the amount of debt so due from him as determined by the Tribunal under section 19:*

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

6. On a perusal of Section 20 of the Act of 1993, it is seen that an appeal can be filed by any person aggrieved by any order made or deemed to have been made by a DRT under the Act of 1993, to the Appellate Tribunal. There is no dispute that the order of the DRT was passed in an application filed by the petitioners under Section 19(23). The said order passed by the DRT on June 03, 2018 is an appealable order and accordingly the petitioners had invoked the jurisdiction of the Appellate Tribunal. Section 21 of the Act of 1993 clearly stipulates deposit of the amount due on filing of appeal. In other words, when an appeal is filed against an order passed by the Tribunal which includes an appeal under Section 19(23), there is a requirement of pre-deposit.

7. In view of the provisions of the Act of 1993 i.e. Sections 20 and 21 of the Act of 1993, the Tribunal has rightly called upon the petitioners to deposit 50% of the debt in question. It is also noted that the DRT has also decided the Original Application filed by the respondent Bank in favour of the Bank vide its order dated January 13, 2017, which has not been challenged by the petitioners. That apart, we find the submission made by

the learned counsel for the respondent Bank that the initial order of pre-deposit of the Tribunal was dated February 19, 2018 whereby the Tribunal directed the petitioners to make a pre-deposit of minimum amount of 25% of the debt in question, has not been challenged as appealing. In the absence of a challenge to the said order directing the pre-deposit of minimum amount of 25% of the debt in question, the order dated April 11, 2018, which is in continuation of the said order, the appeal against the order dated April 11, 2018 shall be unsustainable.

8. Insofar as the judgments relied upon by the learned counsel for the petitioners are concerned, we have considered the same and we find that those judgments are not applicable to the facts of this case and are distinguishable.

9. We do not see any merit in the petition. The same is dismissed.

CM No. 35925/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 05, 2018/*ak*