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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 20.12.2017
Judgment Pronounced On: 17.01.2018

W.P.(C) 11455/2017 & C.M. Nos.46707/2017 & 46708/2017

CHANDRA SENGAR AND ANR ..... Petitioners

versus

UNION BANK OF INDIA AND ORS ..... Respondents

Advocates who appeared in this case:
For the Petitioners : Mr. B.R. Sharma, Advocate
For the Respondent : None

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

J U D G M E N T

DEEPA SHARMA, J.

1. The present petition under Article 226 of the Constitution of India, inter alia, assails an order dated 18.12.2017 passed by the learned Debt Recovery Appellate Tribunal, New Delhi (for short 'DRAT'), in Miscellaneous Appeal No.535/2017, arising out of SA No.109/2016 (DRT-III, Delhi), whereby the said appeal was dismissed for want of pre-deposit.

2. Learned counsel appearing on behalf of the petitioner would urge that respondent No.1/Bank sanctioned a credit limit to the respondent No.2/company on 24.11.2010. Subsequent thereto, upon the joining of the petitioner No.2, as Director in the respondent No.2/company, the respondent No.1/Bank further sanctioned/renewed the said credit limit on 26.02.2010 in the amount of Rs.3.50 lakhs in the name of the respondent No.2/company. In this behalf, the petitioner No.1 had mortgaged her house bearing No.KG-12, Kavi Nagar, Ghaziabad, Uttar Pradesh, as per the demand of the bank to secure the said credit limit.

3. It is further urged that despite the resignation of the petitioner No.2, as Director from the respondent No.2/company on 28.11.2012 and without determining the petitioners liability, the respondent No.1/bank, in collusion with the New Director, knowingly did not stop the operation in the credit limit but further renewed/sanctioned the said credit facility on 15.06.2013, without any notice or information to the petitioners.

4. It is observed that the loan account in relation to the respondent No.2/company was declared NPA by the respondent No.1/bank on 30.09.2014 and consequent thereupon, action has been taken to secure the possession of the properties mortgaged to the respondent No.1/bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act'). It is an admitted position that the possession of the subject property at Ghaziabad was taken by the respondent No.1/bank on 05.09.2017, in terms of the provisions of SARFAESI Act.

5. It is the assertion of Mr. Sharma, learned counsel appearing on behalf of the petitioners that the petitioner is aggrieved by the failure of DRT to dispose of the proceedings expeditiously.

6. We have given thoughtful consideration to the contentions of the learned counsel. It is settled proposition of law that where there is an equally efficacious remedy available to the parties in law, the Courts have to be circumspect while dealing with writ petitions, unless a question of law, which goes to the very root of the proceeding under challenge, are patent.

7. In this writ petition, the following are the prayers of the petitioners:-

> "1. To set aside the order dated 18.12.2017 of the learned DRAT as passed in Misc. Appeal No.535/2017 in the case title as Chandra Sengar & Another vs. Union Bank of India and Another, and allow the said appeal.
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> 2. To quash the entire proceeding qua the petitioners as initiated by the respondent bank under the guise of Securitization Act under Section 13(2) and 13(4) and other provisions of the Act in the interest of justice.
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> 3. To dismiss the OA (Recovery Suit) qua the petitioners as pending before the DRT.
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> 4. To hand over the possession of the property in question to the petitioners.
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> 5. To stay the e-auction/sale of the property bearing KG-12, Kavi Nagar, Ghaziabad (UP) of the petitioners as fixed by the bank for 22.12.2017 till the disposal of the present writ petition.
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> 6. Any other order/direction/declaration as this Hon'ble Court deem fit and proper on the facts and circumstances of the case may please be granted in favour of the petitioners in the interest of justice."

8. In relation to prayer Nos.2,3,4 and 5, the remedy available to the petitioner is before the DRAT.

9. The impugned order dated 18.12.2017 is rendered on the appeal of the petitioners filed before the DRAT. Learned DRAT, while entertaining the appeal had directed the petitioner to make a pre-deposit of a minimum amount of 25%, vide order dated 13.12.2017. The petitioners failed to deposit the said sum and, therefore, vide the impugned order the learned DRAT dismissed the appeal. Learned DRAT made the following observations:-

> "Appellants have not taken steps to serve the respondents. Counsel says that he wanted to collect the summons but they were not ready in time.
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> Today, counsel for the appellants has also submitted that appellants are not in a position to make pre-deposit of even the minimum amount of 25% which this Tribunal had directed to make on 13.12.2017. Counsel further submits that this direction passed by this Tribunal to the appellants, who are neither the borrowers nor guarantors as they had written to the bank a long time back to crystallize their liability as they did not want to continue to remain as guarantors any further, in any case deserves to be recalled.
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> However, in my view, this submission cannot be gone into at this stage as the question whether the appellants who undisputedly had stood guarantee once stood absolved of their liability or not is touching the merits of the case which can be gone into only after this appeal itself is entertained. Now since the appellants are expressing their inability to deposit even the minimum 25% beyond which this Tribunal under no circumstances can travel, this appeal is dismissed as not entertainable for want of pre-deposit."

10. Where an appeal is preferred, Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 states that such an appeal shall not be entertained by the Appellate Tribunal, unless such person has deposited with the Appellate Tribunal 50% of the amount of debt, so due. The proviso to this provision, however, empowers the Appellate Tribunal, for reasons to be recorded in writing, to reduce the amount to be deposited, which deposit shall not be less than 25% of the amount of such debt, so due.

11. Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 is reproduced hereinbelow:

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

The directions of learned DRAT asking the petitioners, who were appellants before him to deposit 25% of the due debt, in our view, are in consonance with the statutory provisions of Section 21 of the Recovery of Debts and Bankruptcy Act, 1993, in this behalf.

12. Apparently, the petitioners did not deposit the minimum 25%, as directed by the learned DRAT and failed to deposit it despite the opportunities given to them.

13. No ground for judicial review of the impugned order has been made out. In the facts and circumstances elaborated hereinabove, the writ petition is without merit. The same is accordingly dismissed. All the accompanying applications are also dismissed. There shall be no order as to costs.

DEEPA SHARMA, J
(JUDGE)

SIDDHARTH MRIDUL
(JUDGE)

JANUARY 17, 2018
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