

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4203 of 2018

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1. Ram Babu Choudhary Son of Late Biyog Lal Choudhary Resident of Village - Shahpur, P.S. - Tisiauta, District - Vaishali - 844141.
 2. Rameshwar Kumar Choudhary Son of Late Biyog Lal Choudhary Resident of Village - Shahpur, P.S. - Tisiauta, District - Vaishali - 844141.
 3. Dharmendra Kumar Choudhary Son of Late Biyog Lal Choudhary Resident of Village - Shahpur, P.S. - Tisiauta, District - Vaishali - 844141.
 4. Smt. Lalita Devi Wife of Late Biyog Lal Choudhary Resident of Village - Shahpur, P.S. - Tisiauta, District - Vaishali - 844141.

... .. Petitioner/s

Versus

1. The Chairman, Debts Recovery Appellate Tribunal and Ors
2. Union of India, Ministry of Finance, through Secretary, Finance, Govt. of India.
3. The Authorised Officer, Punjab National Bank, SME Branch, East Boring Canal Road, Patna - 800001.
4. Kundan Kumar, son of Lal Babu Sah, resident of Meera Automobile, Purani Bazar, Near Durga Mandir, P.S.-Jandaha, District-Vaishali, PIN-844505.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Dr. Binay Kumar Singh, Adv.
For the PNB	:	Mr.Kumar Priya Ranjan, SC
		Mr. Pallav, Adv.
For the Respondent no.4:		Mr.Satish Kumar Sinha, Adv.
		Mr. Nityanand, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 27-08-2019 Heard learned counsel for the petitioners and learned counsel representing the Bank.

Petitioners in the present case are aggrieved by and dissatisfied with the order dated 02.02.2018 passed in Appeal Sr.No.12/2017 by which the appellate tribunal has refused to reduce statutory deposit amount of 50% on filing of the appeal under Section 18 of the SARFAESI Act, 2002.



It is the contention of Dr. Binay Kumar Singh, learned counsel representing the petitioners that in the demand notice under Section 13(2) of the Act of 2002 issued in the year 2009 the outstanding amount was disclosed as Rs.1,33,52,909/- and thereafter by way of auction sale of the secured assets the bank had realized Rs.1,33,18,000/- on 05.01.2017, therefore for purpose of filing of the appeal under Section 18 of the Act of 2002 the appellants-petitioners cannot be compelled to deposit 50% of Rs.295 lacs which is said to be the amount due after adjustment of sale proceeds. Learned counsel submits that the appellate tribunal has failed to appreciate that if the demand notice contained a sum of Rs.1,33,52,900/- and till date there is no determination of the debts by the Debts Recovery Tribunal, the interest accrued on the outstanding amount of Rs.1,33,52,909/- cannot be added so as to reach to a determination that on the date of filing of the appeal the outstanding debt was at Rs.295 lacs. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of **Narayan Chandra Ghosh Vs. UCO Bank & Ors.** reported in **AIR 2011 SC 1913=(2011) 4 SCC 548**. It is submitted that in the said case, against the outstanding dues of Rs. 52,42,474 which was mentioned in the demand notice of the bank, the



Hon'ble Supreme Court directed that on the appellant's depositing with the Appellate Tribunal an amount of Rs. 15 lakhs, his appeal shall be entertained and decided on merits. Learned counsel submits that a similar kind of view be taken by this Court and the statutory amount required to be deposited by the appellant be reduced. It is further submitted by learned counsel for the petitioners that the bank had taken over the possession of the immovable property some time in the year 2011 and thereafter possession continued with the bank until sale of the property in the year 2017. In these context it is submitted that the bank cannot while enjoying the actual possession of the property in question be allowed to add interest to the demand.

On the other hand, learned counsel representing the bank has opposed the writ application on the grounds inter alia that it is settled law that the word "debts" as accruing under second proviso to Section 18(1) of the Act of 2002 includes an amount of interest and therefore the narrow meaning which is sought to be given to the demand raised against the petitioners is not fit to be accepted. Learned counsel submits that the appellate tribunal has rightly relied upon the judgment of the Hon'ble Allahabad High Court in the case of **Nathi Lal**



Rathore Vs. The Debts Recovery Appellate Tribunal and 2 others reported in **2017 1 Bankmann (Debts Recovery Tribunal) 326** and has referred paragraph 16 of the said judgment. It is further submitted that no doubt the secured asset was taken over by the bank in the year 2011, but the property could not be sold despite all steps taken by the bank, it could be sold only in the year 2017 and then on receipt of the sale proceeds the same had been adjusted against the total outstanding amount of Rs.428 lacs leaving balance of Rs.295 lacs on the date of filing of the appeal. Learned counsel submits that in fact the ratio of the judgment in the case of Nathi Lal Rathore (supra) goes against the contention of learned counsel for the appellants-petitioners.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that there is no illegality or infirmity in the appellate order passed in Appeal Sr.No.12/2017 on 02.02.2018. The learned appellate tribunal has recorded the facts appearing from the records wherein it is not in dispute that the bank has given adjustment of the sale proceeds of Rs.1,33,18,000/-and after adjustment the outstanding amount comes to Rs.295 lacs as on the date of filing of the appeal. The paragraph 16 of the



judgment of the Hon'ble Allahabad High Court in the case of Nathi Lal Rathore (supra) on which reliance has been placed by the learned appellate tribunal reads as under:-

“..... Thus, I am inclined to hold that it is not just the sum specified in Section 13(2) alone, but the interest accrued thereupon till the filing of the appeal, which needs to be reckoned for working out the amount of pre-deposit in terms of second proviso to Section 18 of the Act. The judgment of this Court in Gopal Ji Gupta (Supra) since fails to notice the definition of 'debt', as provided in the Act itself, as such, with great respect, I fail to agree with the ratio laid down therein.”

Further, on perusal of the judgment of the Hon'ble Apex Court in the case of Narayan Chandra Ghosh (supra), it would appear that the ratio of the judgment is culled out in paragraph 9 of the said judgment which is quoted hereunder for a ready reference:-

“9. The argument of the learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, the appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is



computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring an appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third provisos to the said section. At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty-five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining the appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed.”

The contention of learned counsel for the petitioner that in the said case the Hon’ble Supreme Court had directed that on appellant’s depositing Rs.15 lacs his appeal shall be entertained in the opinion of this court the order is to be seen as



exercised of power by Hon'ble Apex Court under Article 142 of the Constitution of India which this Court sitting in it's writ jurisdiction would not do as no illegality or infirmity may be found in the impugned order.

In ultimate analysis, this Court finds no reason to interfere with the impugned judgment. This writ application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

Arvind/-**AFR**

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