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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24934 of 2014 (O&M)
Date of decision:September 06, 2019

Shanta Arora …Petitioner

Versus

Debts Recovery Appellate Tribunal and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Arun Kumar Tyagi

Present: Mr. Anand Chhibbar, Senior Advocate, with
Mr. Saurabh Arora, Advocate, for the petitioner.

Mr. G.S.Anand, Advocate,
for respondent no.2.

Mr. Prem Chand Chaudhary, Advocate, for
Mr. Madan Pal, Advocate, for respondent no.6.

Mr. Anil Dutt, Advocate,
for respondent no.7.

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Rakesh Kumar Jain, J.

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 16.10.2014 (Annexure P-13) passed by the Debts Recovery Appellate Tribunal, New Delhi and also for the issuance of a writ in the nature of *mandamus* to direct respondent no.2-bank to first recover the amount in question from the principal debtor(s), i.e. respondents no.3, 4 and 6, who had mortgaged three shops no.497/7, 497/8 and 494/10 and have also given personal guarantee by making House No.KU-62, Pitampura liable for attachment and sale for recovery of the loan.

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Shorn of unnecessary details, the petitioner stood as a guarantor for respondent no.4 by mortgaging her residential House No.705, Sector-8, Panchkula as a collateral security against the loan of ₹2 Crores advanced to respondent no.3-firm, owned by respondent no.4 as a sole proprietor. Respondent no.2-bank recalled the loan by initiating proceedings in terms of Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "Act"). The petitioner challenged the said proceedings by way of Securitization Application bearing SA No.143 of 2012 (which has subsequently been numbered as SA No.643 of 2017 before the Debt Recovery Tribunal-II, Chandigarh), in which the following order was passed on 21.08.2012:-

> "During the course of the arguments, reference was made to the valuation report filed by the applicant alongwith replication (Ann.A-12) wherein the valuation of Shop No.494/10 and 497/7-8 which is part of property No.493 to 497, at Ganga Market in Haveli Halder Qull, Chandni Chowk, Delhi which are also mortgaged in the account of respondent No.3, wherein releasable value of Rs.92.00 lacs has been assessed. Even though this valuation report is not admitted by respondent bank and valuation report obtained by the respondent bank is already on record, applicant shall deposit the balance amount of the outstanding dues of Rs.3.31 crore as per demand notice under Section 13(2) in terms of affidavit-cum-undertaking. In case the applicant deposits the aforesiad differential amount of Rs.2.39 crore within 30 days, the respondent bank will not take action for obtained physical possession of the property of the applicant. In case applicant fails to pay the aforesid

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amount within stipulated time as aforesaid, the bank will be at liberty to proceed as per law."

The petitioner was still aggrieved against the aforesaid order and filed Inward Application No.158/2013 before the Debts Recovery Appellate Tribunal, Delhi, in which the following order was passed on 16.10.2014:-

> "A written request is made for adjournment on the ground that Mr. Anand Chhibbar, Sr. Advocate, who has to make submissions in this case, is not available today. Mr. Aggarwal though has not opposed the prayer for adjournment but states that the appellant is required to make pre-deposit and the amount cannot be less than 25% of the notice amount. Mr. Aggarwal further states that he will not have any objection if the application is disposed with a direction to the appellant to deposit 25% of the notice amount which is minimum and beyond that no further concession can be given by the Tribunal. I see substance in the submission made by Mr. Aggarwal. Accordingly, the waiver application (IA No.731 of 2014) is disposed of with a direction to the appellant to deposit 25% of the notice amount. The counsel for the appellant says that he cannot say anything about the time. Six weeks time is allowed to the appellant to make pre-deposit.
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> Adjourned to 12th December, 2014 to oversee the pre-deposit."

The petitioner still challenged the order dated 16.10.2014 before this Court by way of the present writ petition.

It was contended on behalf of the petitioner that the petitioner is the mother-in-law of respondent no.4 who has sufficient property(ies) to satisfy the outstanding loan of the bank and if the mortgaged property(ies) other than the property in question is/are sold, then it would be sufficient to satisfy the account of the bank. On this premise, notice was issued and various orders were passed by this Court from time to time. However, there is no dispute that three shops situated in Chandni Chowk, Delhi have already been sold for ₹40 lacs and the first floor of the house at Pitampura, Delhi, which was allegedly owned to the extent of 50% each by both respondents no.4 and 6, was sold for ₹85 lacs by the bank. The other three floors of the aforesaid house at Pitampura were illegally sold by respondent no.6. This Court had taken cognizance of the fact that respondents no.4 and 6 have tried to play a fraud and ordered for registration of FIR, which has ultimately been registered vide FIR No.89 dated 19.04.2018 in Police Station Economic Offence Wing, Delhi under Sections 420/120B IPC against respondents no.4 and 6.

As far as the orders passed by this Court in this writ petition, resulting into registration of aforesaid FIR etc. are concerned, the same shall operate, but the question that has been raised by respondent no.2-bank is as to whether there is any error in the order dated 16.10.2014 (Annexure P-13), which has been challenged by the petitioner in this case?

Counsel for the petitioner has not been able to find any fault in the impugned order dated 16.10.2014, which is entirely based upon the provisions of Section 18 (Third Proviso) of the Act, which says that the amount of pre-deposit cannot be less than 25%. Besides this, counsel for respondent no.2 has also brought to our notice that SA No.643 of 2017 has already been dismissed by the DRT-II, Chandigarh on 03.08.2018 and counsel for the petitioner has also submitted that the said order has been challenged by the petitioner by way of CWP No.27431 of 2018. It is also brought to our notice that respondent

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no.2 had filed OA No.206 of 2012 titled as "Bank of Baroda vs. Shri Rakesh Gulati and others" before the Debts Recovery Tribunal-III, Delhi, in which the petitioner is arrayed as respondent no.2 and in the said case, the following order was passed on 02.06.2015:-

> "(i) I allow this OA and direct the defendants no.1 to 3 to pay to the applicant bank jointly and severally, within a period of 30 days, a sum of Rs.3,60,66,325.32 (Rupees Three Crores Sixty Lacs Sixty Six Thousand Three Hundred Twenty Five and Paisa Thirty Two Only) alongwith costs expenses and future interest @ 14% simple from the date of filing of this OA till the date of realization.
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> (ii). The aforesaid amount shall be recovered from the sale of the mortgaged properties i.e. (i) ground floor portion without roof rights of shop bearing private no.494/10, measuring 6.99 sq. yds. forming part of property bearing no.494-495, situated at Haveli Haider Quali, Ward no.Vi, Chandni Chowk, Delhi-110006, (ii) ground floor portion without roof rights of two shops bearing private no.497/7 and 497/8, measuring total area of 18.62 sq. yds. forming part of property bearing nos.493 and 497, situated at Haveli Haider, Quali, Ward no.VI, Chandni Chowk, Delhi-110006 and (iii) property bearing Plot no.705, Sector-8, Panchkula, Haryana. The applicant bank is also entitled to sell the movable and immovable assets of the defendants.
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> (iii). It is made clear that the property bearing Plot no.705, Sector-8, Panchkula, Haryana shall be subject to the outcome of the aforesaid Civil Writ Petition pending before the Hon'ble High Court of Punjab and Haryana.
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> (iv). The recovery certificate be issued forthwith and be sent to the Recovery Office, Debts Recovery Tribunal-III, Delhi.

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(v). Parties are directed to appear before the Recovery Officer, DRT-III, Delhi on 09.07.2015.

(vi). Copies of final order be sent to all concerned free of cost.

File be consigned to records."

It is also submitted that the order dated 02.06.2015 passed in the aforesaid OA No.206 of 2012 has not been challenged by the respondents arrayed therein including the present petitioner rather an Execution Application is pending at the instance of respondent no.2-bank. It is further submitted by respondent no.2 that the liability of the guarantor is co-extensive with that of the principal debtor and in this regard, reference has been made to the decision of the Supreme Court rendered in the case of **State Bank of India vs. M/s Indexport Registered and others,** (1992) 3 Supreme Court Cases 159.

Counsel for respondent no.2 has, thus, submitted that the order dated 21.08.2012 was an interlocutory order passed in SA No.143 of 2012 (New SA No.643 of 2017), which has come to an end with the dismissal of the said OA, for whatsoever reason, on 03.08.2018 and, therefore, the present petition has become infructuous or redundant. It is also submitted that even if it is presumed for the sake of arguments that the writ petition against the order dated 03.08.2018, by which SA No.143 of 2012/SA No.643 of 2017 has been dismissed, is pending in this Court and may be ultimately allowed and the order dated 21.08.2012 is restored/revived, the fact would remain as to whether the order dated 16.10.2014 passed by the Appellate Tribunal is justified or not?

After hearing learned counsel for the parties and examining the available record, we are of the considered opinion that looking from any angle, the impugned order dated 16.10.2014 passed by the Debts Recovery Appellate Tribunal, Delhi is in no way illegal or erroneous for the purpose of interference

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by this Court as it is the mandate of the law that the Appellate Tribunal, at the time of entertainment of an appeal, cannot reduce the pre-deposit less than 25% and the same has exactly been done by the impugned order wherein six weeks time was granted to the petitioner to make the pre-deposit. In this regard, we have had reference of a judgment rendered by the Supreme Court in the case of **Narayan Chandra Ghosh vs. UCO Bank and others,** 2011(4) SCC 548, wherein it has been held that complete waiver of pre-deposit is beyond the provisions of the Act, however, where debt due is not ascertained, Appellate Tribunal can reduce the amount of deposit to not less than twenty-five per cent of the debt as per Section 18(1) proviso 3, for the reasons to be recorded.

The argument of the petitioner that the amount already realized from the sale of three shops of Chandni Chowk, Delhi and one portion of the house of Pitampura, Delhi may be treated as pre-deposit cannot be accepted in view of the decision rendered by the Bombay High Court in the case of **Eskays Construction Pvt. Ltd. vs. Soma Papers & Industries Ltd.,** Writ Petition No.1315 of 2014, decided on 30.11.2016, in which the following observations were made:-

> "18. Faced with this situation, Ms. Vyas submitted that the DRAT has granted full waiver of deposit in peculiar facts and circumstances of the present case. She submitted that considering the fact that the Respondent Banks had already sold the subject properties (secured assets) for a consideration that fully secured their claim, there was no requirement for the 1st Respondent-borrower to deposit any amount as contemplated under Section 18 of the SARFAESI Act. We are unable to accept this submission. In our view, it would be ludicrous to suggest that the money realized by the Respondent banks from sale of their secured assets could be used by the borrower to fulfill the condition of pre-deposit under Section 18. We must hasten to add that it would be a different

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> matter if the sale is accepted and confirmed by the borrower. In the facts of the present case, the 1st Respondent - borrower wants to use the sale proceeds received from sale of the subject properties to be adjusted/ given credit for in the application for waiver of deposit and at the very same time challenges the sale of very same subject properties. This is to our mind, would be defeating the very purpose for which Section 18 was enacted, which is to curb unnecessary and frivolous litigation. We, therefore, have no hesitation in rejecting this argument. We must mention here that an identical argument was canvassed before another Division Bench of this Court in the case of R.G. Dalpatrai and Co. Vs. Bank of Baroda, Writ Petition (L) No.2361 of 2014 decided on 9th October, 2014, and the same was emphatically repelled. Paragraph 5 of the said decision reads thus:
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> > "5. In our view, it will not be possible for us to interfere with the impugned order passed by the DRAT while exercising our writ jurisdiction under Article 226 of the Constitution of India. It is a well settled position in law that the amount which is received by the Bank in the sale of the immovable property cannot be adjusted in the application for waiver of pre-deposit, unless the sale is accepted and confirmed by the borrower. In the present case, Petitioner has challenged the said sale after taking out separate application. We are, therefore, not inclined to entertain this Petition. Petition is dismissed in limine."

In another Single Bench judgment of the Calcutta High Court rendered in the case of **Akshat Commercial Pvt. Ltd. vs. Smt. Kalpana Chakraborty and others,** WP No.2 of 2009, decided on 20.01.2009, it was held that *"no part of the consideration put in by the writ petitioner auction purchaser can be treated towards the deposit that a borrower or guarantor is required to put on the table before proceeding with the appeal"*.

Thus, the aforesaid argument of the petitioner is rejected.

It is also pertinently mentioned by respondent no.2 that even if the

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amount of ₹1.25 crores, realized after the sale of three shops of Chandni Chowk and one portion of the house at Pitampura is adjusted, still the dues of the bank is more than ₹5.58 crores.

The argument of the counsel for the petitioner that the petitioner is an old lady and has been cheated by her son-in-law (respondent no.4) is of no consequence because the bank is not concerned about the inter-se relations of the petitioner and respondent no.4 and the act of cheating by respondents no.4 and 6 upon the petitioner because the petitioner did not even register any criminal case in respect of the alleged cheating by respondent no.4 upon her by mortgaging her property.

In view of the facts and circumstances mentioned above, we hardly find any merit in the present writ petition and hence, the same is hereby dismissed, though without any order as to costs.

(Rakesh Kumar Jain)
Judge

September 06, 2019 **(Arun Kumar Tyagi)**
vinod* **Judge**

Whether speaking / reasoned : Yes/No
Whether reportable : Yes/No