IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-27819-2019
Date of Decision:26.09.2019

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M/s Kohinoor Marketing Associates and others

. . . . Petitioners

Vs.

Debt Recovery Appellate Tribunal, New Delhi and others

. . . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

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Present: - Mr.Sandeep Jain, Advocate,
for the petitioners.

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RAKESH KUMAR JAIN, J.

The petitioners have challenged the order dated 10.4.2019 passed by the Debt Recovery Tribunal-II, Chandigarh by [for short 'the Tribunal] by which OA No.2117 of 2017 filed by respondent No.3 was decreed and the petitioners were held liable to pay a sum of ₹7,33,94,235.28p to respondent No.3, jointly and severally, with costs, current and future simple interest @ 14.50 % p.a., calculated from 01.02.2015, till the date of its realization. Respondent No.3 was also held entitled to recover the aforesaid amount by way of sale of hypothecated/mortgaged properties of the petitioners in execution proceedings, if not sold earlier. It was also ordered that if the dues of respondent No.3 still remain unsatisfied, it shall be entitled to recover the same by attachment and sale of other assets of the petitioners; order dated 29.8.2019 passed by the Debts Recovery Appellate Tribunal, Delhi [for short 'the Appellate Tribunal'] in Appeal No.382 of 2019, is also under challenge, by which the prayer made by the petitioners for waiving of the pre-deposit of

50% of the amount was rejected and 3 weeks time was given to them for making the payment of pre-deposit of 50% of the amount of the debt adjudicated by the Tribunal. It was also held that if the pre-deposit of 50% amount is not deposited, the appeal will become liable to be dismissed as not entertainable/maintainable and in case the deposit is made, the said amount shall be kept in a fixed deposit in a nationalized bank for a period which would earn maximum rate of interest.

In short, the petitioners had availed cash credit limit of ₹4.5 crores from respondent No.3 in April 2012 in which ₹50 lakhs was also added in October 2012. The petitioners mortgaged house No.184, Sector 9, Panchkula in lieu of the loan. It is alleged that in November 2012, in a fire incident, the house-cum-godown of the petitioners along with the entire stock was destroyed. The stock was though insured but the insurance company had rejected their claim and the dispute in respect thereof is pending before the National Consumer Disputes Redressal Commission, New Delhi [for short 'the Commission']. The accounts of the petitioners were declared NPA on 31.3.2013 and vide notice dated 7.6.2013, issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the Act'], an amount of ₹5,51,73,318/- was recalled, determined upto 31.5.2013. The notice was duly replied as stated. Respondent No.3 made an application to the District Magistrate, Panchkula under Section 14 of the Act, which was allowed on 10.12.2013. The petitioners preferred Securitization Application bearing SA No.273 of 2013 before the Tribunal. The interim relief to the petitioners was declined by the Tribunal on 8.1.2014. The petitioners thereafter preferred a writ petition bearing CWP No.854 of 2014 before this Court which was disposed of on 25.2.2014. Respondent No.3 filed OA

No.227 of 2015 which was allowed on 13.3.2015. The petitioners then filed CWP No.15707-2019 before this Court to challenge the order dated 10.4.2019 but the said petition was withdrawn by the petitioners because they had the remedy of appeal before the DRAT in terms of Section 20 of the Act. The petitioners filed the appeal before the DRAT which has now been dismissed as having been found not maintainable for want of deposit of 50% of the amount of debt in view of the statutory provisions of the Act and the petitioners have been given 3 weeks time to deposit the said amount but the petitioners instead of depositing the 50% amount to maintain their appeal or even to make an appropriate application for reducing the said amount to 25% has approached this Court by way of a petition while the appeal is still pending before the DRAT.

Counsel for the petitioners has submitted that the earlier CWP-854-2014 was disposed of on the agreed terms that the bank shall not sell the mortgaged property till the adjudication takes place before the Commission and in case the petitioners succeed, they would deposit the full amount received under the said adjudication of the Commission and in the eventuality when they do not succeed and amount of the bank is not paid then physical possession of the property in dispute shall be handed over by the petitioners to respondent No.3 without any demur or protest. It is submitted that the matter before the Commission is still pending and respondent No.3 cannot take any action in view of the order passed by this Court on 25.2.2014.

We have heard learned counsel for the petitioners and perused the record with their able assistance.

The prayer made in this petition is for quashing of the orders dated 10.4.2019 passed by the Tribunal and order dated 29.8.2019 passed by the Appellate Tribunal. Insofar as the order of the Tribunal is concerned, it has only decided the OA filed by respondent No.3 in their favour holding them entitled to recover a sum of ₹7,33,94,235.28p along with future and simple interest @ 14.50% per month w.e.f. 01.02.2015 and the order of the Appellate Tribunal is only to the extent that it had refused to hear the appeal without the pre-deposit of 50% of the amount which is a statutory condition. The petitioners have miserably failed to prove before the Appellate Tribunal that it had the jurisdiction to reduce the pre-deposit even less than 25% or had the jurisdiction to waive it off completely for the purpose of maintaining the present appeal. No such argument has also been raised before this Court in this regard. Thus, we do not find any reason to interfere in this petition for setting aside the order passed by the Appellate Tribunal which has refused to hear the appeal of the petitioners for want of pre-deposit of 50% of the amount which is a mandatory requirement.

Dismissed. No costs.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

26.09.2019
Vivek

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No