204

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17779 of 2017 (O&M)
Date of Decision: 18.07.2019

A.K. SINHA ***....Petitioner***

VS.

CANARA BANK AND OTHERS ***...Respondents***

CWP No. 17539 of 2017 (O&M)

JATINDER MOHAN MITTAL ***....Petitioner***

V/S

DEBTS RECOVERY APPELLANT TRIBUNAL AND OTHERS
...Respondents

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

Present: Mr. C.S. Pasricha, Advocate,
for the petitioner in CWP No. 17779 of 2017.
for respondent No. 4 in CWP No. 17539 of 2017.

Mr. Rakesh Gupta, Advocate,
for the petitioner in CWP No. 17539 of 2017
for respondents No. 2 and 3 in CWP No. 17779 of 2017.

***

RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of two connected writ petitions bearing *CWP-COM-116 of 2017* now treated as *CWP No. 17779 of 2017* titled as ***"A.K. Sinha*** *Vs.* ***Canara Bank and Others"*** (hereinafter referred to as "the first petition") and *CWP-COM-174 of 2017* now treated as *CWP No. 17539 of 2017* titled as ***"Jatinder Mohan Mittal and another*** *Vs.* ***Debts Recovery Appellant Tribunal and Others"*** (hereinafter referred to as "the second petition") as both the petitions are interconnected and can be disposed of by a common order.

Shorn off the unnecessary details, the first petition is filed by the guarantor and the second petition is filed by the auction purchaser. The property in dispute is House No. 3096, Sector 21-A, Chandigarh which was purchased by the auction purchaser for a sum of ₹4,34,50,000/- in the auction conducted by the Recovery Officer of the Debts Recovery Tribunal-I, Chandigarh (hereinafter referred to as " the DRT-I").

Though, there is a chequered history of this case but the present controversy can be summarized by referring to two orders which are under challenge in both the petitions. In the second petition, the order dated 26.12.2016 passed by the Debts Recovery Appellate Tribunal, New Delhi (hereinafter referred to as "the DRAT") has been challenged by which Appeal No. 76 of 2016, filed by the writ petitioner of the first petition has been entertained *de hors* the provisions of Section 21 of the Recovery of Debts Due To Banks And Financial Institutions Act, 1993 (for short "the Act") as the entire pre-deposit has been waived. In the first petition, the order dated 13.04.2017 has been challenged by the guarantor by which the DRAT has directed him to deposit the entire amount of ₹4,34,50,000/-

It is needless to mention that Appeal No. 76 of 2016 before the DRAT is still pending. At the time of preliminary hearing on 04.05.2017 in the first petition, the guarantor/petitioner raised an issue that on the one hand the DRAT has waived the pre-deposit of the amount for the purpose of entertaining the appeal and on the other hand, while passing the impugned order dated 13.04.2017 in the first petition, he has been asked to deposit the entire sale consideration of ₹4,34,50,000/-. On that pretext, notice was issued and dispossession of the guarantor/petitioner was stayed.

In the second petition, the issue raised by the auction purchaser is that after the amendment in the Act w.e.f 01.09.2016, the DRAT has lost its jurisdiction to pass an order of complete waiver and now it is mandatory either to ask for deposit 50% of the debts due or it may be reduced to 25% after recording reasons.

Admittedly, it is needless to mention that the appeal before the DRAT is pending and the primary issue involved in this case is as to whether the DRAT had the jurisdiction to pass the order dated 26.12.2016 granting complete waiver of the pre-deposit for the purpose of entertainment of the appeal on any ground whatsoever?

The other issue involved is as to whether the appeal having been filed before the commencement of the amendment and the order has been passed after the amendment has come then in such circumstances whether the appellate authority was obliged to look into the amended provision of law?

Since, the facts are not in dispute, therefore, we would directly refer to the provisions of law in this case. In this regard, learned counsel for the guarantor has referred to the un-amended provision of the Act which read thus:-

> ***"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 percent 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.*

This provision of the Act was amended by Section 35 of Act No. 44 of 2016 and read as under: -

> ***"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 (fifty percent) 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, (reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due) to be deposited under this section."*

There is no dispute that the Appeal No. 76 of 2016 was filed when the un-amended provision of law was in operation. It is also not in dispute that the impugned order was passed on 26.12.2016 when the amendment had already commenced. Thus, arguments have been raised by the guarantor/petitioner of the first petition that the amended provisions of Section 21 of the Act would apply even at the time when the order was passed on 26.12.2016 as according to him, the amended law cannot be retrospective.

We have heard learned counsel for the parties in this regard and are of the considered opinion that whenever amendment has come in Section 21 during the pendency of the application which was decided after the amendment then the amended provision of the Act would apply because unamended provision would go in oblivion and would not be applicable. In view thereof, there was hardly any power vested with the DRAT to have passed an order ignoring the amended provisions for the purpose of giving a complete waiver to the petitioner in the first petition which has been challenged by the petitioner in the second petition.

Once we have held that the DRAT had no jurisdiction at all to have waived the amount of pre-deposit of 50% or at the most even 25%, therefore, the order dated 26.12.2016 to entertain the appeal, filed by the petitioner in the first petition is bad in law. Even otherwise, the DRAT had no jurisdiction to observe that since the auction purchaser has already deposited the aforesaid entire auction money, therefore, in that circumstances, the guarantor was not liable to pay the pre-deposit amount. This finding is patently erroneous and illegal and therefore, the second petition is allowed, order dated 26.12.2016 is hereby set aside and the first petition is hereby dismissed as having been rendered infructuous as the order dated 13.04.2017 has become meaningless.

Photocopy of this order be placed on the file of the connected case.

July 18, 2019 **(RAKESH KUMAR JAIN)**
Ess Kay **JUDGE**

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No