$~39

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 10450/2019**

SMT. SHASHI ROHILLA ..... Petitioner

Through: Mr.Pallav Saxena and Mr.Anand Agg., Advocates.

versus

THE AUTHORISED OFFICER CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED AND ORS. ..... Respondent

Through: Mr.Sanjeev Bhandari alongwith Mr.Prateek Kumar, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **25.09.2019**

CM APPL. 43162/2019 (exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 10450/2019 and CM APPL. 43161/2019 (stay)

2. This writ petition is directed against an order dated 20th August, 2019 passed by the Debt Recovery Tribunal (DRT) declining interim relief to the Petitioner in Securitisation Appeal 73/2019 titled as ***Shashi Rohilla & Ors. v. Cholamandalam Investment and Finance Company Limited***.

3. Against the impugned order of the DRT there is a statutory remedy of appeal provided under Section 18 of the SARFAESI Act before the Debt

Recovery Appellate Tribunal (DRAT).

4. The only ground on which the Petitioner seeks to avoid going before the DRAT is that she would be required to make the pre-deposit and that she does not have the financial wherewithal to do so. Learned counsel for the Petitioner additionally relies on the decision ***Star Paper Mills Ltd. vs. State of UP (2006) 10 SCC 201*** to urge that a writ petition can be entertained, despite availability of an alternative remedy when the facts and circumstances so warrant.

5. While under Article 226 of the Constitution of India this Court has the discretion to entertain a writ petition against an order of a quasi-judicial authority, in the present casein light of the fact that there is a efficacious remedy provided under the SARFAESI Act, the Court is not inclined to exercise such discretion to entertain this petition.

6. The mandatory nature of Section 18 of the SARFAESI Act has been emphasised by the Supreme Court in ***Narayan Chandra Ghosh v. UCO Bank (2011) 4 SCC 548*** as under:

> "8. Section 18(1) of the Act confers a statutory right on a (person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, under the third proviso to the sub-section, the Appellate

Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. Thus, there is an absolute bar to entertainment of an appeal under Section 18(1) of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity. It is well-settled that when a Statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18(1) of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18(1) of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement."

7. The above judgement of the Supreme Court has been followed by this Court in two recent judgements dated 4th September, 2019 in W.P.(C) 9578/2019 (***Hassad Food Company Q.S.C. vs. Reliance Reconstruction Company & Ors.***) and 12th September, 2019 in W.P.(C) 9554/2019 (***M/s. Sheena Exports & Ors. v. M/s Assets Care & Reconstruction Enterprises Ltd.***).

8. Consequently, this Court is not inclined to entertain this writ petition but it will be open to the Petitioner to seek other appropriate statutory remedies available to her in accordance with law.

9. The petition is dismissed in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 25, 2019
pa