

\$~8

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

+ **W.P.(C) 2067/2019 & C.M. APPL. 9676/2019 (stay)**

MANOJ KUMAR PRUTHI ..... Petitioner

Through: Mr Sanjay S. Chhabra, Advocate.

versus

M/S MAGMA HOUSING FINANCE ..... Respondent

Through: Mr Samarendra Kumar, Advocate.

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE TALWANT SINGH**

**ORDER**  
**11.10.2019**

%

**Dr. S. Muralidhar, J.:**

1. With the consent of the parties, the writ petition is heard finally.
2. The present petition is directed against an order dated 15<sup>th</sup> January, 2019, passed by the Debt Recovery Appellate Tribunal ('DRAT'), rejecting the Petitioner's application being I.A. No. 450/2018, seeking waiver of the pre-deposit in terms of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SARFAESI Act').
3. The background facts are that the Respondent demanded from the present Petitioner a sum of Rs. 84, 17, 558/- by way of a demand notice issued

under Section 13 (2) of the SARFAESI Act. The DRAT has rejected the application on the ground that Section 18 (2) of the SARFAESI Act makes no distinction between an appeal filed against an interim order of the Debt Recovery Tribunal ('DRT') and a final order.

4. The Petitioner initially was involved in a dispute with his father and a suit C.S. (OS) No. 863/2005 was filed in this Court by his father seeking the Petitioner's eviction from the property at H-29, NDSE Part-I, New Delhi-110049 ('the property in question'). Ultimately, the said suit was dismissed for non-prosecution, after the demise of the Petitioner's father on 25<sup>th</sup> December, 2007.

5. The Petitioner on 5<sup>th</sup> June, 2014 received notice from one Mr. Arun Kumar, who is stated to be the Sole Arbitrator in the arbitration proceedings commenced under the Arbitration and Conciliation Act, 1996 ('Act') by the Respondent. The Petitioner claims to have not been aware of any dispute between him and the Respondent.

6. The case of the Respondent, however, was that the Petitioner had borrowed, as principal borrower, a sum of Rs. 60 lacs in 2005. The Petitioner, however, denies having borrowed any such money.

7. The Respondent filed O.M.P. No. 16/2015 in this Court under Section 9 of the Act seeking injunction against the property in question, purportedly mortgaged with the Respondent. When this petition came up for hearing before this Court on 26<sup>th</sup> May 2015, a preliminary objection was raised by

the present Petitioner that the signatures on the loan agreement produced by the Respondent were not that of the Petitioner. The Petitioner asked the Court to direct the Respondent herein to produce the original loan agreement.

8. Meanwhile, a second O.M.P. (I) No. 162/2015 under Section 9 of the Act was filed by the Respondent against the present Petitioner for coercive action against the property in question. In the said petition, the Petitioner herein filed I.A. No. 9808/2015 for directions to the Respondent to produce the original loan agreement, together with supporting documents and asked that the specimen signatures of the present Petitioner be sent to the Central Forensic Sciences Laboratory ('CFSL') to seek a report as regards the genuineness of the signatures on the said loan agreement. He also prayed that the already pending O.M.P. No. 16/2015 be kept in abeyance.

9. This application was considered by the learned Single Judge of this Court and a detailed order was passed on 27<sup>th</sup> July, 2016, directing the present Respondent to file the original documents and the Petitioner to give his specimen signatures as well as a copy of his passport, which along with the original documents would be sent to the CFSL for purposes of comparison thereof with the disputed signatures.

10. It appears that subsequently, the Respondent herein withdrew both the aforementioned O.M.P.s on 3<sup>rd</sup> May, 2017. In the said order passed on that date, this Court noted that the Respondent had initiated proceedings under the SARFAESI Act by issuing a notice dated 9<sup>th</sup> February, 2016 against the

present Petitioner under Section 13 (2) of the SARFAESI Act. It is noted that the Respondent had also filed a petition under Section 14 of the SARFAESI Act for taking possession of the mortgaged property. It was also noticed that the present Petitioner had filed a Securitization Application ('SA') No. 286/2016 before the DRT, which was pending consideration. In the circumstances, the learned Single Judge directed that as and when the CFSL report is ready, it should be filed before the concerned DRT hearing the Petitioner's SA and his mother's SA No. 180/2016. Even by 18<sup>th</sup> August, 2017, the DRT had not received the report of the CFSL. On 1<sup>st</sup> September, 2017, an order was passed directing the matter to be listed before the Registrar of the DRT to enable the Petitioner herein to file replication, evidence and exhibit documents. Time was granted on 25<sup>th</sup> October, 2017 to the Petitioner to file rejoinder and evidence and the matter was listed on 30<sup>th</sup> November, 2017.

11. On that date, the DRT was informed that the Petitioner had filed his rejoinder. However, it noted that the right of the Petitioner to file evidence "already stands closed as per the order of the Hon'ble PO", whereas the DRT itself had granted time on 25<sup>th</sup> October, 2017 to the Petitioner to file evidence.

12. The Petitioner had then to file an application for condonation of delay in filing the rejoinder and evidence and that was taken up for consideration by the DRT on 8<sup>th</sup> February, 2018. In an order passed on that date, the DRT declined to condone the delay by holding that the opportunity of filing rejoinder and evidence had already been closed by the order dated 1<sup>st</sup>

September, 2017. It is against this order that the Petitioner approached the DRAT in appeal.

13. The question before the DRAT therefore was whether it should entertain the Petitioner's application for waiver of the pre-deposit. The view taken by the DRAT that there could be no waiver of pre-deposit in terms of Section 18 of the SARFAESI Act appears to be incorrect in view of the decision of the Division Bench of this Court in ***Manju Devi and Ors. v M/s. R. B. L. Bank Ltd. and Ors. 2017 II AD (Delhi) 542***. This Court in the said decision noted that the second proviso to Section 18 (1) of the SARFAESI Act obligates the borrower to deposit with the DRAT 50% of the amount of debt due from him for the appeal, which may be filed either by the borrower or other party, to be entertained. The Court noted that if the said proviso had to be read literally to mean that such appeal would not be entertained, if neither the borrower nor the third person made the deposit then "appeals by third persons would in effect and substance, be rendered nugatory for a third person, who would never be able to get his appeal entertained." On the facts of that case, which are similar to the facts in the present case, the petitioners therein were neither the borrowers nor the mortgagers or guarantors in respect of the loan facility availed by the principal borrower. In those circumstances in ***Manju Devi (supra)*** this Court set aside the order of the DRAT requiring the petitioners therein to pay 50% of the amount due from the principal borrower as a condition for entertaining the appeal.

14. In view of the legal position explained in ***Manju Devi (supra)*** this Court holds that the DRAT was in error in the present case in declining to entertain

the prayer of the Petitioner for waiver of pre-deposit. It is the Petitioner's case that he is neither the principal borrower nor mortgager of the property in question and that issue has to await the consideration of the SA filed by him on the strength of the CFSL final report which is yet awaited. It may be noticed here that it is only an interim report of the CFSL that has been submitted before the DRT.

15. In order to avoid further delay in the matter, this Court is of the view that the delay in the Petitioner filing the affidavit of the evidence and rejoinder before the DRT ought to be condoned. It is plain that by the order dated 25<sup>th</sup> October, 2017 the DRT had in fact granted time to the Petitioner to file both the rejoinder and the evidence and this was done by the next date before the DRT i.e. 30<sup>th</sup> November, 2017.

16. Accordingly, the impugned order dated 8<sup>th</sup> February, 2018 passed by the DRT-I dismissing the Petitioner's application for condonation of delay is hereby set aside. The DRT-I is directed to take on record the affidavit of evidence and rejoinder filed by the Petitioner.

17. Resultantly, the appeal pending before the DRAT being Misc. Appeal. No. 276/2018 has been rendered infructuous and it is ordered disposed of as such.

18. Learned counsel for the parties inform the Court that the final report of the CFSL is awaited. Although an order was passed in that regard by the Joint Registrar on 17<sup>th</sup> May, 2017 pursuant to the order dated 3<sup>rd</sup> May, 2017

of this Court in O.M.P. (I) No. 162/2015, it is not clear whether the CFSL to which the original documents has been transmitted by this Court has retained such original documents. On the side of the Respondent it is submitted that they have applied for certified copies of the original documents but that these have not been supplied to them on the ground that the file/documents in the Court are not traceable.

19. The Court directs the concerned Joint Registrar of this Court to ensure that the file/documents are traced out and whatever original documents are available with the Registry should be forthwith transmitted to the DRT-I before whom SA No. 286/2016 is pending after ensuring that certified copies thereof are supplied to the Respondent and filed in this Court by the Respondents in terms of the impugned order dated 3<sup>rd</sup> May, 2017 of this Court.

20. The SA 286 of 2016 will now continue before the DRT on the date already fixed. A direction is issued to the CFSL to expedite the final report and send it directly to the DRT-I not later than 30<sup>th</sup> November, 2019. Any observation made in this order will not affect the final outcome of the SA No. 286/2016 pending before the DRT which will be decided independently by the DRT on merits.

21. The petition is disposed of in the above terms. The pending application is also disposed of.

22. Order *dasti* to the parties. A certified copy of this order be delivered

forthwith to the concerned JR of this Court as well as to the Director, CFSL through Special Messenger for compliance.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**OCTOBER 11, 2019**

*mw*

