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

\+ W.P.(C) 2827/2019

NABEEL HUSSAIN ..... Petitioner
Through: Mr.Harpreet Singh Hora, Adv.

versus

PHOENIX ARC PRIVATE LIMITED ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

<u>O R D E R</u>
% **20.03.2019**

The petitioner assails the order dated 30.07.2018 and 25.10.2018 passed by the learned DRAT in Appeal No.461/2017 arising out of S.A. No.101/2013 (DRT-I, Delhi).

By the first order dated 30.07.2018, the learned DRAT rejected the petitioner's IA No.811/2017, whereby the petitioner sought waiver of the compliance of the condition of pre-deposit for the entertainment of the appeal under proviso to Section 18 of the SARFAESI Act. The Tribunal gave its reasons that the appellant was not entitled to waiver of the condition of pre-deposit since the petitioner was a partner of the borrower partnership firm. The petitioner was directed to first make pre-deposit of the 50% of the amount of debt in question in the form of bank draft in the name of the Registrar of the Tribunal within four weeks. It was clearly stated that in case if the said direction is not complied with, the appeal would be liable to be dismissed as not entertainable/maintainable. Despite being well aware of the said order, the petitioner did not make pre-deposit of the 50% of the amount of debt and consequently, the inevitable consequences flowed on 25.10.2018, and the appeal was dismissed as not entertainable/maintainable. The petitioner should have approached this Court, if he was aggrieved by the order dated 30.07.2018, soon after the said order was passed and had no justification to wait till the passing of the order dated 25.10.2018. The order dated 25.10.2018 is only a consequential order, which was bound to follow on account of non-compliance of the order dated 30.07.2018.

We may observe that the plea set up by the petitioner is that he was a minor and was admitted to benefits of the partnership firm at the time when the property of the firm was mortgaged to secure the credit advanced by the bank, whose interest have been taken over by the present respondent. The petitioner seems to reel under the impression that because he was a partner of the partnership firm, the property was also his. The partnership assets are not the assets of the partners. The partners are only entitled to the balance amount, if any, left after settlement of all accounts and payment of all the liabilities of the partnership firm.

We find that the present petition is barred by delay and laches and, even otherwise, there is no merit in the petition. The same is accordingly, dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

MARCH 20, 2019
gm