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

Date of decision: 19.03.2019

+ W.P.(C) 12942/2018 & C.M. No.50232/2018

VIRENDER PAL SINGH Petitioner
Through Mr.Sanjeev Bhandari, Adv. with
Mr.Prateek Kumar Adv.

versus

CENTRAL BANK OF INDIA Respondent
Through Ms.Seema Gupta, Adv.

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

VIPIN SANGHI, J (ORAL)

1. This writ petition has been preferred by the petitioner, aggrieved by the order dated 28.11.2018 passed by the learned Debts Recovery Appellate Tribunal (DRAT), Delhi in Miscellaneous Appeal No.562/2018 arising out of SA No.374/2018 (wrongly typed in the impugned order as OA No.374/2018), wherein the petitioners prayer for grant of interim relief was declined. On that day, the learned DRAT considered the petitioners submissions on the aspect of pre-deposit. The contention of the petitioner was that, as against the demand raised by the respondent/bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") in its notice dated 27.10.2016, for

Rs.72,31,969/-, the petitioner had made payment of nearly Rs.35.00 lakhs which amounted to 45% of the claimed debt by the respondent/bank, and the balance amount payable – even according to the respondent bank was Rs.37,12,920/-. The petitioner claimed that in view of the said amount having been already paid to the respondent/Bank, the requirement of pre-deposit of 50% of the amount of the debt be held as complied with.

2. This submission of the petitioner was not accepted by the Tribunal on the premise that under the second proviso to Section 18(2) of the SARFAESI Act, the pre-deposit had to be made before the Appellate Tribunal, and not before the bank. The Tribunal held that 50% of the outstanding amount would be 50% of the amount of Rs.37,12,920/- which was still payable by the petitioner as per the amount demanded in the notice under Section 13(2) of the SARFAESI Act.

3. The Tribunal then proceeded to consider the issue as to whether the amount of pre-deposit should be reduced to 25% in terms of the third proviso to Section 18(2) of the SARFAESI Act, and it accepted the petitioner's submission in this regard. The Tribunal directed that the petitioner should deposit 25% of the amount of Rs.37,12,920/- and, for that purpose, granted four weeks' time to the petitioner. The petitioner then prayed for interim relief—that he be not dispossessed for the said period to enable him to make the pre-deposit. On this aspect, the Tribunal observed as under:-

“.....I am afraid, unless appeal itself is entertained

for hearing, no such direction is being passed today. Once pre-deposit is made, the appellant is always at liberty to revive this prayer.”

4. During the pendency of this petition, the petitioner has made the deposit of 25% of Rs.37,12,920/- before the learned DRAT. Thus, the petitioner’s appeal before the learned DRAT can now be heard on merits. We are informed that the same is coming up on 03.05.2019.

5. The only submission advanced by learned counsel for the petitioner at this stage is that the Tribunal was not correct in its view in observing, that unless the appeal itself is entertained for hearing, the prayer for interim relief could not be entertained by the Appellate Tribunal. In this regard, Mr.Bhandari, learned counsel for the petitioner submits that as per Rule 22 of the Debt Recovery Appellate Tribunal (Procedure) Rules, 1994, which is attracted by virtue of Section 18(2) of the Act, “*The Appellate Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice*”. Mr.Bhandari, submits that once the Tribunal had granted time of four weeks to the petitioner to make the pre-deposit of 25% of the amount, the Tribunal had the jurisdiction to grant interim relief to the petitioner/appellant, at least during the said period.

6. Learned counsel for the respondent is not in a position to dispute the aforesaid proposition.

7. We have considered the above submission of Mr.Bhandari. It

is not that without making of the pre-deposit, the appeal which may be lodged by the borrower before the Appellate Tribunal, is not entertained at all for any purpose whatsoever. The appeal is entertained, and is listed before the Appellate Tribunal, at least for consideration of the aspect whether the borrower has: firstly, deposited the debt or any part thereof with the bank/financial institution; if so, what amount stands deposited; after taking into account the deposit made, if any, what further amount is required to be deposited in terms of the second proviso to Section 18 of the SARFAESI Act; whether the borrower/appellant is entitled to reduction of the amount of deposit upto 25% and, if so, the amount that the appellant is required to so deposit. It is in exercise of the said power that the Appellate Tribunal has passed the impugned order and has granted time of four weeks to the appellant to make the said pre-deposit. It cannot be that, on the one hand, the Tribunal issues such a direction granting time to the appellant to make the pre-deposit and, on the other hand, the appellant is left unprotected to face the consequence of him being dispossessed and/or his property being sold in auction. The Borrower-Appellant cannot be left remediless. If that is permitted, the purpose of preferring the appeal itself may be defeated. In our view, Rule 22 of the Debt Recovery Appellate Tribunal (Procedure) Rules, 1994 squarely applies to a situation like the present. To meet the ends of justice, the Appellate Tribunal has the jurisdiction to grant interim protection to the Borrower-Appellant during the period within which he is permitted to make the deposit of the pre-deposit amount. The Appellate Tribunal is, therefore, not

bereft of jurisdiction to consider an application for grant of interim relief, at least during the period which the Appellate Tribunal may grant for making the pre-deposit. To the aforesaid extent, we find merit in the submission of Mr.Bhandari.

8. Since the petitioner has already made the pre-deposit of 25% of the aforesaid amount of Rs.37,12,920/-, and the appeal is ripe for hearing, we continue the interim protection granted to the petitioner vide order dated 30.11.2018. Consequently, till 03.05.2019, the petitioner should not be dispossessed from his property in question. On 03.05.2019, the Tribunal may, if convenient, take up the appeal itself for hearing since learned counsels have assured this Court that neither of them shall take the adjournment. However, in case the Tribunal is not able to hear the appeal on merits on that date, the Tribunal should at least consider the application for interim relief moved by the petitioner and pass appropriate orders, as it deems fit after hearing the parties, uninfluenced by the interim protection granted to the petitioner by this Court.

9. The petition along with pending application stands disposed of in the above terms.

VIPIN SANGHI, J

REKHA PALLI, J

MARCH 19, 2019/aa