IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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(PROCEEDINGS THROUGH V.C.)

CWP-21479-2020
DATE OF DECISION: DECEMBER 15, 2020

Mrs.Sudha Joshi

.....Petitioner

VERSUS

Authorized Officer, HDFC Bank Ltd., New Delhi and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA

Present: Mr. Baldev Kapoor, Advocate,
for the petitioner.

Mr. Manish Jain, Advocate with
Mr. Mayur Kanwar, Advocate,
for the respondent-Caveator-HDFC Bank.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner asserts herself to be a victim of fraud being played upon her by her own son, who had, without her knowledge or consent, removed the title deed of her residential house from the joint locker of the bank and proceeded to mortage the said house with the bank to obtain loan. She, therefore, asserts that she is neither a borrower nor guarantor nor had she mortgaged her property to the bank and, thus, is not required to comply with the provisions of Second proviso to Section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (for short, "SARFAESI Act"), which requires pre-deposit for entertainment of the appeal as the same would not be applicable on her and, therefore, the appeal should have been entertained by the Debt Recovery Appellate Tribunal, Delhi (hereinafter referred to as "DRAT"), without insisting upon the condition of pre-deposit of 25% of the amount claimed by the bank.

2. The facts, in detail, need not be gone into as the short question involved in the present writ is as to whether pre-deposit of 25% of the amount claimed by the bank for entertaining the appeal preferred by the petitioner before the DRAT as per order dated 03.12.2020 under Section 18 of the SARFAEST Act is in accordance with law, when she claims to be neither the borrower nor guarantor nor a mortgagor?

3. It is the contention of learned Senior Counsel for the petitioner that in the light of FIR No.237, dated 04.11.2016 registered under Sections 420, 467, 468, 471 IPC at Police Station Manimajra, Chandigarh, by the petitioner against her son for having forged her signatures on the bank documents for obtaining a loan by mortgaging her only residential House No.5663, Modern Housing Complex, Manimajra, wherein challan has been presented and the trial is in progress, especially the CFSL report, according to which the signatures on the bank documents are not that of the petitioner, the liability as put on the petitioner cannot sustain and, therefore, proceedings initiated under Section 14 of the SARFAESI Act for taking possession of the house of the petitioner are unsustainable. He also asserts that the Debt Recovery Tribunal II, Chandigarh, vide order dated 27.11.2020 (Annexure P-15) had dismissed the application as preferred by the petitioner, challenging the action of the bank without taking into

consideration or giving finding whether the mortgage was legally sustainable or not. An appeal has been filed by the petitioner against the said order before the DRAT, which has been adjourned at the request of counsel for the appellant (petitioner herein) vide order dated 03.12.2020 for pre-deposit of minimum amount of 25% for entertainment of the appeal, which order has been challenged by the petitioner in the present writ petition. It is contended by counsel for the petitioner that the insistence on the part of DRAT for pre-deposit of 25% amount is unsustainable as the petitioner is neither a borrower nor a guarantor nor a mortgagor and, therefore, as per the language of Section 18 (1) of the SARFAESI Act, insistence upon pre-deposit by DRAT is unsustainable as the requirement of pre-deposit is only mandated qua the borrower. In support of this submission, learned counsel for the petitioner has referred to order dated 18.04.2015 passed by the Bombay High Court in Civil Writ Petition No.3995 of 2015 (M/s Anchor Electrical Pvt. Ltd. Vs. Canara Bank and another); order dated 18.02.2020 passed by the Karnataka High Court in W.P. No.29535 of 2019 (Shri M.K.Yashvantha Alva and others Vs. The Authorized Officer, State Bank of India, Yellapur, Arakere and others as also a Division Bench judgment of this Court in Civil Writ Petition No.20773 of 2019 (Punjab National Bank and others Vs. M/s Chintpurni School Educational Society and others), decided on 12.02.2020.

4. On the other hand, learned counsel for the Caveator-respondents submits that the contentions as raised by learned counsel for the petitioner are unsustainable in the light of the judgment passed by Hon'ble Supreme Court in Union of India Vs. Rajat Infrastructure Private Limited and others, (2020) 3 Supreme Court Cases 770 as the issue of waiver of pre-

deposit condition for filing an appeal before DRAT, where the appellant was claiming himself to be not a borrower stand rejected. Rather, the Hon'ble Supreme Court has gone to the extent of saying that a guarantor or a mortgagor stand on the same footing as a borrower and for preferring an appeal under Section 18 of the SARFAESI Act, condition of pre-deposit was mandatory.

5. We have considered the submissions made by counsel for the parties and with their assistance have gone through the pleading as well as the judgments on which reliance has been placed by them.

6. On perusal of the provisions of Section 18 of the SARFAESI Act, we are not inclined to accept the contentions as have been raised by counsel for the petitioner, especially in the light of the fact that there is an order dated 27.11.2020 (Annexure P-15) passed by Debt Recovery Tribunal II, Chandigarh, which unfortunately has gone against the petitioner, where the plea of the petitioner regarding denial of the signatures on the bank documents has not been accepted, which means that as of now she is a borrower/mortgagor, unless the said findings are set-aside. Petitioner has challenged these findings before DRAT, which has rightly proceeded to pass order dated 03.12.2020 (Annexure P-16), requiring the petitioner to make pre-deposit of minimum amount of 25% for entertainment of the appeal prior to the next date of hearing i.e. 20.01.2021.

7. The plea, which has been taken by counsel for the petitioner, is that the petitioner is neither a borrower nor a mortgagor and, therefore, not required to fulfill the condition of pre-deposit of the amount as provided under Section 18 of the SARFAESI Act cannot be also accepted in the light

of the observations of Hon'ble Supreme Court in Rajat Infrastructure Private Limited's case (supra), wherein it has been held as under:-

> "*11. The following observations of this Court in Narayan Chandra Ghosh case are relevant: (SCC p.550, para 7)*
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> *"7...Thus, there is an absolute bar to the entertainment of an appeal under Section 18 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."*
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> *12. In view of the law laid down by this Court, we are clearly of the view that the observation made by the High Court was totally incorrect.*
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> *13. We are not in agreement with the submission of Mr.Chaudhri that the High Court has exercised its discretionary powers under Article 226 of the Constitution. The order of the High Court does not show any exercise of such discretionary powers but according to the High Court on an interpretation of the section, pre-deposit was not required. We are also not impressed with the argument of Mr.Chaudhri that his client is not a borrower. A guarantor or a mortgagor, who has mortgaged its property to secure the repayment of the loan, stands on the same footing as a borrower and if he wants to file an appeal, he must comply with the terms of Section 18 of*

the SARFAESI Act.

14. Furthermore, we may add that the High Court has no powers akin to powers vested in this Court under Article 142 of the Constitution. The High Court cannot give directions which are contrary to law."

8. In the light of the above, order passed by DRAT dated 27.11.2020 (Annexure P-15), being in accordance with law do not call for any interference by this Court in exercise of its writ jurisdiction.

9. The writ petition, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

December 15, 2020 **(ASHOK KUMAR VERMA)**
khurmi **JUDGE**

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No