IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 WRIT PETITION NO.3420 OF 2020

VIJAY GINNING AND PRESSING FACTORY THROUGH ITS PROPRIETOR
VERSUS
AUTHORIZED OFFICER /CHIEF MANAGER, STATE BANK OF INDIA AND ANOTHER
...
Mr A. S. Usmanpurkar, Advocate for petitioner;
Mr A. V. Rakh, Advocate for respondent No.1

CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.

DATE : 20th September, 2021

PER COURT:

1. Though respondent No.2 – auction purchaser has been served with Court notice, no appearance has been entered, either in person or through an Advocate.

2. We have considered the submissions of the learned Advocates for the petitioner and respondent No.1. Considering the short issue raised before us, we are not required to advert to their entire submissions.

3. The petitioner was before the Debts Recovery Appellate Tribunal at Mumbai, in M.A. No.111/2016 in Appeal No.21/2016, praying for the benefit of the third proviso below Section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act). The total amount due, when the appeal was tendered, was Rs.52,17,880/-. The Bank admitted that the petitioner had deposited Rs.10,00,000/-. The Bank also admitted that it received the subsidy amount of Rs.13,92,100/- from NABARD which was directly appropriated towards his Term Loan Account. Consequentially, the amount due when the appeal was filed, was Rs.29,16,000/- approximately.

4. The learned Debts Recovery Appellate Tribunal at Mumbai, while delivering the impugned order dated 26/09/2019, excluded the amount of Rs.13,92,100/-, which the Bank received directly from NABARD as subsidy in favour of the petitioner. Consequentially, the Debts Tribunal directed the petitioner to deposit Rs.23,10,817/-, which amounts to 50% of the amount to be recovered as per the second proviso to Section 18(1) of the SARFAESI Act. The petitioner was not able to deposit the said amount and consequentially, the appeal was dismissed.

5. Section 18 of the SARFAESI Act reads as under :-

*“**18. Appeal to Appellate Tribunal.**—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal along with such fee, as may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:*

[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]

[Provided further 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:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

***[18-A. Validation of fees levied.**—Any fee levied and collected for preferring, before the commencement of* *the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if the amendments made to sections 17 and 18 of this Act by sections 11 and 12 of the said Act were in force at all material times.*

18-B. Appeal to High Court in certain cases.*—Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge under section 17-A may prefer an appeal, to the High Court having jurisdiction over such Court, within thirty days from the date of receipt of the order of the Court of District Judge:*

Provided that no appeal shall be preferred unless the borrower has deposited, with the Jammu and Kashmir High Court, fifty per cent. of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less:

Provided further that the High Court may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of the debt referred to in the first proviso.]

[18-C. Right to lodge a caveat.*—(1) Where an application or an appeal is expected to be made or has been made under sub-section (1) of section 17 or section 17-A or sub-section (1) of section 18 or section 18-B, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or* *the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.*

(2) Where a caveat has been lodged under sub-section (1),—

(a) the secured creditor by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been or is expected to be made under sub-section (1);

(b) any person by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgment due, on the person by whom the application has been or is expected to be made under sub-section (1).

(3) Where after a caveat has been lodged under sub-section (1), any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveator.

(4) Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of the period of ninety days from the date on which it was lodged unless the application or

> *appeal referred to in sub-section (1) has been made before the expiry of the said period.]"*

6. The learned Counsel for the petitioner submits that the amount of Rs.23,92,100/- should have been credited to the loan account of the petitioner when he had preferred the appeal in 2016. Consequently, an approximate amount of Rs.29,16,000/- was recoverable and even if 50% of the said amount was to be considered as per the second proviso, the petitioner was liable to pay Rs.15,00,000/- approximately as 50% deposit.

7. The learned Advocate for the Bank submits that Rs.10,00,000/- were deposited towards the Cash Credit Account and the said account was rounded off with such payment. The balance was credited to the Term Loan Account. As per the notice, the recovery under the Term Loan Account was of Rs.47,77,505/-.

8. We are of the view that the subsidy from NABARD received by the petitioner and credited directly to the Bank, will have to be credited to the loan account. With this, the total amount payable would be Rs.33,85,405/-. Even if we round off

all the above stated amounts for simple calculation, Rs.34,00,000/- would be outstanding dues.

9. The learned Advocate for the petitioner submits on instructions, that the petitioner did not have the amount before the Appellate Tribunal to deposit. Today, he has generated funds by borrowings and is willing to deposit Rs.17,00,000/- before the Appellate Tribunal, if six weeks are granted .

10. We are of the view that a fair offer has been made by the petitioner, though belatedly. We can consider his request in this proceeding. If we refuse to accept his request, the doors of the Debts Recovery Appellate Tribunal would be permanently closed for him.

11. In view of the above, this petition is partly allowed with the following directions :

(a) By recording the statement of the petitioner, he shall deposit an amount of Rs.17,00,000/- with the Debts Recovery Appellate Tribunal, Mumbai, on or before 30/10/2021;

(b) No extension of time shall be granted;

(c) If the above directed amount is deposited, the impugned order of the Debts Recovery Appellate Tribunal, dated 26/09/2019, shall stands quashed, only after the amount is deposited in the Tribunal.

(d) If the above directions are complied with, Appeal No.21/2016 shall be taken on the file of the Appellate Tribunal and notices can then be issued by the Tribunal to the contesting parties.

(e) We grant liberty to respondent No.2 before us, to seek intervention before the Debts Recovery Appellate Tribunal, since the auction sale has already crystallized and he has been put in possession of the property.

(S. G. MEHARE, J.) **(RAVINDRA V. GHUGE, J.)**

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