

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-23688-2021

Date of Decision: 29.11.2021

THROUGH VIDEO CONFERENCING

M/s Kaur Sain Spinners Ltd. & Ors.

... Petitioners

VS.

DRAT, Delhi & Ors.

... Respondents

Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao

Hon'ble Mr. Justice Jasjit Singh Bedi

Present: Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Aman Bansal, Advocate for the petitioners

Mr. CS Pasricha, Advocate for respondent No.3

M.S. Ramachandra Rao, J. (Oral)

Notice of motion.

Mr. CS Pasricha, Advocate take notice for respondent No.3-Bank.

In this writ petition, the petitioners assail the order dt. 27.10.2021 (P13) passed by the Debt Recovery Appellate Tribunal, New Delhi (first respondent) wherein the petitioners had questioned the final order dt. 02.03.2020 (P10) of the DRT-III, Chandigarh (second respondent) in OA No.3000/2018.

The second respondent-Tribunal in the said OA had granted a decree to the third respondent against the writ petitioners for a sum of Rs.49,44,65,248/- to be paid jointly and severally, with costs, current and future simple interest @ 13.60% per annum in both loan accounts from 12.12.2018, till the date of realization of the amount, and issued a recovery certificate to the third respondent.

When the writ- petitioner filed Appeal No.65/2021 before the first respondent-Appellate Tribunal along with IA No.561/2021 seeking waiver of the pre-deposit for entertainment of the appeal, the first respondent-Tribunal had passed the impugned order on 27.10.2021 directing the petitioners to make deposit of 25% minimum of the decretal amount. Since the decretal amount would be around Rs.50 crores, it directed the appellant to make partial pre-deposit of Rs.7 crores within a week and the balance within 3 weeks thereafter. It further directed that if the amount is not deposited, the appeal would stand dismissed.

It is the contention of counsel for the petitioners that in the OA, the petitioners had been set *ex parte* along with other defendants since replies/written statements could not be filed within the time specified on account of death of a close relative, and in OA No.3000/2018, a finding was recorded erroneously that the petitioners were negligent and had only intended to delay the disposal of the case.

Counsel for the petitioners submits that it would be in the interests of justice if the petitioners are granted time to file reply in OA within 2 days and if there is adjudication on merits in the said OA by setting aside the orders passed on 02.03.2020 in OA No.3000/2018 as well as the order dt. 27.10.2021 in Appeal No.65/2021.

Mr. CS Pasricha, Advocate for the third respondent-Bank refuted the said contention and drew attention of this Court to the order dt. 06.04.2021 in CWP No.3655 of 2021. He contended that the petitioners had earlier approached this Court by filing the said writ seeking a writ of *certiorari* to set aside the order dt. 24.07.2019 passed by the second respondent-Tribunal and also the order dt. 02.03.2021 wherein the

petitioner was proceeded against *ex parte*, and recovery certificate was issued, and the said writ petition was dismissed on 06.04.2021. He pointed out that this Court had recorded a finding that the petitioners had intentionally not sought for setting aside of the order setting them *ex parte* within a reasonable time and their conduct was fraudulent.

He also cited the judgment of the Supreme Court in **Kotak Mahindra Bank P.Ltd. vs. Ambuj A. Kasliwal & Ors. (2021) 3 SCC 549** wherein it was categorically held that the High Court did not have the power to waive the pre-deposit mandated under Section 21 nor can it exercise discretion against the mandatory requirement prescribed therein i.e. the deposit of 50% or reasons to be recorded by the Appellate Tribunal, a minimum of 25%.

He contended that in the instant case, the first respondent-Appellate Tribunal had accorded to the petitioners the concession of deposit of 25% of the decretal amount mentioned in the recovery certificate and it is not permissible for this Court to completely waive the pre-deposit or to reduce the amount to be deposited as a pre-condition or to reduce the amount to be deposited as a pre-condition for entertainment of the appeal by the first respondent.

We have noted the contentions of both the sides.

Admittedly, in the impugned order passed by the first respondent-Appellate Tribunal, it had directed the petitioners to only make pre-deposit of 25% of the amount mentioned in the recovery certificate issued in the OA No.3000/2018 by the second respondent.

It is not permissible for this Court, having regard to the law laid down in **Kotak Mahindra Bank P.Ltd.** case (supra), to reduce to

amount of pre-deposit below the mandatory 25% indicated in the *proviso* to Section 25 of the SARFAESI Act whatever be the circumstances pleaded by the petitioners.

Also having regard to the findings recorded in the order dt. 06.04.2021 in CWP No.3655/2021 about the conduct of the petitioners in not taking steps within a reasonable time for recall of the order setting the petitioners *ex parte* in the OA, which would operate as *res judicata*, it would not be permissible for the petitioners to again canvass the contention that the petitioners were unfairly set *ex parte* by DRT, Chandgiarh in OA No.3000/2018.

For all the reasons recorded above, we do not find merit in the writ petition and it is accordingly dismissed.

No costs.

(M.S. Ramachandra Rao)
Judge

29.11.2021
V.Vishal

(Jasjit Singh Bedi)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No