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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Decided on : 03.08.2022*

\+ W.P.(C) 7772/2022, CM APPL. 23760-61/2022, CM APPL. 26012-13/2022, CM APPL. 30291-92/2022

DR YASHWANT SINGH ..... Petitioner

Through: Mr. Mohit Chaudhary and Mr. Kunal Sachdeva, Advocates.

versus

ENCORE ASSET RECONSTRUCTION COMPANY PVT LTD. & ANR. ..... Respondents

Through: Mr. Sudhir K. Makkar, Sr. Advocate with Ms. Jayshree Shukla, Ms. Garima Goel, Ms. Saumya Gupta, Ms. Yogita Rathore and Mr. Sanjay Jha, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE VIKAS MAHAJAN

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The learned counsel for the petitioner submits that this case be listed with W.P. (C) No. 8845/2021. However, there is no occasion for doing so because that writ petition has already been disposed-off by order dated 23.09.2021. A subsequent order passed on 11.01.2022, was because the case was listed on Office Note, apropos seeking extension of time sought by the learned DRT, Allahabad for disposal of the matter. A

subsequent application moved by the present petitioner, seeking modification/clarification of the order dated 11.01.2022, was disposed-off on 31.01.2022.

2. The orders passed on 30.05.2022 and 12.07.2022 show that an endeavour was made between the parties in the past two months, to settle the *lis* amicably. However, today we are informed that, at the moment, there is no likelihood of a settlement.

3. The petitioner impugns the order of the learned DRAT dated 17.05.2022 in Misc. Appeal No.65/2022, (in S.A. No.93/2015), giving liberty to the petitioner to make a pre-deposit in terms thereof, so that his appeal could be heard. The amount demanded under section 13(2) of the SARFAESI Act ('Act') was Rs.4,45,81,148.32. Fifty percent of the said amount would be required to be deposited, in the first instance, for the appeal to be heard. If the petitioner wanted a reduction of the same, to 25% of the principal amount in terms of the third proviso to sub-section (1) of section 18 of the Act, it would be on the basis of the application as may be filed. Such application is yet to be filed.

4. The learned counsel for the petitioner submits that since the principal amount itself is a matter of dispute, therefore, the requirement of making a pre-deposit on the aforesaid principal amount is unfair. This submission of the learned counsel for the petitioner pre-supposes that there is an error apropos the principal amount. The issue is yet to be determined in

proceedings that are pending.

5. The learned Senior Advocate for R-1 refers to the dicta of the Supreme Court in *Union Bank of India vs. Rajat Infrastructure Private Liited and Ors.*, (2020) 3 SCC 770, which has held that the language of section 18 of the Act is clear and leaves no room for confusion. The pre-deposit is a necessary requirement before any appeal could be heard by the DRAT. The said judgment reads *inter-alia* as under:

> *"...*
> *9. We may make it clear that we are not going into the merits of the case in view of the fact that we agree with the High Court that the matter must be decided by DRAT. The only issue is whether the High Court was right in holding that no pre-deposit was required. We may refer to Section 18 of the Sarfaesi Act, which reads as follows:*
>
> > *"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 an Appellate Tribunal within thirty days from the date of receipt of the order of the 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."*

10. This Court in Narayan Chandra Ghosh v. UCO Bank, held that keeping in view the language of Section 18 even if the amount or debt due had not been determined by DRT, the appeal could not be entertained by DRAT without insisting on pre-deposit. DRAT, at best could, after recording the reasons, have reduced the amount to 25% but could not have totally waived the deposit. This Court also held that the right of appeal conferred under Section 18(1) is subject to the conditions laid down in the second proviso therein which postulates that no appeal shall be entertained unless the borrower has deposited 50% of the amount of debt due from him as claimed by the secured creditors or determined by DRT, whichever is less. The third proviso enables DRAT, for reasons to be recorded in writing, to reduce the amount of deposit to not less than 25%.

11. The following observations of this Court in Narayan Chandra Ghosh case are relevant: (SCC p. 550, para 7)

> *"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."*

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.

...
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.
...”

6. The learned counsel for the petitioner submits that Article 226 of the Constitution has been invoked to protect the petitioner’s interests as the statutory remedy is not efficacious. The court is of the view that there is a procedure prescribed in law whereunder the statutory remedy of appeal can be invoked only upon making a certain pre-deposit and it has been so held by the Supreme Court, as noted hereinabove. This being the position, there is no occasion for exercise of discretionary jurisdiction under Article 226 of the Constitution.
7. There is no reason to interfere with the impugned order. The petition, along with any pending applications, is dismissed.
8. It will be open to the petitioner to move appropriate application for reduction of pre-deposit to 25% and for his appeal to be duly considered.

NAJMI WAZIRI, J

VIKAS MAHAJAN, J

AUGUST 3, 2022
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