**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(132) **CWP-5942-2023**
Decided on : 12.04.2023

Harbax Singh Grewal and another
……Petitioner(s)

Versus

Debts Recovery Appellate Tribunal, Delhi and others
……Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Aditya Dassaur, Advocate for the petitioner (s).

Mr. Gaurav Goel, Advocate for the respondent No.3-Bank.

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G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Articles 226/227 of the Constitution of India is to the order of the Debts Recovery Appellate Tribunal dated 24.01.2023 (Annexure P-27), wherein the appeal was dismissed on account of the non-depositing the pre-deposit amount which is the statutory requirement under the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short '2002 Act'). The Appellate Tribunal has relied upon the judgment of the Apex Court passed in **Kotak Mahindra Bank Pvt. Ltd. Vs. Ambuj A Kasliwal and others, 2021 AIR SC 1041.**

2. Counsel for the petitioner has mainly tried to distinguish the judgment passed in **Kotak Mahindra Bank (supra)** to the extent that it is under the Recovery of Debts and Bankruptcy Act, 1993.

3. We are not inclined to accept such an argument, as the requisite requirement of pre-deposit is statutory under the 2002 Act and

therefore, by virtue of filing the present writ petition the remedy before the Debts Recovery Appellate Tribunal cannot be by-passed by not depositing the amount.

4. We are of the considered opinion that remedy of appeal is provided against the order of Debts Recovery Tribunal under Section 18 of the 2002 Act, which reads as under:-

> "**18. Appeal to Appellate Tribunal.—**
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> (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:
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> 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."

5. It is settled position of law the appeal is creation of a statute and once the above said section provides the deposit of 50% which could be reduced to 25% for the reasons to be recorded in writing by the

Appellate Tribunal, we see no reason why the petitioners can be given a blanket stay as such on the ground since the application was dismissed by the Tribunal by noticing that the appellants are not in a position to make a pre-deposit. Liberty was given to revive the appeal by making a pre-deposit. If such requests are accepted then the whole purpose of pre-deposit would be done away with by all the litigants filing such applications. The Apex Court in **Narayan Chandra Ghosh Vs. UCO Bank and others, 2011 (3) SCR 1024** while discussing the said provisions and upholding the order of the High Court who had set aside the order of the Tribunal which had exempted the appellant from making any deposit in terms of second proviso of Section 18 of 2002 Act, had observed that the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement. Relevant portion of the said judgment reads as under:-

> "8. It is well-settled that when a Statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate

Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.

9. The argument of learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third proviso to the said Section. At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed.

10. It is stated before us that in the notice issued to the appellant under Section 13(2) of the Act, the debt due from the appellant as on 25th September, 2006 was ₹52,42,474/-. Since in the present case Debts Recovery Tribunal had not determined the debt due, we direct that on appellant's depositing with the Appellate Tribunal an amount of ₹15 lakhs within a period of four weeks from today, his appeal shall be

> entertained and decided on merits. We direct that till the Appellate Tribunal takes a final decision in the appeal, the bank shall maintain status quo in respect of the property of which physical possession is stated to have been taken by it."

6. The said view was thereafter followed in **Union Bank of India Vs. Rajat Infrastructure Pvt. Ltd. and others, (2020) 3 SCC 770** wherein also the order of the High Court granting the relief holding pre-deposit was not required for entertaining an appeal, was set aside while rejecting the argument that discretionary power under Article 226 of the Constitution of India could be exercised to dispense with the statutory requirement.

7. In **Kotak Mahindra Bank (supra)** the order requiring pre-deposit was, accordingly, modified and it was held that any waiver would be against the statutory provisions and, therefore, not sustainable in law. Relevant portion of the said judgment reads as under:-

> "14. Therefore, in the facts and circumstances arising herein, when further amount is due and payable in discharge of the decree/recovery certificate issued by the DRT in favour of the appellant/Bank, the High Court does not have the power to waive the predeposit in its entirety, nor can it exercise discretion which is against the mandatory requirement of the statutory provision as contained in Section 21, which is extracted above. In all cases fifty per cent of the decretal amount i.e. the debt due is to be deposited before the DRAT as a mandatory requirement, but in appropriate cases for reasons to be recorded the deposit of at least twenty five per cent of the debt due would be permissible, but not entire waiver. Therefore, any waiver of predeposit to the entire extent would be against the statutory provisions and, therefore, not sustainable in law. The order of the High Court is, therefore, liable to be set aside."

8. Thus, keeping in view the settled principles of law, we are of the considered opinion that the order of the Appellate Tribunal does not suffer from any infirmity, which would require interference under Articles 226/227 of the Constitution of India. Resultantly, there is no merit in the present writ petition and the same is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

12.04.2023
Naveen

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