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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision:28.11.2023*

\+ **W.P.(C) 6367/2023, CM Nos.37149/2023, 25002/2023 & 37148/2023**

PREETI SHARMA ..... Petitioner

Through: Mr. K.K. Sharma, Sr. Adv. with Mr. Pranav Pareek, Adv.

Versus

AUTHORIZED OFFICER BANK OF BARODA & ORS. ..... Respondents

Through: Mr. Narender Hooda, Sr. Adv. with Mr. T.Kumar, Ms. Swati Mishra, Advs. for R-1&2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 15.02.2023 (hereafter **'impugned order'**) passed by the learned Debts Recovery Appellate Tribunal (hereafter **'DRAT'**) declining to entertain the petitioner's appeal [Misc. Appeal No.58/2022 captioned ***Shrim Industries Pvt. Ltd. & Ors. v. Bank of Baroda (formerly Vijaya Bank)***].

2. The learned DRAT had declined to entertain the said appeal under Section 18 of the Securitization and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (hereafter **'SARFAESI Act'**) on account of failure of the petitioner to deposit a minimum amount of 25% of the amount of debt due, in terms of the proviso to Section 18 of the SARFESI Act.

3. The petitioner had filed the said appeal before the learned DRAT impugning an order dated 07.12.2021 passed by the learned Debt Recovery Tribunal (hereafter **'DRT'**) in case No. TSA/11/2021 captioned ***Shrim Industries Pvt. Ltd. & Ors. v. The Authorized Officer Bank of Baroda*** rejecting the petitioner's prayer for interim relief.

4. The petitioner had filed the said Securitization Application under Section 17 of the SARFAESI Act, *inter alia*, impugning the steps taken by respondent no.1 Bank for taking possession of the property described as "All part & parcel of freehold shop no. Private No.12, Ground Floor area 136.69 sq. Feet including Basement & Mezzanine part of property no. Municipal No.1702/1703 at Krishna Bhawan, Bhagirath Place, Delhi". The petitioner had, *inter alia,* stated that the property in question was never mortgaged by her against any financial assistance/ loan granted to respondent no. 3 company (Shrim Industries Pvt. Ltd.). The petitioner claims that respondent no.1 Bank had deliberately added the property in the Memo dated 13.01.2019 in respect of financial assistance/ loan that was advanced to respondent no.3 company.

5. It is now contended before this Court by the learned senior counsel appearing for the petitioner that, in fact, the said property was mortgaged with respondent no.1 bank but in respect of a personal loan

advanced by the respondent no.1 Bank to the petitioner and not against any financial assistance/loan advanced to respondent no.3.

6. On a pointed query whether an averment to the said effect was made in the present petition, the learned senior counsel appearing for the petitioner fairly states that no such averment has been made in the present petition or before the learned DRAT.

7. According to respondent no.1 Bank, the property in question has been mortgaged in respect of financial assistance/ loan advanced to respondent no.3. It is not disputed that the repayment obligations of such financial assistance / loan advanced were guaranteed by the petitioner.

8. The learned DRT did not, *prima facie,* accept that the subject property was not mortgaged against the financial assistance / loan advanced to respondent no.3.

9. The learned senior counsel appearing for the petitioner submits that the petitioner has no cavil with the obligation to deposit 50% of the debt due as per proviso to Section 18 of the SARFAESI Act. He, however, states that the said amount is required to be computed on the basis of the outstanding personal loan advanced by respondent no.1 Bank to the petitioner and not on the basis of the financial assistance/ loan granted to respondent no.3. He earnestly contended that since the subject property was not mortgaged in respect of the financial assistance/ loan advanced to respondent no.3, the debts due by respondent no.3 could not be considered for determining the amount

required to be deposited for maintaining the appeal.

10. As noted above, the said contention is disputed by respondent no.1 Bank. According to respondent no.1 Bank, the petitioner is liable to pay the amount as claimed against respondent no.3 as a personal guarantor and the property in question was mortgaged as a security for the said financial assistance/ loan advanced to respondent no. 3.

11. It is relevant to refer to the second proviso to Section 18 of the SARFAESI Act. The same reads as under:

> "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:"

12. It is apparent from the above that, the quantum of pre-deposit required to maintain an appeal under Section 18 of the SARFAESI Act is to be determined on the basis of the debt due from the borrower as claimed by the secured creditor or as determined by the DRT, whichever is less. In the present case, the DRT has not determined any amount payable by the petitioner as yet. Therefore, the quantum of pre-deposit is necessarily to be paid on the basis of the debts as claimed by respondent no.1 Bank. It is apparent that the quantum of pre-deposit is, thus, required to be determined on the basis of the claim made by respondent no.1 Bank and not on the basis of the defence as advanced by the petitioner.

13. In view of the above, we find no infirmity with the decision of the learned DRAT in declining to entertain the petitioner's appeal under Section 18 of the SARFAESI Act for want of necessary pre-deposit in terms of the proviso to Section 18 of the SARFAESI Act.

14. The petition is unmerited and is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 28, 2023
'gsr'