



2023:DHC:8772-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 08th December, 2023

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**W.P.(C) 7818/2023 & CM APPL. 30150/2023 & CM
APPL. 30151/2023 & CM APPL. 30152/2023****RAM CHANDRA OMER AND
ANOTHER**

..... Petitioners

Through: Mr. Ravi Gupta, Sr. Adv.
with Ms. Jayashree Shukla
Dasgupta & Ms. Rishika
Ahuja, Advs.

versus

STATE BANK OF INDIA

..... Respondent

Through: Mr. Jai Mohan, Adv. for
SBI
Mr. Virender Pratap
Charak, Ms. Shubhra
Parashar & Mr. Yash Hari
Dixit, Advs. for R1
Mr. Rajeev Aggarwal,
Adv. for R2**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J. (Oral)**

1. The petitioners have filed the present petition impugning an order dated 23.05.2023 (hereafter '**impugned order**'), passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereafter '**DRAT**'), in Misc. Appeal No. 14/2023.
2. The petitioners had filed the said appeal against an order dated 20.01.2023, passed by the learned Debts Recovery Tribunal-II, Delhi (hereafter '**DRT**'), whereby the petitioner's



being S.A. No. 372/2022, was declined.

3. By the impugned order, the learned DRAT had declined to entertain the petitioner's appeal on the ground that the petitioner had failed to make the pre-deposit quantified at 25% of the amount as claimed by the respondent (hereafter '**SBI**').

4. SBI had issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('**SARFAESI Act**'), seeking recovery of an amount of ₹31.26 crores, along with interest. This was in respect of the financial assistance extended by SBI to Nice Projects Private Limited (hereafter '**the principal borrower**'). The petitioners had guaranteed the repayment obligations in respect of the financial assistance extended to the said principal borrower by SBI. According to the petitioners, the security extended by the petitioners was limited to the value of the mortgaged property described as "DDA Flat No. 107, 2nd and 3rd Floor (Duplex), SFS Category-III, South Park Apartment, Block-B, Kalkaji, New Delhi-110019".

5. The petitioners contend that the pre-deposit in terms of Section 18 of the SARFAESI Act is required to be computed on the basis of their liability as guarantors, which, according to the petitioners, is the value of the mortgaged property.

6. The petitioner is essentially aggrieved as in terms of the impugned order, passed by the learned DRAT, the petitioners are now required to deposit 25% of the entire amount claimed by SBI as outstanding and payable by the principal borrower.

7. Mr. Ravi Gupta, learned senior counsel appearing for the



petitioners, also contends that a petition [C.P. No. (IB) 3042 (ND) of 2019 captioned *Varun Shuttering Store v. Nice Projects Limited*] under the Insolvency and Bankruptcy Code, 2016 was admitted by the National Company Law Tribunal against the principal borrower and corporate insolvency resolution proceedings were commenced. He points out that in the said proceedings, the resolution plan was drawn whereby the liability of SBI was admitted to the extent of ₹29.10 crores. He contends that the said liability would be discharged in terms of the resolution plan, and therefore, there was no occasion for SBI to claim any further amount from the petitioners.

8. The learned counsel appearing for SBI countered the aforesaid submissions. He has referred to various Guarantee Deeds whereby the liability of the petitioners is not limited to the value of the mortgaged property. He also submits that the resolution plan has not been implemented as yet, and therefore, there is no impediment in SBI proceeding under Section 13(4) of the SARFAESI Act for auction of the mortgaged property.

9. At the outset, it is relevant to state that this Court is not required to examine and determine the petitioners' liability as a guarantor. It is apparent that the same is a contentious matter. Whereas SBI claims that the petitioners have guaranteed the repayment of the entire loan/ financial assistance granted to the principal borrower in terms of the Guarantee Deeds, the petitioners dispute the same. According to the petitioners, the Guarantee Deeds must be read along with the sanction letters.

10. Plainly, the aforesaid dispute cannot be determined in the



present proceedings.

11. In terms of proviso to Section 18 of the SARFAESI Act, no appeal under Section 18 of the SARFAESI Act can be entertained unless the borrower has deposited with the Appellate Tribunal, 50% of the amounts due from him *“as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less”*. This amount can be reduced to 25% if the learned DRAT finds sufficient reasons for the same. However, the learned DRAT cannot entertain the appeal, without the said pre-deposit being made.¹

12. The right of to prefer the appeal is not unconditional. It is also well-settled that the provisions of an appellate remedy is a matter of statutory prescription and not an inherent right².

13. In the present case, the right to file an appeal under Section 18 of the SARFAESI Act is conditional on the petitioners depositing at least 25% of the amount as claimed by the secured creditors. There is, thus, no scope for the learned DRAT to enter into a controversy regarding any contentious issue as to the debt owed by the petitioners for determining the quantum of pre-deposit under Section 18 of the SARFAESI Act. The quantum of pre-deposit is to be determined on the basis of the debts as determined by the learned DRT – which in this case has not been done – or on the basis of the debts as claimed by the secured creditor. There is no ambiguity in quantum of the debt claimed

¹ Kotak Mahindra Bank Private Limited v Ambuj A. Kasliwal & Ors.: (2021) 3 SCC 549

² Gujrat Agro Industries Co. Ltd. v Municipal Corporation of the City of Ahmedabad & Ors.: (1999) 4 SCC 468; Vijay Prakash D Mehta & Ors. v. Collector of Customs (Preventive), Bombay: (1988) 4 SCC 402.

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by SBI and the same is specifically stated in the notice issued under Section 13(2) of the SARFAESI Act. Thus, the quantum of pre-deposit has to be computed on the basis of the amount as specified in the said notice.

14. Insofar as the petitioner's contention that it is absolved of its liability on account of the resolution plan, the said issue too cannot be considered for the aforesaid reason. Having stated above, it is also relevant to note that the resolution plan has not been implemented as yet, and the claims of SBI have not been satisfied.

15. As noted at the outset, the scope of the present petition is limited to examine whether the petitioner is required to make a pre-deposit. As stated above, the same is to be computed on the basis of the debt claimed by SBI as due and payable.

16. In view of the above, the present petition is dismissed. The pending applications are also disposed of.

17. All rights and contentions of the parties on the merits are reserved.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 8, 2023
“SS”