IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

123 **CWP-23697-2024.**
Date of Decision: 17.09.2024.

Pawan Kumar Kansal ....Petitioner.

VERSUS

Debts Recovery Appellate Tribunal-Delhi and others ....Respondents.

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CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Atul Sharma, Advocate for the petitioner.

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<u>ANUPINDER SINGH GREWAL, J. (Oral)</u>

Learned counsel for the petitioner submits that petitioner has preferred an appeal before the DRAT against the order passed by the DRT-I, Chandigarh. The petitioner is the guarantor and the property of the principal borrower has been sold and amount to the extent of Rs.2,28,55,000/-, which is about 48% of the demand notice amount and 28% of the outstanding amount, was deposited with respondent No.2-Bank. He, therefore, submits that petitioner should not be required to deposit another 25% of the amount as pre-deposit.

2. Heard.

3. The petitioner has filed an appeal before the DRAT. In terms of Section 18 of SARFAESI Act, the petitioner would be required to deposit 25% to 50% of the amount. Section 18 of Act is reproduced hereunder:-

> *"**18. Appeal to Appellate Tribunal.**—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal1 [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:]

[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."

4. The DRAT has directed the petitioner to deposit 25% of the amount as a pre-deposit. It is manifest that there is a statutory requirement of depositing *atleast* 25% of the amount before an appeal could be adjudicated. The petitioner is claiming set off of the amount recovered by respondent No.2-Bank, which is impermissible in law. We also draw support from the judgment of the Supreme Court in the case of '**Sidha Neelkanth Paper Industries Pvt. Ltd. & Anr. Vs. Prudential ARC Ltd. & Ors., 2023 SCC Online SC 12'**, wherein it has been held as under:-

16. In view of the above and for the reasons stated above, in the present case, the respective High Courts have seriously erred in directing to adjust/appropriate the amount realised by auction sale of the secured properties/deposited by the auction purchasers while considering the 50% of the amount as pre-deposit to be deposited by the borrower, while preferring an appeal before the DRAT. Even the High Court of Delhi has erred in excluding the amount payable towards interest while considering the "debt due". As per Section 2(g) of the Act 1993, "debt" means liability inclusive of interest as claimed by the bank/financial institution."

5. In view of the above, we are of the considered view that there is no merit in this petition which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

17.09.2024
jitender

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