



2024:DHC:10035-DB



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 24.12.2024

+

W.P.(C) 17914/2024, CM APPL. 76239/2024-Stay, CM APPL. 76240/2024-Exp

KRISHNA GOPAL AND ORS

.....Petitioners

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Vineet Mehta and Mr. Nitin Mangla, Advs.

versus

INDIAN BANK AND ORS

.....Respondents

Through: Ms. Seema Gupta, Adv. for R-1.
Mr. Sidharth Chopra and Mr. Navneet, Advs. for
R-2 to R-5.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 20.12.2024 passed by the learned Debts Recovery Appellate Tribunal (DRAT), Delhi in Misc. Appeal No. 359/2024.
2. The short submission of learned senior counsel for the petitioners is that the petitioners, as subsequent purchasers of the mortgaged property had preferred an appeal before the learned DRAT which has been dismissed, on an erroneous presumption, that no appeal was maintainable at their behest. Consequently, the petitioners' appeal



stands rejected by the learned DRAT without even examining the merits of their challenge to the order dated 13.12.2024 passed by the learned DRT. He submits that the petitioners were always ready and willing to comply with the condition of pre-deposit and therefore prays that the impugned order be set aside and the matter be remanded back to the learned DRAT for hearing of the petitioners' appeal on merits.

3. Issue notice. Ms. Seema Gupta and Mr. Sidharth Chopra accept notice on behalf of respondent nos. 1 and 2 to 5, respectively. Both Ms. Gupta and Mr. Chopra fairly submit that the appeal filed at the behest of the petitioners as subsequent purchasers of the mortgaged property was maintainable before the learned DRAT. Ms. Gupta, however, submits that the appeal has been dismissed by the learned DRAT on merits after duly considering the submissions of the petitioners. She contends that the plea of the learned senior counsel for the petitioners that the appeal has been rejected by the learned DRAT without examining the merits of the challenge to the Tribunal's order, is factually incorrect. She, therefore, prays that the writ petition be dismissed.
4. In order to appreciate the rival submissions of the parties, it would be apposite to refer to the relevant extracts of the impugned order which read as under:

"I have considered the rival submissions. The Ld. DRT while rejecting the prayer of the appellants has categorically held that the auction sale of the properties in question would be subject to the outcome of the S.A. Perusal of the record reveals that the appellants are subsequent purchasers of the properties in



question, i e. after the mortgage by the borrowers and they have no right to challenge the auction sale. In case the respondents 2 to 5, who are owner/borrowers, wanted to challenge the auction sale, they should have filed a separate appeal, making the requisite pre-deposit as envisaged in Section 18(1) of the SARFAESI Act, which runs 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 Debts Recovery Tribunal.

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than 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 in the second proviso."

In view of above discussion and the fact that the appellants are not the owners of the properties in question, but only subsequent purchasers after the mortgage and the borrowers have not filed any appeal for the reason best known to them, the present appeal fails and the same is, therefore, dismissed."

5. Having considered the submissions of the learned counsel for the parties and perused the aforesaid extracts of the impugned order, it emerges that the appeal preferred by the petitioners has been rejected by observing that since they were not the original borrowers, they were not entitled to maintain an appeal without the borrower having filed an appeal. We, therefore, find that the petitioners' appeal has been neither dismissed on merits nor on account of their failing to



2024:DHC:10035-DB



make the pre-deposit as envisaged under Section 18 of the SARFAESI Act, 2002 (the Act) but only on the ground of maintainability. In our view, once the respondents themselves admit that the appeal at the behest of subsequent purchasers was maintainable under Section 18 of the Act, we have no other option but to set aside the impugned order dated 20.12.2024 and remand the matter back to the learned DRAT for re-adjudication of the appeal on merits.

6. The writ petition is accordingly allowed by setting aside the impugned order and remanding the matter to the learned DRAT for adjudication of the petitioners' appeal on merit. We, however, make it clear that it will be open for the learned Tribunal to direct the petitioners to make pre-deposit, as maybe deemed appropriate, before proceeding with the appeal on merits. Needless to state, this Court has not expressed any opinion on the merits of the grounds raised by the appellants.
7. The petition alongwith all pending applications, accordingly, stand disposed of.
8. List the appeal before the learned DRAT, Delhi on 27.12.2024.

(REKHA PALLI)

JUDGE

(SAURABH BANERJEE)

JUDGE

DECEMBER 24, 2024/acm