D/L- 5
02/09/2025
Ct. No.-6
Aritra

C.O. 3205 of 2025

Siddhartha Mitra & Anr.
Vs.
Punjab National Bank & Anr.

Mr. Arijit Bardhan
Ms. Saheli Bose
Mr. Gourab Mondal
....for the petitioners

Mr. Siddhartha Banerjee
Ms. Sampati Roy
....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of a person claiming to be co-sharer in respect of an immovable property and is directed against an order dated July 24, 2025 passed by the learned Debts Recovery Appellate Tribunal at Kolkata in I.A. No.135 of 2025 filed in Appeal Diary No.216 of 2025.

By the order impugned, the application being I.A. No.135 of 2025 was disposed of directing the petitioner herein to make a pre-deposit of 50% of Rs.2,25,22,570/- within the time limit indicated in the said order.

The facts giving rise to this civil revision application in a nutshell is as follows:-

The petitioner filed an application under Article 226 of the Constitution of India in W.P.A. No.25352 of 2024 alleging that the petitioner being a co-sharer of the property could not be asked by the bank to hand over possession of the immovable property in the absence of any order passed against them.

A co-ordinate Bench in its order dated October 7, 2024 recorded that a copy of the order of the District Magistrate has been handed over by the learned advocate for the bank to the petitioner's learned advocate on record and disposed of the writ petition by giving liberty to the petitioner to approach the learned DRT under section 17 of the SARFAESI Act in accordance with law. The coordinate bench further observed that the issue of limitation will be decided by the Debts Recovery Tribunal.

Thereafter, the petitioner approached the learned Debts Recovery Tribunal III at Kolkata by filing an application under Section 17 of the SARFAESI Act, 2002, (in short 2002 Act) being case No.NDN/1871/2024 (SA). The said application was dismissed, by an order dated December 2, 2024, upon holding that the same is barred by limitation.

Challenging the said order, the petitioner approached this Court under Article 227 of the Constitution of India being C.O. No.4191 of 2024 as at the relevant point of time the Debts Recovery Appellate Tribunal was not available. The co-ordinate Bench, by an order dated December 6, 2024 stayed the order of the District Magistrate, South 24-Parganas dated February 20, 2020 under memo dated August 10, 2020 for a limited period. In the meantime, the Debts Recovery

Appellate Tribunal started functioning and taking note of such fact the co-ordinate Bench by an order dated January 21, 2025 gave opportunity to the petitioner to approach the Debt Recovery Appellate Tribunal under Section 18 of the 2002 Act. The co-ordinate Bench however, granted an interim protection to the petitioner for a further period of six weeks from the date of the order dated January 21, 2025. It was further observed that in the event an appeal is filed within the aforesaid period the same shall be disposed of on merit.

The learned Debts Recovery Appellate Tribunal, by the order impugned, directed the petitioner to make a pre-deposit of 50% of Rs. 2,25,22,570/- within a period of four weeks.

Mr. Bardhan, learned advocate appearing for the petitioner submits that since the petitioner is neither a borrower nor a guarantor but a co-sharer by an immovable property which was sought to be taken possession of by the bank, the petitioner is not required to make a pre-deposit as required by the second proviso to Section 18 (1) of the 2002 Act.

Mr. Bardhan placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Sunshine Builders and Developers vs. HDFC Bank Limited**, reported at **2025 SCC Online SC 1234** in support of his contention that the expression “any order” used in Section 18 of the 2002 Act should be given a meaningful interpretation and in an order of the instant nature a pre-deposit is not required to be made. Mr. Bardhan further submits that the learned Debts Recovery Tribunal ought not to have dismissed the SARFAESI application on the ground of limitation as the petitioner approached the Tribunal within the stipulated time limit of 45 days from the date of handing over the copy of the order passed under Section 14 of the 2002 Act by the District Magistrate at the time of hearing of the writ petition on October 7, 2024. Mr. Bardhan further refers to a decision of a co-ordinate Bench in the case of **Deecon India Pvt. Ltd. & Ors. vs. Canara Bank & Ors.**, reported at **2022 SCC Online Cal 3737** in support of his contention that the period of limitation as mentioned under Section 17(1) of the 2002 Act shall start to run from the date of the communication of the order passed under Section 14 of the 2002 Act and not from the date of the order passed by the District Magistrate.

Mr. Banerjee, learned advocate appearing for the opposite party/bank submits that that from the averments made in the SARFAESI application it would reveal that the petitioner had knowledge of the order passed by the District Magistrate under the Section 14 of the 2002 Act well before October 7, 2024. He submits that it is now well-settled that any person, who is aggrieved by an order passed by the Debts Recovery Tribunal on an application under Section 17 of the 2002

Act is required to make a pre-deposit as required under the second proviso to Section 18 (1) of the 2002 Act. Mr. Banerjee placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Narayan Chandra Ghosh vs. UCO Bank & Ors.**, reported at **(2011) 4 SCC 548** and an order dated April 22, 2025 passed by this Court in C.O. No.308 of 2025 in **M/s. Southern Cooling Tower Pvt. Ltd. & Ors. vs. Bank of Baroda & Ors.** in support of his contention that any person preferring an appeal under Section 18 (1) of the 2002 Act is required to make a pre-deposit under the second proviso to Section 18 (1) of the 2002 Act. He further submits that the petitioners are the legal heirs of the mortgager and, therefore, are required to make a pre-deposit for entertaining an appeal under Section 18 (1) of the 2002 Act.

Heard the learned advocates for the respective parties and perused the materials placed.

Record reveals that in course of hearing of W.P.A. No.25352 of 2024 on October 7, 2024 a copy of the order of the District Magistrate has been handed over by the learned advocate for the bank to the petitioner's learned advocate on record. It *prima facie* appears to this Court that the date of receipt of the order passed under Section 14 of the 2002 Act by the District Magistrate is October 7, 2024.

It is not in dispute that the application under Section 17 of the 2002 Act challenging the order of the

District Magistrate was filed on November 14, 2024 i.e., well within the stipulated time limit of 45 days as required under Section 17 of the 2002 Act if the date of the order in W.P.A. No.25352 of 2024 is taken to be the starting point of limitation for filing such application on the facts of the instant case. However, since it is the contention of the opposite party/bank that the petitioner was well aware of the order passed by the District Magistrate under Section 14 of the 2002 Act much prior to October 7, 2024, a disputed question of fact arises as to what should be the starting point of limitation under Section 17 of the 2002 Act in the case on hand. A larger issue would be whether the petitioner, who is claiming to be the co-sharer in respect of an immovable property, and is aggrieved by the action of the bank in making an attempt to take over possession of the said immovable property, petitioner should be required to make a pre-deposit for entertaining an appeal under Section 18.

The Hon'ble Supreme Court in **Sunshine Builders and Developers** (supra) was of the *prima facie* view that the expression "any order" should be given some meaningful interpretation and should any and every order that may be passed by the DRT, if sought to be challenged, be made subject to pre-deposit. In the case on hand, the SARFAESI application filed under Section 17 of the 2002 Act was dismissed only on the ground of limitation.

This Court has expressed a *prima facie* view that the order passed under Section 14 of the 2002 Act was received only on October 7, 2024 which may be starting point of limitation. Whether an order passed dismissing the SARFAESI application on the ground of limitation would also be subject to the second proviso to Section 18 (1) of the 2002 Act requiring a pre-deposit to be made is required to be considered.

At this stage Mr. Banerjee, learned advocate appearing for the opposite party/bank, on instruction, submits that instead of keeping the matter pending before this Hon'ble Court for deciding the issue with regard to pre-deposit, the matter be remitted to the learned Debts Recovery Tribunal for deciding the issue of limitation afresh.

Mr. Bardhan, learned advocate appearing for the petitioner does not oppose the prayer of Mr. Banerjee but submits that in the meantime the petitioner should be given protection as the order passed by the District Magistrate is staring at the face of the petitioner.

In the light of the observations made hereinbefore and taking note of the submissions of the learned advocates for the respective parties, this Court is inclined to remit the matter before the learned Debts Recovery Tribunal III at Kolkata for a fresh decision.

Accordingly, the order passed by the Debts Recovery Appellate Tribunal at Kolkata dated July 24, 2024 in Appeal Diary No.216 of 2025 and the order dated December 2, 2024 passed by the learned Debts Recovery Tribunal-III, Kolkata in NDN/1871/2024(SA) are set aside. The SARFAESI application being case No.NDN/1871/2024 (SA) is restored to the file of the learned Debts Recovery Tribunal III at Kolkata. The learned Debts Recovery Tribunal III at Kolkata is requested to consider the issue of limitation afresh after giving an opportunity to the opposite party/bank to file a written objection and the petitioner an opportunity to file a reply thereto, if any, and to decide the issue of limitation afresh after giving an opportunity of hearing to the respective parties. The learned Debts Recovery Tribunal III at Kolkata is requested to decide the issue of limitation as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

Since the petitioner was granted an interim protection by this Hon'ble Court for a limited period to enable the petitioner to approach the Debts Recovery Appellate Tribunal and also taking note of the peculiar facts of this case, this Court is inclined to grant an interim protection to the petitioner for a limited period.

There shall be an order of stay of operation of the order of the District Magistrate, South 24-Parganas at Alipore dated February 20, 2020 passed under Section 14 of the 2002 Act till the issue of limitation is decided by the learned Debts Recovery Tribunal III at Kolkata.

With the above observations and directions CO 3205 of 2025 stands disposed of leaving the issue of pre-deposit open to be decided in a future litigation.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)