

(2015) 11 DEL CK 0069
In the Delhi High Court
Case No : W.P. (C) 10022/2015

Arvind Aggarwal	Vs	APPELLANT
Punjab National Bank and Others		RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17, 18, 18(1)

Citation : (2015) 11 DEL CK 0069

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Bharat Bhushan Bhatia, Advocate, for the Appellant; Rajinder Wali, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—Petitioner is aggrieved by the order dated 08.10.2015 passed by the Debts Recovery Appellate Tribunal(hereinafter referred to for short as "DRT"), by which the petitioner has been directed to make a pre-deposit of 25% of the notice amount to enable the Tribunal to hear the appeal.

2. Mr. Bhatia, learned counsel for the petitioner submits that the order with respect to pre-deposit for 25% of the notice amount is harsh as the Tribunal has failed to consider that a fraud has been played by the principal borrowers in connivance with the officers of the Bank upon the petitioner. It is contended that the petitioner did not stand as a guarantor and neither mortgaged any immovable property in favour of the Bank.

3. Mr. Wali enters appearance on advance copy and submits that the allegations made in the writ petition are false and scandalous. He submits that the petitioner had mortgaged the immovable property by deposit of title deeds and has also signed and executed various documents. He further submits that the allegation of fraud are an afterthought and have been raised only after the legal notice was issued and prior thereto no objection was raised. He further submits that pre-

deposit of 25% is a mandatory requirement as per Section 18 of the Act and this cannot be waived.

4. We have heard learned counsel for the parties. Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI Act) reads as under:

"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 alongwith 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."

5. In the case of Narayana Chandra Ghosh Vs. UCO Bank and Others, , it was held as under:

"7. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates 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. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. Thus, there is an absolute bar to the entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the

Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity.

8. It is well-settled that when a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement."

6. In the light of the statutory provision and in view of the observations of the Supreme Court in the case of Narayan Chandra Ghosh(supra), we find no ground to interfere with the order passed by the DRAT.

7. The writ petition is devoid of any merit; the same is accordingly dismissed.

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8. Application stands dismissed in view of the order passed in the writ petition.