**(2013) 08 DEL CK 0124**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 5400 of 2013

Kanti Lal Sadh and Others — APPELLANT

Vs

Indian Overseas Bank — RESPONDENT

**Date of Decision :** 30-08-2013

**Acts Referred:**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17, 18

**Citation :** (2013) 204 DLT 246

**Hon'ble Judges :** S. Ravindra Bhat, J;Najmi Waziri, J

**Bench :** Division Bench

**Advocate :** Mukesh Malhotra and Mr. Vikas Minhas, for the Appellant; Karan Khanna, for the Respondent

**Final Decision :** Allowed

## Judgement

S. Ravindra Bhat, J.

C.M. No. 12074/2013 (for exemption from filing annexures)

Allowed, subject to all just exceptions.

W.P. (C), 5400/2013 & C.M. No. 12073/2013 (for stay)

1. Notice. Mr. Karan Khanna, learned counsel for respondent accepts notice.

2. The petition can be heard and disposed off finally.

3. The petitioner''s property was the subject matter of notice and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002 (SARFAESI) (hereinafter referred to as "the Act"), pursuant to which notice u/s 13(2) of the Act was issued by Indian Overseas Bank (hereinafter referred to as "IOB") in the present case.

4. The present case has a chequered history. Apparently, this Court had occasion to deal with the matter at another stage of the proceedings when in respect of

the amount received from the Export Credit Guarantee Corporation of India Ltd. (ECGC), this Court clarified that the same would be treated as compliance to that extent with respect to the provisions for pre-deposit as a condition of hearing of the appeal. Consequently, this Court agreed that the amount received could not be treated as margin money. In any event, on 8th January, 2013, the Debts Recovery Tribunal (DRT) made an order requiring the petitioner to deposit Rs. 25 lacs as a condition for hearing its appeal u/s 17 of the Act.

5. The DRT also indicated the time within which the money was to be deposited. The appellants first deposited monies to the limited extent of Rs. 10 lacs and approached the Debts Recovery Appellate Tribunal (DRAT), which by way of its order dated 7th February, 2013 stayed the operation of the order dated 8th January, 2013. It directed the appellants to deposit the balance amount of Rs. 15 lacs. The appellants deposited only a sum of Rs. 5 lacs and moved an application before the DRAT for further extension of time and modification of the order dated 7th February, 2013.

6. The DRAT vide its order dated 26th February, 2013 varied the conditions imposed on the appellants earlier and granted further time of two weeks to comply with the order dated 7th February, 2013 which was then complied with. Thereafter, apparently, the appeal was withdrawn.

7. Vide order dated 5th June, 2013 in I.A. No. 417/2013, filed by petitioners, the DRT agreed with the petitioners and allowed the application of the petitioners, clarifying that upon deposit of entire amount, the previous order dated 8th January, 2013 subsisted and bound the parties. It restrained the Bank from taking the possession of the suit property.

8. In this background, being aggrieved by the stay of notice u/s 13(4) of the Act vide order dated 8th January, 2013 read with order dated 5th June, 2013, the IOB moved an appeal being I.A. No. 243/2013 u/s 18 of the Act against the petitioners. The respondent''s appeal sought for stay of order dated 5th June, 2013 passed by DRT. Thereupon, the DRAT passed the order dated 15th July, 2013 whereby operation of the impugned order dated 5th June, 2013 was stayed. The petitioners filed an application i.e. I.A. No. 529/2013 for modification of the order dated 15th June, 2013.

9. The DRAT vide its order dated 19th July, 2013, i.e. the impugned order, modified its earlier order passed on 15th July, 2013. It accepted the contention of the petitioners that after extension of time for deposit of the remaining amount as directed vide order dated 8th January, 2013 by DRT and its compliance in full, the order dated 8th January, 2013 stood operative, nevertheless the DRAT imposed a further condition upon the petitioners to deposit another amount of Rs. 50 lacs over and above Rs. 25 lacs already deposited by them earlier as a pre-condition for the order dated 8th January, 2013 remaining in operation.

10. Learned counsel for the respondent, having regard to the above sequence of

 

facts states that the DRAT is justified in imposing the condition of requiring the petitioners to make a further payment of Rs. 50 lacs as a pre-condition for hearing of the appeal u/s 17 of the Act.

11. Learned counsel for the petitioners, on the other hand, urged that the respondent/IOB was not aggrieved by the first order passed by DRT dated 8th January, 2013 requiring the petitioners to deposit Rs. 25 lacs as they did not prefer an appeal against the order dated 8th January, 2013 and the same has attained finality as against the respondent. In fact the petitioners approached the DRAT, as is evident from the subsequent orders, which granted limited reliefs in terms of grant of extension of time to them. The appeal was subsequently withdrawn. Since the bank sought to proceed u/s 13(4) of the Act contending that the interim stay no longer bound it, the petitioners filed application before DRT which clarified vide its order dated 5th June, 2013 that indeed the stay order dated 8th January, 2013 subsisted.

12. The Bank''s grievance at this stage was only in terms of order dated 8th January, 2013. The appeal of the respondent, therefore, was directed against that part of the DRT''s order of 5th June, 2013. Instead of confining itself to the contention of whether such stay order subsisted or not, DRAT proceeded ahead and overstepped its jurisdiction in directing further deposit of Rs. 50 lacs. This approach of DRAT, in our opinion, is wholly unwarranted since it was already clarified by the DRT that its stay granted on 8th January, 2013 bound the parties, including IOB.

13. In view of the above discussion, the impugned order of DRAT, to the extent it directs the petitioners to deposit a further sum of Rs. 50 lacs as a pre-condition for continued operation of the order dated 8th January, 2013 cannot be sustained and it is hereby set aside.

14. The parties are directed to appear before the DRAT on 1st October, 2013, which shall proceed to hear and complete the hearing and proceed to judgment within six weeks thereafter.

15. The writ petition and accompanying application are allowed to the above extent. Order Dasti.

 