(2015) 08 AHC CK 0253

In the Allahabad High Court

Case No : Writ C No. 45995 Of 2015

Sarla Devi Mishra APPELLANT

Vs

Debts Recovery Appellate Tribunal Allahabad And Others RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 18

Citation : (2015) 08 AHC CK 0253

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : Sanjay Kumar Gupta, Santosh Kumar Shukla, Satish Chaturvedi, Sandip Arora

Final Decision : Allowed

Judgement

Suneet Kumar, J

Heard learned counsel for the petitioner, Sri Sandeep Arora, learned counsel for the second respondent and learned Standing Counsel.

The State Bank of India granted credit facility of Rs. 3,72,000/- for Housing loan on 7th August 2006 to the petitioner. Accordingly the petitioner executed a deed of mortgage by depositing original title of the property in question standing in her name. The loan account of the petitioner was declared Non Performing Asset (NPA) by the respondent bank, a demand notice dated 07.08.2010 for Rs. 5,59,000/- plus interest was issued under section 13(2) of the SARFEASI Act, 2002. Pursuant thereof, the security asset was put to auction sale, Bank received a sum of Rs. 9.50 Lacs from the auction purchaser, upon confirmation of the sale, the same was deposited in the loan account of the petitioner/appellant. Aggrieved, petitioner preferred an appeal, being Appeal No. Sr-49 of 2015 before the Debts Recovery Appellate Tribunal, Allahabad along with stay application. The Appellate Authority on 27th May 2014 directed the petitioner to deposit 35 % of the amount of debt claimed by the respondent Bank as per demand notice in terms of proviso to section 18 of the SARFAESI Act, 2002 before the appeal and the stay application could be heard on merit. The petitioner did not deposit the amount, contending that the Bank had recovered the entire outstanding dues, therefore, the petitioner was not required to make a pre- deposit in terms of Section 18 of Act. The Appellate Authority vide order 04th August 2014 dismissed the entire appeal, which is being assailed in writ jurisdiction.

Submission of the learned counsel for the petitioner is that the Appellate Authority has committed an error in dismissing the appeal.

It is not being disputed by the learned counsel appearing for the Bank that the outstanding amount on the date of notice, has been recovered from the auction sale of the property.

This Court in M/s Akash Ganga Airlines Ltd v Debt Recovery Appellate Tribunal (Writ Petition No. 3973 (MS) of 2015) decided on 12th August 2015 held that the second proviso to Section 18 clearly provides that no appeal shall be entertained unless the borrower deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. The third proviso to Section 18 provides that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25 % of debt, referred in the second proviso. Thus, the amount to be deposited under the said provisos is between 25% and 50% of the amount of debt due from the appellant as claimed by the secured creditor or determined by the Debt Recovery Tribunal, whichever is less.

Reliance was also placed on the decisions rendered in Indian Bank v M/s Blue Jaggers Estates Ltd and others [2010(3) Bankers' Journal 9 (SC), Narayan Chandra Ghosh v UCO Bank and others [AIR 2011 (SC) 1913 and Indian Bank v Debt Recovery Appellate Tribunal and others [2011)BC 514(B)].

Similar view has been taken by the Division Bench of Punjab & Haryana High Court, in the case of S.R. Forging Ltd. & another v UCO Bank & others [2013 (1)DRTC 734 (P & H), para 3, is extracted:

"3. At this stage, we find that out of total due amount of Rs.18.24 crores, Rs.17.75 crores have been received by the Bank in a public auction. Therefore, the deposit of 50% of the amount due prior to sale from the petitioner would be wholly unjustified. The proviso to Sec. 18 of the Act restricts the entertainment of the Appeal unless the borrower deposits 50% of the amount of the debt claimed by the secured creditors. Once rs.17.75 crores have been received by the secured creditors, that is more than 50% of the debt due from the petitioners, the purpose of the proviso stands satisfied."

In the instant case the appeal of the petitioner under the SARFAESI Act, 2002 has been rejected despite the Bank recovering 9.5 Lacs against a sum claimed by the Bank being at Rs. 5.59 Lacs. Thus, in the facts of the case, the sum recovered by the Bank is more than 100% of the debt claimed from the petitioner, therefore, the petitioner is not required to deposit any sum under section 18 of the Act to maintain the appeal Having due regard to the facts and circumstances of the case, the impugned order dated 04th August, 2015 passed by the first respondent, Debts Recovery Appellate Tribunal, Allahabad is quashed.

The first respondent, Debts Recovery Appellate Tribunal, Allahabad is directed to reconsider the application and the appeal in the light of the observations made herein above and decide the same within one month from the date of production of a certified copy of this order.

The petition is allowed. No orders as to costs.