
(2014) 10 CAL CK 0026
In the Calcutta High Court
Case No : C.O. No. 2070 of 2014

Satish Tiwari

APPELLANT

Vs

The Authorized Officer, SBI

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17, 18, 2(1)(f), 21

Citation : (2015) 1 BC 574 : (2014) 4 CALLT 460 : (2015) 1 CHN 186

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : J. Saha, J. Basu Ray and L. Som, Advocate for the Appellant; Shamit Sanyal, Anirban Das and Samit Bhanja, Advocate for the Respondent

Judgement

Sanjib Banerjee, J.—The legal issue that is canvassed is that if a provision is hedged with a condition, the statutory mandate has to be strictly construed and the condition attached to the exercise of the privilege by a class of persons should not be extended to other classes of persons entitled to the privilege. The question arises in the context of a pre-deposit being required to be made by an appellant under section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Section 18 of the Act of 2002 permits any person aggrieved by an order made by the Debts Recovery Tribunal under section 17 of the Act to prefer an appeal before the Appellate Tribunal. Every appellant is required to pay a fee. The first proviso to the section provides for different fees being prescribed for appeals being preferred by different classes of persons. The second proviso to section 18 of the Act of 2002 mandates as follows:

"Provided further that no appeal shall be entertained unless the borrower has deposited with the appellate authority fifty percent of the amount of the debt due from him, as claimed from the secured creditors or depend upon the Debts Recovery Tribunal, whichever is less:"

2. It is not in dispute that the petitioners here are not borrowers within the definition of section 2(1)(f) of the Act of 2002. That implies that the petitioners are also not guarantors, for a guarantor is deemed to be a borrower within the relevant definition in the said Act.

3. The Appellate Tribunal has held in the order impugned that since the petitioners herein had applied under section 17 of the Act of 2002 before the Tribunal and had carried the grievance in appeal, the petitioners were required to make the pre-deposit in terms of the second proviso to section 18 of the said Act. The Appellate Tribunal has treated the petitioners as borrowers. At the ad interim stage of the present proceedings, the petitioners were required to make the pre-deposit, without prejudice to their rights and contentions. It is the admitted position that the pre-deposit has now been made and the appeal is pending before the Appellate Tribunal.

4. The petitioners refer to a judgment reported at Sajeda Khatoon Vs. Bank of India and Others, rendered in similar circumstances, though in the context of section 21 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. The requirement for making a pre-deposit under the said Act of 1993 is similar to that in the appellate provision of the Act of 2002, but the provisions are neither identical nor do they convey the exact same meaning. However, for the present purpose there does not appear to be any distinction between the pre-deposit required to be put in under the Act of 1993 and the pre-deposit required to be made under the Act of 2002.

5. Section 18 of the Act of 2002 permits any person to prefer an appeal from any order made by the Debts Recovery Tribunal under section 17 of the Act, subject to the Appellate Tribunal being persuaded that such person is aggrieved by the order of the Debts Recovery Tribunal. It is not necessary to immediately imagine the many classes of persons who could be appellants under section 18 of the Act of 2002. Suffice it to say for the present purpose that borrowers of secured creditors would be a major class of persons who may be appellants under section 18 of the Act of 2002, but not all appellants need be borrowers within the meaning of the Act.

6. The second proviso to the relevant section covers only the borrowers of the secured creditors and, by definition, the guarantors who have promised repayment of the debt due from the principal debtor. Other classes of persons who prefer appeals have deliberately not been required to make the pre-deposit and it would be presumptuous to conclude that a person aggrieved within the meaning of the opening three words of section 18 of the Act of 2002 would only be a borrower within the definition of the said Act.

7. In the light of the reasons given in Sajeda Khatoon and since the right of appeal is a precious right which is conferred by statute, the opportunity to exercise the right must not be curtailed by any judicial or quasi-judicial pronouncement unless the curtailment is in the statute itself. If any person

aggrieved by an order of the Debts Recovery Tribunal passed under section 17 of the Act of 2002 is permitted to carry an appeal from any order and only a class or sub-set of such persons - namely, the borrowers, including the guarantors - are singled out for the pre-deposit as a condition precedent to the appeal being received, the onerous condition should not attach to other classes of persons who have been permitted to prefer appeals under the relevant provision.

8. The bank does not insist that the petitioners herein are borrowers within the definition of the word in the Act of 2002. The bank says that the situation should be somewhat different for a non-party to the proceedings before the Debts Recovery Tribunal seeking to prefer an appeal from an order passed under section 17 of the Act of 2002 and a person who had invoked section 17 of the Act of 2002 in the first place and carries an appeal from the order passed thereon. There does not appear to be any charter to make the distinction between the classes of persons other than borrowers for the purpose of interpreting the relevant proviso to section 18 of the Act of 2002. The only distinction that the statute makes is between borrowers and other classes of appellants. Borrowers, including guarantors, are required to make the pre-deposit; the other classes of appellants are not required to do so.

9. CO 2070 of 2014 is allowed by setting aside the order impugned and requesting the relevant Appellate Tribunal to ensure that the pre-deposit made by the petitioners herein is returned forthwith upon production of a copy of this order. Needless to say the appeal filed by the petitioners herein shall proceed on merits upon the pre-deposit being refunded. The Appellate Tribunal is requested to ensure that the appeal is disposed of as expeditiously as the business of that forum would permit. There will be no order as to costs.

Certified website copies of this order, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.