(2017) 02 DEL CK 0320

In the Delhi High Court

Case No : 55 of 2017 in W P (C) 296 of 2017

SYNDICATE BANK APPELLANT

Vs

M/S. S.S.P. TRADEX PVT. LTD. & ORS RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Section 21, Section 21 - Deposit of amount of debt due, on filing appeal

Citation : (2017) 02 DEL CK 0320

Hon'ble Judges : Indira Banerjee, Anil Kumar Chawla

Bench : DIVISION BENCH

Advocate : V. Sudeer, Monika Yadav, B.S.Nagar

Judgement

1. This is an application for review of a judgment and order dated 13.01.2017, whereby the writ petition filed by the applicant being W.P.(C) No.296/2017 has been dismissed.

2. The applicant, Syndicate Bank filed the said writ petition, inter alia, challenging an order of the Debt Recovery Appellate Tribunal, Delhi whereby the order of the Debt Recovery Tribunal -II, Delhi under appeal directing the applicant to refund Rs.2 cores to the respondent No.1 has been stayed, subject to deposit of demand draft of Rs.2 crores by the applicant with the Registrar of the Appellate Tribunal.

3. The applicant Bank, a nationalised Bank lent and advanced money to Nidhi Builders Pvt. Ltd., against the mortgage of property at Plot no.9, Dwarka, New Delhi, hereinafter referred to as the said property.

4. The Bank initiated proceedings against M/s. Nidhi Builders for recovery of its dues. In course of the proceedings, it was decided that the said property would be sold.

5. The respondent No.1 offered Rs.21.06 crores for purchase of the said property

and deposited a sum of Rs. 2 crores by way of earnest money deposit.

6. The sale did not materialize. The respondent No.1 made an application before the Debt Recovery Tribunal-II for refund of the earnest deposit of Rs. 2 crores. The application was allowed by an order dated 08.09.2016.

7. Being aggrieved by the said order, the applicant Bank filed an appeal and also sought stay of operation of the order under appeal. By the order impugned in the writ petition, the Debt Recovery Appellate Tribunal granted stay of the order under appeal, subject to the applicant bank depositing Rs.2 crores with the Registrar of the Debt Recovery Tribunal, by way of demand draft.

8. The applicant Bank, challenged the said order of the Appellate Tribunal, by filing a writ petition, which has been dismissed by the judgment and order under review.

9. Learned counsel appearing on behalf of the petitioner argued that there was error of law apparent on the face of the record, in as much as this Court had, by its order dated 13.01.2017 under review held that even though Section 21 of the Recovery of Debts due to Banks and Financial Institutions Act 1993, which debars the Appellate Tribunal from entertaining an appeal of a person by whom a debt is due to a bank of financial institution unless he deposits 75% of the amount due from him, does not strictly speaking, apply in case of the direction on a Bank to refund money, the Appellate Tribunal could in exercise of its inherent power call upon the applicant Bank to make a deposit.

10. Mr.Sudeer, appearing for the applicant Bank strenuously argued that the Tribunal does not have any inherent powers. In support of such submission Mr.Sudeer cited the judgments of the Supreme Court in Standard Chartered Bank Vs. Dharmender Bohi, 2013 (12) SCALE 124; Union of India Vs. Orient Paper and Industries Ltd. (2009)16 SCC 286 and Upper Doab Sugar Mills Ltd. Vs. Shahdara (Delhi) Saharanpur Light Rly. Co. Ltd. AIR 1963 SC 217.

11. Unfortunately, it is settled law that this Court cannot in the garb of review of a judgment and order rehear the writ petition on merits. A review is by no means an appeal in disguise whereby an erroneous decision can be corrected after re-hearing the case as held by the Supreme Court in Tungabhadra & Co. Vs. Government reported in AIR 1964 SC 1372. A final order can only be reviewed if there is a patent error which has resulted in gross miscarriage of justice.

12. The order under review does not have any error on its face. If this Court misinterpreted the law and arrived at a wrong finding, the order would have to be rectified in appeal by a higher Forum.

13. The review application is, therefore, dismissed.

