IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

Dy. No. 339 of 2023

Order No. 11
03.05.2024

K. Nataraj Goud
... Appellant
-Vs-
Indian Bank (Erstwhile Allahabad Bank) & Ors.
......Respondents

Mr. G.K. Deshpande, Learned Counsel (through virtual mode) and Mr. Shreyash Basu Dasgupta, Learned Counsel for the Appellant
Mr. Debasish Chakrabarty, Learned Counsel for the Respondent

THE APPELLATE TRIBUNAL :

I.A. No. 422 of 2023
I.A. No. 423 of 2023

I.A. No. 423 of 2023 application under Section 5 of Limitation Act for condonation of delay of 42 days in filing the Appeal.

Heard the Learned Counsel for the Appellant as well as Respondent No. 1 and perused the record.

Appeal against the impugned order dated 28.02.2023 is filed on 23.05.2023. It is submitted that 10 days time was consumed in preparation of copy. Thereafter due to ill health, Appellant could not contact his Counsel.

Having considered the submissions, I found the ground to be sufficient. Accordingly, I.A. No. 423 of 2023 is allowed. Delay in filing the Appeal is condoned. I.A. No.

422 of 2023 application for waiver from making pre deposit under Section 21 of the SARFAESI Act.

Heard the Learned Counsel for the parties and perused the record. It appears that the O.A. No. 857 of 2018 was decided exparte against the defendants on 06.03.2019 by Learned DRT-2 Hyderabad and a certificate for Rs.1,39,79,417/-along with pendente lite and future interest @11.70% simple was issued. Thereafter, an I.A. No. 4089 of 2019 was filed by the Appellant for setting aside the exparte order which was dismissed by the impugned order.

As far as question of waiver is concerned, it has been held in Narayan Chandra Ghosh Vs. UCO Bank [(2011) 4 SCC 548] wherein it was held that :

> "Thereafter, the Bombay High Court considered in detail Section 18. After considering the decision of this Court in the case of Narayan Chandra Ghosh v. UCO Bank, (2011) 4 SCC 548, it was observed and held that provisions of Section 18, more particularly the second and the 21 third proviso thereto are mandatory in nature and that the DRAT has no power to grant full waiver of deposit. In paragraph 16, it is observed as under:
> "16. Section 18(1) clearly stipulates, any person aggrieved by any order made by the DRT under Section 17, may prefer an appeal to the DRAT within 30 days from the date of receipt of the order of the DRT. The 2 nd proviso to Section 18(1) stipulates that no appeal shall be entertained by the DRAT unless the borrower has deposited with it 50% of the amount of debt due from him, as claimed by the secured creditors or as determined by the DRT, whichever is less. The 3rd proviso to Section 18(1) gives a discretion to the DRAT to reduce the aforesaid amount to not less than 25%, provided the DRAT gives reasons for the same which are to be recorded in writing. What becomes clear from the aforesaid provisions is that there is a jurisdictional bar from entertaining an appeal filed by the borrower from an order passed under Section 17, unless the borrower deposits 50% of the amount of debt due from him, as claimed by the secured

> creditors or as determined by the DRT, whichever is less. There is also a discretion granted to the DRAT to reduce this amount to 25% provided it finds adequate reasons for doing so and gives reasons, that are recorded in writing. If this deposit is not made, then the DRAT has no jurisdiction to entertain the appeal of the borrower. The crucial words "debt due from him" have to be interpreted consistent with the object and purpose sought to be achieved by the SARFAESI Act. Unless the debt due is secured, the borrower cannot be allowed the luxury of litigation. If that is permitted, the secured creditors would be engaged in a continuous and futile litigation. On a plain reading of the section, it is clear that the DRAT has no power or jurisdiction to reduce the deposit amount to less than 25%. This is ex-facie clear from the plain and unambiguous language of Section 18 of the SARFAESI Act."

Provisions of pre deposit are mandatory in nature. Certificate in O.A. was issued by the Learned DRT. Learned Counsel for the Respondent Bank submits that as on 30th March, 2023 an amount of Rs 1,69,44,967.87 is debt due against the Appellants. They are liable to make a pre deposit of 50% of the same amount.

Having considered the submissions of the Learned Counsel for the parties, I found it appropriate that there is a debt due of Rs. 1,69,44,967.87 as on the date of filing of the appeal. Accordingly, Appellant is required to make a pre deposit of 50% of the same to maintain the appeal. Accordingly, I.A. No. 422 of 2023 is disposed of with the direction to the Appellant to make the pre deposit within six weeks.

List on 10th July, 2024 for further orders.

(Anil Kumar Srivastava,J)
Chairperson

Dated 3rd May, 2024
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