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2020 PLRonline 5204

Supreme Court Of India

Deepak Gupta, J. Aniruddha Bose, J

Union Bank of India v. Rajat Infrastructure Pvt. Ltd. & Ors.

Civil Appeal No. 1902 of 2020

02/03/2020

Sarfaesi Act, S. 18 - DRAT cannot entertain an Appeal under SARFAESI Act without Pre- deposit

Judgment

Deepak Gupta, J. - Leave granted.

2. These appeals were initially directed against the order dated 25.11.2019 of the Bombay High Court. By the said impugned order the High Court had relegated the appellant before it i.e. respondent no. 1 herein to avail the statutory remedy of appeal before the Debt Recovery Appellate Tribunal (for short 'the DRAT').

3. The short question which arises for determination is whether the High Court was right in directing that predeposit was not required for entertaining an appeal before the DRAT as mandated by Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

4. It is not necessary to set out the facts of the case in detail in view of the decision which we propose to take. The basic facts are that the respondent no. 1 stood guarantee and mortgaged its property for repayment of loan availed by respondent nos. 4 and 5. The property was put to auction and respondent nos. 2 and 3 who are the alleged leaseholders in possession of the property are the highest bidders for a sum of Rs.65.52 crores. The main objection of the respondent no.1 to the sale is that it is for a low amount and there is collusion between the officers of the Bank and the auction purchaser. The petitioner challenged the order of the DRAT dated 11.11.2019 before the High Court and the High Court passed the following order dated 25.11.2019:

"2. Relegating the Petitioner to the appellate remedy on account of aforementioned facts and holding that the Petitioner has an efficacious alternate remedy of appeal before the learned DRAT where no predeposit is required, the Petition is rejected without making any observation on the merits of the disputes between the parties."

5. It appears that the successful bidders filed review petitions before the High Court praying that the High Court could not have issued directions that no predeposit was required. Vide order dated 16.12.2019 the High Court dismissed the review petition and the relevant observations of the High Court are as under:

“7. Suffice it to state that where a proposed sale notice is questioned with reference to the reserve price fixed and the argument takes the form of considering valuation report, such order, if challenged before DRAT, would not require any predeposit being made for the reason under the impugned order, no decree has been passed or liability fixed. It would depend on the nature of the order whether before the appeal there against is entertained, should a predeposit be made.”

6. Mr. O.P. Gaggar, learned counsel for the appellant submitted that the order of the High Court is not only against the provisions of the Act but also against the law laid down by this Court. Mr. Dushyant A. Dave, learned senior counsel for the auction purchasers, respondent nos. 2 and 3, supported the case of the appellant and submitted that the no appeal on behalf of respondent no. 1 can lie without complying with the provisions of Section 18 of the SARFAESI Act which mandates the deposit of 50% or at least 25% of the amount due, as claimed by the secured creditor or determined by the Debt Recovery Tribunal (DRT). On the other hand, Mr. Vikram Chaudhri, learned senior counsel appearing for the respondent no.1 urged that the High Court has exercised its discretionary jurisdiction under Article 226 of the Constitution of India while holding that it is not required to make predeposit. He also submits that the respondent no.1 is not a borrower and finally submits that the main ground is that since the amount offered by the highest bidder is below the value of the property, the DRAT is entitled to entertain the appeal without deposit of any amount. It is submitted that the value of the property is about Rs.160 crores and even the value as per the circle rate is about Rs.120 crores, but the same has been sold for a pittance of Rs.65.52 crores. He also submitted that there is collusion between the employees of the Bank and the successful bidders.

7. We may make it clear that we are not going into the merits of the case in view of the fact that we agree with the High Court that the matter must be decided by the DRAT. The only issue is whether the High Court was right in holding that no predeposit was required. We may refer to Section 18 of the SARFAESI Act, which reads as follows:

“18. Appeal to Appellate Tribunal.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twentyfive per cent. of debt referred to in the second proviso.

xxx xxx xxx”

This Court in the case of Narayan Chandra Ghosh vs. UCO Bank & Ors.¹, held that keeping in view the language of the Section even if the amount or debt due had not been determined by the DRT, the appeal could not be entertained by the DRAT without insisting on predeposit. The DRAT, at best could, after recording the reasons, have reduced the amount to 25% but could not have totally waived the deposit. This Court also held that the right of appeal conferred under Section 18(1) is subject to the conditions laid down in the second proviso therein which postulates that no appeal shall be entertained unless the borrower has deposited 50% of the amount of debt due from him as claimed by the secured creditors or determined by the DRT, whichever is less. The third proviso enables the DRAT, for reasons to be recorded in writing, to reduce the amount of deposit to not less than 25%. The following observations of this Court are relevant:

“7...Thus, there is an absolute bar to the entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a predeposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity.”

8. In view of the law laid down by this Court, we are clearly of the view that the observation made by the High Court was totally incorrect.

9. We are not in agreement with the submission of Mr. Chaudhri that the High Court has exercised its discretionary powers under Article 226 of the Constitution. The order of the High Court does not show any exercise of such discretionary powers but according to the High Court on an interpretation of the Section, predeposit was not required. We are also not impressed with the argument of Mr. Chaudhri that his client is not a borrower. A guarantor or a mortgagor, who has mortgaged its property to secure the repayment of the loan, stands on the same footing as a borrower and if he wants to file an appeal, he must comply with the terms of Section 18 of the SARFAESI Act.

10. Furthermore, we may add that the High Court has no powers akin to powers vested in this Court under Article 142 of the Constitution. The High Court cannot give directions which are contrary to law.

11. In view of the above discussion, we set aside both the orders dated 25.11.2019 and 16.12.2019 of the High Court in so far as they hold that predeposit is not required and allow the appeals. We reiterate that we have not gone into the merits of the contentions raised by the parties which shall be decided by the DRAT when it entertains the appeal and is called upon to do so. We extend the time given to the auction purchasers, respondent nos. 2 and 3 to deposit the balance of the sale amount till 20.03.2020. We also direct that in case respondent no.1 files an appeal within 30 days of the pronouncement of this order it

shall not be rejected on the ground of limitation.

12. Pending application(s), if any, stand(s), disposed of.