DEBTS RECOVERY APPELLATE TRIBUNAL, DELHI

Misc. Appeal No.99/2018
Arising out of S.A. No.135/2017 (DRT-III, Chandigarh)

Item No. 20

G.R. Industries & others
V.
Allahabad Bank

03.08.2026 Hon'ble Dr. Justice Sudhir Kumar Jain

Present: Sh. Manish Jain, Sr. Advocate along with Sh. Siddhant Jain, Advocates for appellants through VC

Sh. Sovi Bipneet Singh, Advocate for respondent

This matter is taken up through Hybrid hearing.

I.A. No.185/2018 (Application for condonation of delay)

1. The present application is filed for condonation of delay of 114 days in filing the present appeal due to the reasons as stated in the application. After considering all facts, the delay of 114 days in filing the present appeal stands condoned. The application is accordingly allowed.

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2. The appellants filed S.A. bearing No.417/2016 titled as **M/s GR Industries V. Allahabad Bank** (now represented by Indian Bank) which was stated to be pending before DRT-II, Chandigarh. The appellants during the pendency of S.A. filed application bearing I.A. No.2268/2016 for restraining the respondent from taking over the physical possession of the subject property which was stated to be residential house of appellant no.2 &3. During the hearing of application bearing I.A. No.2268/2016 it was stated on behalf of the appellants that as per notice under Section 13(2), a sum of Rs.1.06 crores was due as on June, 2016 and the appellants were having the buyers of the said property. It was also stated on behalf of the appellant through the counsel that the appellants were ready to deposit a sum of Rs.40 lakhs with the respondent no.1.

3. DRT-II, Chandigarh vide order dated 04.01.2017 has ordered that the amount of Rs.40 lakhs in terms of order dated 04.01.2017 be kept in a no lien account. It is appearing that S.A. bearing No.417/2016 with new S.A. No.135/2017 was taken up for final hearing by DRT-III, Chandigarh on 16.08.2017. DRT-III, Chandigarh vide order dated 16.08.2017 has dismissed the S.A. The perusal of order dated 16.08.2017 reflected that it was contended on behalf of the appellant that after depositing a sum of Rs.40 lakhs out of the outstanding dues of Rs.1.05 crore as per notice under Section 13(2) of the Act, the respondent bank cannot put the subject property on auction which was having more value in comparison to the demand as mentioned in notice under Section 13(2). It was contended on behalf of the respondent that the subject property was mortgaged against two more loans i.e. Housing Loan of Rs.25 lakhs & FLC limit of Rs.2 crore and as such more than Rs.2.5 crore was still outstanding against the appellant. The relevant portion of the final order dated 16.08.2017 is reproduced as under:

> **The applicant has specifically mentioned that if any other amount apart from the sum of Rs. One Crore, demanded by the bank vide notice U/s 13(2), is due towards the applicant, bank can't sell out said property. I am not agreed with this plea of applicant, as the residential property, regarding which the auction process is underway, is also lying pledged with the bank against two loan accounts of the applicant, as is mentioned in Notice U/s.13(2). In these circumstances, if the original title deeds of said property are returned by the bank to applicant, it would not be possible to recover the amount due against other loan accounts, against which said property is pledged by the applicant. It is just to see as to whether the plea taken by applicant is legally valid or not? It is admitted fact that the above noted residential property of applicant is also pledged in two other loans apart from the Cash Credit Loan, whereas notice U/s 13(2) has been issued only in respect of single loan i.e. Cash Credit limit and the applicant has merely paid an amount of Rs.40 lakhs out of said sum of Rs. One crore and the amount, as mentioned in Notice U/s 13(2) is still to be recovered. Moreover, the said property is also pledged in two other loan accounts, in which, a sum of more than Rs.2 crore is due towards applicant. In these circumstances, no case is made out in favour of applicant and the proceeding being conducted by the bank is absolutely correct as per rules & there is no question to interfere in the same. Hence the present SA submitted by the Applicant is hereby dismissed and stay order dated 04.01.2017,**

passed in favour of Applicant in connection with said property, is hereby set-aside. The bank is free to take further action for recovery as per rules.

A copy of order be supplied to the parties as per rules.

Case file be consigned to record.

4. The appellant filed application bearing M.A. No.161/2017 in S.A. No.135/2017 wherein they stated that the S.A. bearing No.135/2017 was disposed of on 16.08.2017 and requested that a sum of Rs.40 lakhs which was kept in no-lien account be returned back to the appellants. DRT-III, Chandigarh vide order dated 21.09.2017 after hearing the contentions and arguments of concerned parties observed that a sum of Rs.40 lakhs was kept in a no-lien account on the request of the appellant before passing the restraining order in their favour. It was also observed that a sum of Rs.40 lakhs was not deposited as pre-deposit and the appellants have availed the stay order after depositing a sum of Rs.40 lakhs. Accordingly, DRT-III, Chandigarh has dismissed the application bearing M.A. No.161/2017. The relevant portion of impugned order dated 21.09.2017 is reproduced as under:

Arguments led by both the parties are heard. The applicant deposed in the court on 04.01.2017 that it is ready to pay entire amount payable towards the bank and only having made request by it to deposit a sum of Rs.40 lac in bank, stay order passed in favour of bank and the sum of Rs.40 lac kept in no lien account. No Lien Account means that any party has no right over said amount until & unless any exclusive order is not passed in this regard. The stay order obtained by the applicant by depositing a sum of Rs.40 lac was passed in its favour for the reason that it will pay entire amount payable to the bank. But applicant did not deposit any amount in bank except the said payment and the SA filed by it stands disposed of on 16.08.2017. The applicant quoted a ruling, passed in '(2016)2 Supreme Court Page no.18 Axis Bank V/s S.B.S. Organees Private Limited' in its favour. The above noted ruling is duly examined. The said ruling, this principal is deliberately mentioned that if necessary pre-deposit is deposited as per law while filing appeal in DRAT, the bank can't get the said amount after disposal of the appeal.

The above noted ruling is not applicable on present case, as the principal mentioned in the said ruling relates with the pre-deposit before filing appeal in DRAT, whereas in the present case, applicant deposited a sum of Rs.40 lac and availed benefit of stay order for a period of 7 months.

Moreover, a total sum of Rs.3.94 crore is due towards applicant and as told by Ld. Counsel for Bank, the property pledged with the bank is not sufficient to recover the above noted amount. Hence the Bank is entitled to adjust the sum of Rs.40 lac, kept in No Lien Account, against loan account. Hence a direction is issued to the bank that it may deposit the said amount of Rs.40 lac in loan account and the bank is free to conduct further proceeding under SARFAESI Act for recovery of balance amount, due towards applicant. While depositing the sum of Rs.40 lac in bank, the applicant made a statement in the Court that it will deposit the balance due amount in the bank. In these circumstances, since the applicant has not paid the due amount of the bank, hence in my considered opinion, the applicant is not entitled to get back the said sum of Rs.40 lac. Hence in view of above noted discussion, the M.A. filed by applicant is hereby dismissed.

A copy of order be supplied to the parties as per rules.

Case file be consigned to record.

5. Sh. Manish Jain, Advocate for the appellant argued that the impugned order dated 21.09.2017 was passed by DRT-III, Chandigarh on incorrect appreciation of facts and law and in violation of law relating to No Lien Account. It is further argued that the stay order granted to the appellants was passed for the reasons that the appellants would pay the entire amount outstanding to the respondent as mentioned in the order dated 04.01.2017. Sh. Manish Jain, Advocate also referred the impugned order dated 21.09.2017 in support of his argument. It is prayed that the impugned order be set aside and the appellants be refunded back the sum of Rs.40 lakhs along with accrued interest, if any.

5.1 The counsel for the respondent has referred the order dated 16.08.2017 by which the S.A. bearing No.135/2017 was finally disposed of and wherein it was observed by DRT-III, Chandigarh that the subject property was mortgaged against two more loans i.e. Housing Loan of Rs.25 lakhs & FLC limit of Rs.2 crore. He further argued that the sum of more than Rs.2 crore was due against the appellant at the time of passing of order dated 16.08.2017 and further the said amount of Rs.40 lakhs was deposited by the appellants towards part payment of outstanding although it was ordered to be kept in No Lien Account. Sh. Manish Jain, Advocate defended the impugned order.

6. It is reflecting that the subject property was mortgaged in respect of three loans. The appellants on 04.01.2017 to show their *bona fide* had expressed their readiness to deposit a sum of Rs.40 lakhs with the respondent and said amount was ordered to be kept in No Lien Account. It is pertinent to mention that a sum of Rs.40 lakhs was not deposited towards making pre-deposit. The appellants were granted *status quo* in respect of the subject property subject to deposition of Rs.40 lakhs. DRT-III, Chandigarh while finally disposing of the S.A. vide order dated 16.08.2017 also observed that the subject property was mortgaged in respect of two other loans while the notice under Section 13(2) of the SARFAESI Act was only in respect of single loan. It was also observed that more than two crore was due against the appellant. It is manifested from the various orders as referred herein above that a sum of Rs.40 lakhs were deposited by the appellants for grant of interim protection in respect of the subject property. DRT-III, Chandigarh in the impugned order dated 21.09.2017 has categorically observed that the appellants have deposited Rs.40 lakhs and thereafter availed the stay order for about seven months. DRT-III, Chandigarh in the impugned order has appreciated the legal as well as the factual position and rightly came to the conclusion about the dismissal of application bearing M.A. No.161/2017.

7.There is no illegality or infirmity in the impugned order which warrants any interference by this Tribunal. Hence, appeal is dismissed being devoid of any merit.

Sd/-

(Dr. Justice Sudhir Kumar Jain)
Chairperson

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