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**SooperKanoon Citation** : sooperkanoon.com/56498

**Court** : DRAT Delhi

**Decided On :** Aug-03-2005

**Reported in** : IV(2005)BC44

**Judge** : M B Naik

**Appellant** : K.C. Textiles Ltd. and ors.

**Respondent** : Oriental Bank of Commerce and ors.

**Advocate for Pet/Ap.** : Mr. Rajeev Narain

**Judgement** :

1. The respondent-Bank has filed this petition seeking to vacate the stay order granted by this Court on 31.5.2005. In the petition, it is stated that this vacate petitioner had invoked the provisions under Section 13(4) of the Securitization Act, such steps undertaken by the respondent Bank herein invoking the provisions under Section 13(4) of the Securitization Act was questioned by the appellant under Section 17 of the Securitization Act on various grounds. It is also stated that as provided under the scheme of the Securitization Act, in terms of Section 18, no appeal could be entertained unless the appellant deposits 50% of the amount. However, the said provision further gives a discretion to the Chairman or DRAT who can reduce it to 25%.

2. The learned Counsel for the vacate petitioner Mr. Lajwinder Singh pleaded when the appeal was preferred along with the Miscellaneous Application No.

136/2005 seeking exemption from deposit under Section 18 of the Securitization Act, the tribunal probably is not justified in granting a stay without insisting on deposit as provided under Section 18 of the Securitization Act. Counsel stated on that ground alone, the stay order passed on 31.5.2005 has to be vacated.

3. Mr. Rajeev Narain, learned Counsel for the applicant, on the contrary submitted though the provision under Section 18 of the Securitization Act speaks about the condition of deposit of 50% of the amount and vests certain discretionary powers in the hands of the Chairman of the Tribunal, but, however, when the Chairman of the Tribunal exercises jurisdiction under the DRAT Act, Section 21 provides that the Chairman could grant total exemption in a given case by recording sufficient reasons. Counsel stated, Rule 22 of the DRAT Procedure Rules also empowers this Tribunal to make such order or grant such discretion as may be necessary to secure the ends of justice.

4. In the light of the submissions made by both the Counsels, it is necessary for this Court to clarify the position. It is true this Court, while exercising jurisdiction under the DRT Act in respect of statutory appeals filed under Section 20 of the DRT Act is entitled to exercise discretion while deciding the petition. The powers so conferred under Section 21 is either to reduce the pre-deposit amount or to waive the entire pre-deposit amount by recording sufficient reasons. But in cases falling under the Securitization Act, when an appeal is filed before this Tribunal, the mandatory provision under Section 18 of the Securitisaton Act though gives some discretion to this Court to reduce the pre-deposit which shall not be less than 25% of the debts referred in the notice. In that view of matter, it is difficult to appreciate the contention that the constitution of this Court is under the DRT Act and while discharging the functions under the DRT Act, the Court is competent to waive the condition of pre-deposit even under Section 18 of the Securitization Act. It is also contended by the learned Counsel for the appellant while drawing the attention of this Court to Rule 22 of DRT (Procedure) Rules that the Court can make such orders for securing ends of justice, I am afraid, the provision under Rule 22 of DRAT (Procedure) Rules cannot be interpreted to say that the Court can ignore the statutory provisions under Section 18 of the Securitization Act and order exemption of pre-deposit. Rule 22 of the DRAT (Procedure) Rules, 1993

does not contemplate vesting of such powers in the hands of this Court. What all the Rule 22 says is : "The Appellate Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice." It only says when certain orders are issued for giving expedient effect, certain directions can be issued and not otherwise. It is settled law, the rules provided under the scheme of the Act cannot over-ride the statutory provisions of the Act. Rules are only intended to facilitate the implementation of the provisions contemplated under the Act, therefore, it is difficult to appreciate the contention of the learned Counsel for the appellant.

5. On 31.5.2005, when the appeal was instituted in Inward No. 113/2005 arising out of an Appeal No. 47/2004 (DRT-II Delhi), this Court granted a direction against the respondent Bank whereby the respondent-Bank was directed not to take possession of the property pending passing further orders. Now, that the vacate petition has been filed by the respondent-Bank, bringing to the notice of this Court about Section 18 of the Securitization Act which imposes a condition of pre-deposit. I think the stand taken by the respondent-Bank is appropriate and is in tune with the provisions of the Securitization Act. On this ground, the interim order granted by this Court on 31.5.2005 has to be vacated.

However, in view of the difficulties expressed by the Counsel for the appellant about his inability to make pre-deposit, in order to meet the ends of justice, the appellant shall deposit 25% of the amount of notice i.e. Rs. 2,71,88,608/- on or before 31.8.2005. In default, the interim order granted by this Court on 31.5.2005 shall stand vacated.

The vacate petition i.e. Miscellaneous Application No. 168/2005 is ordered accordingly. LR copy be marked.

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