

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD  
(Special Original Jurisdiction)**

MONDAY, THE SIXTEENTH DAY OF DECEMBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO**

**WRIT PETITION NO: 9556 OF 2021**

**Between:**

Sri. Manji Patel, S/o. Jetha Patel, Aged about 67 years, Occ. Business R/o.  
H.No. 11-9-133/1 (New) Lakshmi Nagar Colony, Kothapet, Hyderabad

**...PETITIONER**

**AND**

1. Indian Bank, (Erstwhile Allahabad Bank,) Maruti Nagar Branch, Hyderabad 8/3/22/1/1, Shalimar Apartments, Maruti Nagar, Yousufguda Road, Hyderabad - 500 038 Represented by its Authorised Officer
2. The Registrar, The Debt Recovery Appellate Tribunal At Kolkata, 9 Old Post Office Street, 7th Floor, Kolkata-700001, West Bengal.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue writ in the nature of Mandamus, declaring the Order Dt. 01-04-2021 passed in Appeal Dy.No. 119 of 2021/24 in (Arising out of SA No.1311/2017 on the file of DRT-2 Hyderabad)passed by the Honourable the Debt Recovery Appellate Tribunal at Kolkata, to the extent of not considering the sum of Rs 1,29,18,336/- paid by petitioner after issuance of Demand Notice U/Section 13 (2) Dt. 14-02-2017, while ordering deposit of percentage of the amount claimed in the Demand Notice issued under Section 13(2) of the Sarfaesi Act as illegal, arbitrary, against the provisions of Sarfaesi Act and against the principles of natural justice and also oppose to Article 14 of Constitution of India and consequently to declare that the petitioner is entitled for the benefit of adjustment of amount Rs 1,29,18,336/- paid after issuance of Demand Notice Dt.

14-02-2017 as against the direction of Respondent No 2 by impugned Order Dt. 01-04-2021 to deposit 25 % of the amount claimed in Section 13(2) Notice.

**IA NO: 1 OF 2021**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation and effect of the impugned Order Dt.01-04-2021 passed in Appeal Dy.No. 119 of 2021/24 in (Arising out of SA No.1311/2017 on the file of DRT-2 Hyderabad) passed by the Honourable the Debt Recovery Appellate Tribunal at Kolkata till the disposal of the present Writ Petition.

**IA NO: 2 OF 2021**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings of the Respondent No.1 bank in taking physical Possession under Section 14 of the Sarfaesi Act in respect of the schedule property till the disposal of the present Writ Petition.

**IA NO: 3 OF 2021**

**Between:**

Indian Bank, (Erstwhile Allahabad Bank,) Maruti Nagar Branch, Hyderabad 8/3/22/1/1, Shalimar Apartments, Maruti Nagar, Yousufguda Road, Hyderabad - 500 038 Represented by its Authorised Officer

**...PETITIONER**

**AND**

1. Sri. Manji Patel, S/o. Jetha Patel, Aged about 67 years, Occ. Business R/o. H.No. 11-9-133/1 (New) Lakshmi Nagar Colony, Kothapet, Hyderabad
2. The Registrar, The Debt Recovery Appellate Tribunal At Kolkata, 9 Old Post Office Street, 7th Floor, Kolkata-700001, West Bengal.

**...RESPONDENTS**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders dt. 15/04/2021 passed in I.A. No. 01/2021 in Writ Petition No. 9556/2021 and dismiss the W.P. with exemplary costs.

**Counsel for the Petitioner: SRI G.K.DESHPANDE**

**Counsel for the Respondent No.1: SRI V.MURALI MANOHAR, REP. FOR  
M/s. V.DYUMANI, SC FOR INDIAN BANK**

**The Court made the following: ORDER**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

**WRIT PETITION No. 9556 of 2021**

**ORDER:** (per the Hon'ble the Chief Justice Alok Aradhe)

Mr. G.K. Deshpande, learned counsel appears for the petitioner.

Mr. V. Murali Manohar, learned counsel appears for Smt. V. Dyumani, learned Standing Counsel for Indian Bank, for respondent No.1.

2. With the consent of the learned counsel for the parties, the Writ Petition is heard finally.

3. In this Writ Petition, the petitioner has assailed the validity of the order dated 01.04.2021 passed by the Debts Recovery Appellate Tribunal at Kolkata (hereinafter referred to as 'the Appellate Tribunal'), in exercise of powers under the third proviso to Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"). By the aforesaid order, the petitioner has been asked to deposit 25% of the amount claimed in the notice issued to him under

Section 13(2) of the SARFAESI Act i.e., a sum of Rs.4,76,01,250/-, before the Appellate Tribunal on or before 29.04.2021.

4. Facts giving rise to filing of this petition in nutshell are that the petitioner is a guarantor to a loan transaction between M/s. Dhanyaah Victuals Private Limited and respondent No.1, namely, Indian Bank. The borrower did not repay the amount of loan. Thereupon, the proceedings were initiated against the borrower as well as the petitioner. The petitioner approached the Debts Recovery Tribunal (hereinafter referred to as 'the Tribunal') by filing a Securitization Application, namely, S.A. No.1311 of 2017. The aforesaid Securitization Application was dismissed on 01.06.2020.

5. Being aggrieved, the petitioner filed an appeal before the Appellate Tribunal along with an application seeking waiver of the amount of pre-deposit as a condition precedent for filing of the appeal. The Appellate Tribunal however, by an order dated 01.04.2021 in exercise of powers under the third proviso to Section 18(1) of the SARFESI Act directed the petitioner to deposit 25% of the amount claimed in the notice issued under

Section 13(2) of the SARFAESI Act. Being aggrieved, this Writ Petition has been filed.

6. Learned counsel for the petitioner submits that the amount deposited by the petitioner during pendency of the proceeding under Section 17 of the SARFAESI Act has to be taken into account while computing the amount of debt due for the purposes of entertaining the appeal under Section 18 of the SARFAESI Act. In support of aforesaid submission, reliance has been placed on a judgment of Division Bench of Delhi High Court in **Prudent ARC Limited v. Sidha Neelkanth Paper Industries and others {W.P. (C) No.6060 of 2020 dated 22.12.2020}**. It is further pointed out that the aforesaid order has been affirmed by the Supreme Court in **Sidha Neelkanth Paper Industries Private Limited and another v. Prudent ARC Limited and others<sup>1</sup>**.

7. Learned counsel for respondent No.1 has not disputed the aforesaid legal proposition. However, it is submitted that the Appellate Tribunal be directed to compute 25% of the amount of debt due after adjustment of the amount.

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<sup>1</sup> 2023 SCC OnLine SC 12

8. We have considered the rival submissions made on both sides and have perused the record.

9. The issue involved in this Writ Petition is whether the amount deposited by the petitioner during pendency of a proceeding under Section 17 of the SARFAESI Act has to be taken into account and has to be adjusted while computing the amount of debt due for the purposes of entertaining the appeal under Section 18 of the SARFAESI Act. The Division Bench of Delhi High Court in para 65 of **Prudent ARC Limited** (supra) has held as under:

“65. Applying the same analogy, any amount that may have been deposited by the borrower with the secured creditor or with the Debt Recovery Tribunal after filing of the petition under Section 17 of the SARFAESI Act, must also be taken into consideration while computing the “amount of debt due” for purposes of entertaining the appeal, as contemplated under the second proviso to Section 18 of the SARFAESI Act, 2002.”

10. It is not in dispute that the aforesaid decision of Delhi High Court has been modified by the Supreme Court in **Sidha Neelkanth Paper Industries Private Limited** (supra) insofar as it pertains to the direction to include interest on the amount of

debt due. However, in paragraph 40 of **Sidha Neelkanth Paper Industries Private Limited** (supra), it has been held as under:

“40. In view of the above and for the reasons stated above, the respective appeals preferred by the financial institution/assignee and auction purchasers being civil Appeal Nos.8970, 8972, 8973 and 8974 of 2022 are hereby allowed. The appeal preferred by the borrower against the judgment and order passed by the Delhi High Court being Civil Appeal No. 8969/2022 deserves to be dismissed and is accordingly dismissed. It is observed and held that the borrower has to deposit 50% of the amount of “debt due” as claimed by the bank/financial institution/assignee along with interest as claimed in the notice under Section 13(2) of the SARFAESI Act and the borrower is not entitled to claim adjustment/appropriation of the amount realized by selling the secured properties and deposited by the auction purchaser when the auction sale is also under challenge.”

Thus, it is evident that the amount of debt due has to be determined with reference to the amount mentioned in the notice issued under Section 13(2) of the SARFAESI Act. Thus, the petitioner is entitled to adjustment of the amount deposited by him in the proceeding under Section 17 of the SARFAESI Act for computation of the amount of debt due for the purposes of Section 18(1) of the SARFAESI Act.

11. For the aforementioned reasons, the order dated 01.04.2021 passed by the Appellate Tribunal is modified and it



is directed that the petitioner is entitled to adjustment of the amount deposited by him in the proceeding under Section 17 of the SARFAESI Act while computation of 25% of the amount claimed in the notice issued under Section 13(2) of the SARFAESI Act i.e., a sum of Rs.4,76,01,250/-. After adjustment of the amount deposited by the petitioner in the proceeding under Section 17 of the SARFAESI Act, it is open for the Appellate Tribunal to examine whether the petitioner has fulfilled the requirement of deposit of 25% of the amount due under Section 13(2) of the SARFAESI Act and to proceed further with the matter.

12. Accordingly, the Writ Petition is disposed of.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

**SD/-P. CH. NAGABHUSHAMBA**  
**ASSISTANT REGISTRAR**

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**SECTION OFFICER**

To,

1. The Authorised Officer, Indian Bank, (Erstwhile Allahabad Bank,) Maruti Nagar Branch, Hyderabad 8/3/22/1/1, Shalimar Apartments, Maruti Nagar, Yousufguda Road, Hyderabad - 500 038.
2. The Registrar, The Debt Recovery Appellate Tribunal At Kolkata 9 Old Post Office Street, 7th Floor, Kolkata-700001, West Bengal.
3. One CC to SRI G.K.DESHPANDE, Advocate [OPUC]
4. One CC to M/s. V.DYUMANI, SC FOR INDIAN BANK [OPUC]
5. Two CD Copies

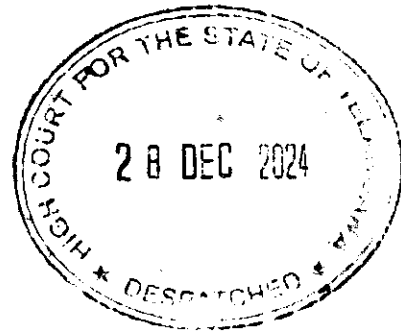
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**HIGH COURT**

**DATED: 16/12/2024**

**ORDER**

**WP.No.9556 of 2021**



**DISPOSING OF THE WRIT PETITION,  
WITHOUT COSTS**

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4.13  
28/12/24