

HIGH COURT OF MADHYA PRADESH: BENCH INDORE

**HON'BLE SHRI JUSTICE VIVEK RUSIA &
HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)**

ON THE 12th OF APRIL, 2022

WRIT PETITION No. 5494 of 2021

Between:-

VISHAL JAISWAL S/O RAJENDRA JAISWAL , AGED ABOUT 40 YEARS, OCCUPATION: BUSIENSS 102, CHANDRA SHEKHAR AZAD MARG (MADHYA PRADESH)

.....PETITIONER

AND

1. NARESH SONI S/O LATE SHRI ANIL SONI , AGED ABOUT 36 YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

2. RAHUL SONI S/O LATE SHRI ANIL SONI , AGED ABOUT 33 YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

3. ABHIJEET SONI S/O LATE SHRI ANIL SONI , AGED ABOUT 33 YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

4. SMT. NIRMALA SONI W/O LATE SHRI ANIL SONI , AGED ABOUT 54 YEARS, OCCUPATION: HOUSEWIFE 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

5. BANK OF BARODA, THROUGH AUTHORIZED OFFICER DEWAS BRANCH 21, JAWAHAR CHOWK, DEWAS (MADHYA PRADESH)

.....RESPONDENTS

WRIT PETITION No. 5470 of 2021

Between:-

VIKAS JAISWAL S/O RAJENDRA JAISWAL , AGED ABOUT 40 YEARS, OCCUPATION: BUSINESS 377, WARD NO 16, UJJAIN ROAD BANGAR (MADHYA PRADESH)

.....PETITIONER

AND

1. SUNIL SONI S/O LATE SHRI KANHAIYALAL SONI , AGED ABOUT 56

YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

2. RAJENDRA SONI S/O LATE SHRI KANHAIYALAL SONI , AGED ABOUT 54 YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD DEWAS (MADHYA PRADESH)

3. SMT. MADHURI SONI W/O SHRI SUNIL SONI , AGED ABOUT 54 YEARS, OCCUPATION: HOUSEWIFE 253 M.G. ROAD DEWAS (MADHYA PRADESH)

4. AKSHAY SONI S/O SHRI SUNIL SONI , AGED ABOUT 27 YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

5. BANK OF BARODA THR AUTHORIZED OFFICER 21, JAWAHAR CHOWK DEWAS (MADHYA PRADESH)

.....RESPONDENTS

WRIT PETITION No. 5478 of 2021

Between:-

SARITA MAHAJAN W/O HARISH MAHAJAN , AGED ABOUT 59 YEARS, OCCUPATION: HOUSE WIFE 78, TILAK NAGAR, ANNAPURNA BHAWAN, A.B. ROAD (MADHYA PRADESH)

.....PETITIONER

AND

1. RAJENDRA SONI S/O LATE SHRI KANHAIYALAL SONI , AGED ABOUT 54 YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

2. BHANUPRIYA SONI W/O SHRI RAJENDRA SONI , AGED ABOUT 49 YEARS, OCCUPATION: HOUSEWIFE 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

3. NARESH SONI S/O LATE SHRI ANIL SONI , AGED ABOUT 36 YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

4. ABHIJEET SONI S/O LATE SHRI ANIL SONI , AGED ABOUT 34 YEARS, OCCUPATION: HOUSEWIFE 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

5. RAHUL SONI S/O LATE SHRI ANIL SONI , AGED ABOUT 33 YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA PRADESH)

6. BANK OF BARODA, DEWAS BRANCH THROUGH AUTHORIZED OFFICER 21, JAWAHAR CHOWK, DEWAS (MADHYA PRADESH)

.....RESPONDENTS

WRIT PETITION No. 6062 of 2021

Between:-

BANK OF BARODA THROUGH AUTHORIZED OFFICER DEWAS
BRANCH, 21 JAWAHAR CHOWK DEWAS (MADHYA PRADESH)

.....PETITIONER

AND

NARESHSONI S/O LATESHRI ANILSONI , AGED ABOUT 36 YEARS,
1. OCCUPATION: BUSINESS 253, M.G. ROAD. DEWAS (MADHYA
PRADESH)

RAHUL SONI S/O LATE SHRI ANIL SONI , AGED ABOUT 33 YEARS,
2. OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA
PRADESH)

ABHIJEETSONI S/O LATE SHRI ANIL SONI , AGED ABOUT 34 YEARS,
3. OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA
PRADESH)

SMT. NIRMALA SONI W/O LATE SHRIANIL SONI , AGED ABOUT 54
4. YEARS, OCCUPATION: HOSUE WIFE 253, M.G. ROAD, DEWAS
(MADHYA PRADESH)

VISHAL JAISWAL S/O RAJENDRAJAISWAL , AGED ABOUT 40 YEARS,
5. OCCUPATION: BUSINESS 102, CHANDRA SHEKHAR AZAD MARG
(MADHYA PRADESH)

.....RESPONDENTS

WRIT PETITION No. 6065 of 2021

Between:-

BANK OF BARODA THR. AUTHORIZED OFFICER DEWAS BRANCH,
21, JAWAHAR CHOWK (MADHYA PRADESH)

.....PETITIONER

AND

SUNIL SONI S/O LATE SHRI KANHAIYALAL SONI , AGED ABOUT 56
1. YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA
PRADESH)

RAJENDRA SONI S/O LATE SHRI KANHAIYALAL SONI , AGED
2. ABOUT 54 YEARS, OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS
(MADHYA PRADESH)

MADHURI SONI W/O SHRI SUNIL SONI , AGED ABOUT 54 YEARS,
3. OCCUPATION: BUSINESS 253, M.G. ROAD, DEWAS (MADHYA
PRADESH)

AKSHAY SONI S/O SHRI SUNIL SONI , AGED ABOUT 27 YEARS,
4. OCCUPATION: HOUSEWIFE 253, M.G. ROAD, DEWAS (MADHYA
PRADESH)

VIKAS JAISWAL S/O SHRI RAJENDRA JAISWAL , AGED ABOUT 40
5. YEARS, OCCUPATION: BUSINESS 377, WARD NO 16, UJJAIN ROAD
BANGAR (MADHYA PRADESH)

.....RESPONDENTS

WRIT PETITION No. 6069 of 2021

Between:-

BANK OF BARODA DEWAS BRANCH THROUGH AUTHORIZED
OFFICER AUTHORIZED OFFICER 21, JAWAHAR CHOWK, DEWAS
(MADHYA PRADESH)

.....PETITIONER

AND

RAJENDRA SONI S/O LATE SHRI KANHAIYALAL SONI , AGED
1. ABOUT 54 YEARS, OCCUPATION: BUSINESS 253,M.G. ROAD. DEWAS
(MADHYA PRADESH)

BHANPURIYA SONI W/O SDSHRI RAJENDRA SONI , AGED ABOUT 49
2. YEARS, OCCUPATION: HOUSE WIFE 253,M.G. ROAD. DEWAS
(MADHYA PRADESH)

NARESH SONI S/O LATE SHRI ANIL SONI , AGED ABOUT 36 YEARS,
3. OCCUPATION: BUSINESS 253,M.G. ROAD. DEWAS (MADHYA
PRADESH)

ABHIJEET SONI S/O LATE SHRI AIL SONI , AGED ABOUT 34 YEARS,
4. OCCUPATION: HOUSE WIFE 253,M.G. ROAD. DEWAS (MADHYA
PRADESH)

RAHUL SONI S/O LATE SHRI ANIL SONI , AGED ABOUT 33 YEARS,
5. OCCUPATION: BUSINESS 253,M.G. ROAD. DEWAS (MADHYA
PRADESH)

SMT. SARIYA MAHAJAN W/O SHRI HARISH MAHAJAN , AGED
6. ABOUT 59 YEARS, OCCUPATION: HOUSE WIFE 78, TILAK NAGAR
ANNAPURNA BHAWAN A.B. ROAD. DEWAS (MADHYA PRADESH)

.....RESPONDENTS

Shri Akash Rathi, learned counsel for the petitioners – auction purchasers.

Shri Vivek Phadke, learned counsel for the respondents 1 to 4 – borrowers.

Shri Kshitij Vyas, learned counsel for respondent – Bank of Baroda.

ORDER

Per Vivek Rusia, J :

As the identical issues are involved in all the aforesaid writ petitions, therefore, they are being decided by this common order. For the sake of convenience, facts narrated in W.P. No.5494/2021 are being taken into consideration.

The petitioner has filed the present petition being aggrieved by the order dated 9.2.2021 passed by Debt Recovery Appellate Tribunal (DRAT), Allahabad in Appeal No.344/2020 whereby the objection in respect of deposit of 50% of the debt due before entertaining the appeal on merit has been rejected.

The facts of the case, in short, are as under :

1. Respondents No.1 to 4 (hereinafter referred to as “the borrowers” for short) took financial assistance by way of a home loan to the tune of 1,50,00,000/- from respondent No.5 – Bank of Baroda (hereinafter referred to as “the bank” for short). In order to secure the loan, the borrowers had mortgaged their property situated at Survey No. 542/2/2/1, Patwari Halka No.18, Junior Dewas, District Dewas. Upon committing the default of returning the loan amount, the bank issued a demand notice dated 3.8.2019 under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as

“SARFAESI Act” for short) for a debt of Rs.,140,81,936/-. Thereafter, a possession notice was issued on 10.10.2019. The borrowers approached the Debt Recovery Tribunal (DRT) by filing Securitization Application (SA) No.652/2019. The bank withdrew the above notice and issued a fresh notice dated 13.1.2020 u/s. 13(2) of the SARFAESI Act for the demand of Rs.1,40,81,936/- as outstanding debt from the borrowers. Again, the bank withdrew this notice, therefore, the aforesaid SA was dismissed as having been rendered infructuous. According to the borrowers, approximately Rs.72,99,970/- has been paid to the bank.

2. The bank has published the possession notice in daily newspapers on 24.3.2020 during the nationwide lockdown period due to Covid-19. Thereafter, the bank issued a sale notice under 8(6) of the Security Interest Enforcement Rules, 2002 and put the mortgaged property to auction on 17.8.2020. The borrowers again approached the DRT by way of SA No. 240/2020 on 14.8.2020. The bank has conducted the auction proceedings on 17.8.2020 in which the present petitioner as one of the bidders offered the highest bid of Rs.1,55,10,000/-. After acceptance of his highest bid, he deposited an amount of Rs.37,77,500/- on the same day. The Authorised Officer allowed the time till 30.10.2020 for depositing the remaining 75% of the total amount. Thereafter upon deposition of the remaining amount the bank has finalized the sale and the sale certificate was registered on 23.11.2020 in favour of the auction purchaser i.e. the petitioner and he was put into possession.

3. Vide order dated 13.11.2020, the learned DRT has dismissed the SA as no irregularity was found in the measures taken by the bank for recovery of the entire debt.

4. Being aggrieved by the aforesaid order, the borrower approached the DRAT by way of Appeal No.344/2020 along with an application seeking waiver of deposit of amount under section 18 of the SARFAESI Act. The said application was opposed by the present petitioner and the bank as well. Vide order dated 9.2.2021, learned DRAT has held that the bank has already recovered the debt, hence, there is no amount of debt due, the requirement of pre-deposit is satisfied and the borrower/appellants are not required to tender any amount towards the condition of pre-deposit for entertaining the appeal u/s. 18 of the SARFAESI Act.

5. Being aggrieved by the aforesaid order, the auction purchasers, as well as the bank, have filed the present writ petitions before this Court. The writ petitions came up for consideration on the question of interim relief and vide order dated 18.1.2022 the Division Bench of this Court has held that the demand notice was for a sum of Rs.1,40,81,936 and the bank has recovered Rs.1,65,10,000/- which is much more than the amount due, therefore, the impugned order passed by DART does not call for any interference and the matter is required to be considered finally.

Submissions of the petitioner

6. Shri Akash Rathi, learned counsel appearing for the petitioner/borrower, submitted that the first proviso to Section 18(1) of the SARFAESI Act provides that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of **debt due** from him and the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25%, but there is no provision of complete waiver of the aforesaid amount in any of the circumstances. Hence, the DRAT has erred in

law while passing the impugned order. Shri Rathi has relied on the case of *Manohar Infrastructure and Constructions Pvt. Ltd. V/s. Sanjeev Kumar Sharma & others* (Civil Appeal No.7098 of 2021 decided on 7.12.2021) in which the Apex court has considered the scope of Section 51 of the Consumer Protection Act which also mandates the deposit of amount before entertaining an appeal and held that the object of the said pre-deposit condition is to avoid frivolous appeals. Learned counsel has also placed reliance on another judgment passed by the Apex Court in the case of *Narayan Chandra Ghosh V/s. UCO Bank : (2011) 4 SCC 548* in which it has been held that the requirement of pre-deposit under sub-section (1) of Section 18 of the act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18. It has further been held that the deposit under the second proviso to Section 18(1) of the Act is a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement. The High Court of Bombay in the case of *Eskays Construction Pvt. Ltd. V/s. Soma Papers & Industries ltd. & others : AIR 2017 Bom. 10* has held that the amount realised by the bank in the auction proceedings cannot be adjusted or cannot be given credit to the borrower for waiver of the deposit as section 18 has been enacted to curb the unnecessary and frivolous litigation. Learned counsel further submitted that the learned DRAT has placed reliance on the judgment passed by the Allahabad High Court in the case of *M/s. Akash Ganga Airlines ltd. V/s. Debt Recovery Appellate Tribunal, Allahabad* that the amount of sale price received in an auction is required to be considered while deciding the issue of pre-

deposit u/s. 18 of the SARFAESI Act. Against the said order, SLP has been preferred and the same has been entertained.

7. Shri Rathi, learned counsel for the petitioner, further submitted that in the present case, the auction purchaser has deposited much more than the amount due to the bank. Sale-certificate has been registered and the possession has also been given, he has constructed the house and while dismissing the SA, learned DRT has held that the borrower has not shown any inclination to repay the loan amount, therefore, the appeal is nothing but misuse of the right of appeal. Hence, to entertain such type of an appeal, there should not be a waiver of pre-deposit.

8. Shri Kshitij Vyas, learned counsel appearing for the respondent/bank has supported the argument advanced by the learned counsel for the petitioner and submitted that the amount realised by the bank in an auction proceeding has nothing to do with the amount which is liable to be deposited as a pre-condition to entertain the appeal. Hence, the writ petition is liable to be dismissed.

Submissions of the respondent

9. Shri Vivek Phadke, learned counsel appearing for the borrower contended that the learned DRAT has rightly held that as per proviso to Section 18, the borrower is liable to deposit 50% of the **debt due** from him. As of the date of filing of an appeal, there was no amount of debt due against the borrower, therefore, there is no question of a deposit of 50% of the total amount as a pre-deposit. The aforesaid provision has been made in order to secure some amount from the bonafide borrower whose case has been dismissed by the DRT and his mortgaged property has been put to auction. In the present case, during the pendency of the SA the bank has sold the mortgaged

property, therefore, it cannot be said that the borrower was not interested in the payment of the amount, hence there is no merit in the petition and the same is liable to be dismissed.

Conclusion...

10. Section 2(ha) of the SARFAESI Act defines the word “debt” and according to which, the debt shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as “the Act of 1993” for short) and also includes an unpaid portion of the purchase price of any tangible asset and any other contract, any right, title or interest on any intangible asset or licence or assignment of such intangible asset. According to Section 2(g) of the Act of 1993, “debt” means any liability inclusive of interest that is claimed as due from any person by a bank or a financial institution. According to aforesaid both the definitions “debt” means any liability inclusive interest which is claimed as to any due from the person by the bank or financial institution.

11. Section 19 of the Act of 1993 provides that where a bank or a financial institution has to recover any **debt** from any person, it may make an application to the Tribunal within the local limits. Section 13(2) of the SARFAESI Act provides that where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13. Sub-section (8) of Section 13 provides that where any amount of dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date of publication of notice for public auction, the secured assets shall not be

transferred by way of assignment, lease or sale by the secured creditor. Sub-section (10) of Section 13 provides that where the dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the DRT having jurisdiction or a competent court for recovery of the balance amount from the borrower. Therefore, the bank or the secured creditor is entitled to file an application before the DRT or a competent court to recover the balance amount when the dues are not fully satisfied with the sale and if the dues of the secured creditor are fully satisfied, then the secured creditor or the bank cannot proceed further for any recovery.

12. In the present case, now the bank cannot proceed against the borrower for recovery of any amount of the debt because the entire amount of dues has been received by way of an auction sale. As on today, there are no dues or debt against the borrower. U/s. 13 of the SARFAESI Act and Section 17 of the Act of 1993, the bank can take steps for the recovery of any **debt**.

13. The word “debt” means total outstanding against the borrower at the time of taking measures by the bank or financial institute against the borrower, and under the second proviso of Section 18(1) of the SARFAESI Act the word is used is “**amount of debt due**”, which means, the borrower is liable to deposit 50% of the amount of **debt due** and not the entire debt. For example in a situation where during the pendency of any proceeding and before the filing of appeal before DART, the borrower deposits some amount of debt under the order of the Tribunal or *suo motu* and that amount so deposited is liable to be adjusted in the amount due or debt, then the amount of debt get reduces, hence the borrower is only liable to deposit as precondition

50% of the amount of **debt due**.

14. In a given case where while deciding on a securitization application the learned Tribunal determines any amount of debt or dues payable to the bank by the borrower which is less than the actual amount of debt or due at the time of filing of securitization application, therefore, the second proviso of section 18 clarifies that 50% of the amount of debt due from him as claimed by the secured creditor or determined by the Tribunal **whichever is less**.

Hence, the borrower is not liable to deposit 50% of the amount of **the debt** as initially claimed by the secured creditor. The amount payable at the time of appeal is called **debt due** or determined by the Tribunal and whichever is less, is to be considered for depositing 50%. In the present case, while dismissing the SA the learned DRT has held that the bank has recovered the entire amount, even more than the amount of debt i.e. Rs. 24,28,064/- by way of an auction sale. Therefore, at the time of filing an appeal, there is no amount determined by the learned DRT as a debt against the respondent/borrower and there was no debt due against the borrower because the bank had received it from the petitioner/ auction purchaser. Now the bank cannot initiate the proceedings for recovery of debt against the borrower as there is no debt.

15. Section 20 of the Act of 1993 provides an appeal to the DRAT against the order of DRT. Section 21 of the Act of 1993 provides the pre-condition of deposit of 75% of the amount of debt so due from him as determined by the DRT u/s. 19. Here in the Act of 1993 also, there is no precondition of deposit of 75% of the entire debt amount, but 75% of the amount determined by the DRT under section 19.

16. In view of the above discussion, the learned DRAT has not

committed any error of law while passing the impugned order. In the considered opinion of this Court, the appeal of the borrower has rightly been entertained without the pre-deposit of 50% of the debt due under the second proviso of section 18 of SARFAESI Act. In view of the foregoing discussion, all these petitions deserve to be and are hereby dismissed. Let a photocopy of this order be retained in each connected case.

[VIVEK RUSIA]
JUDGE.

[AMAR NATH (KESHARWANI)]
JUDGE.

Alok/-

WRIT PET. (SERVICE) No. 1617 of 2005

Case Number	<u>W.P. No.5494/2021, W.P. No.5470/2021, W.P. No.5478/2021, W.P. No.6062/2021 & W.P. No.6069/2021</u>
Parties Name	Vishal Joshi Vs. Naresh Soni and others (connected cases)
Date of Order	/04/22
Judgment delivered by	Justice Vivek Rusia
Whether approved for reporting	Yes
Name of counsel for parties	Shri Akash Rathi, learned counsel for the petitioners – auction purchasers. Shri Vivek Phadke, learned counsel for the respondents 1 to 4 – borrowers. Shri Kshitij Vyas, learned counsel for respondent – Bank of Baroda.
Law laid down	<p>As per definition the word “debt” means total outstanding against the borrower at the time of taking measures by the bank or financial institute against the borrower, but under the second proviso of section 18(1) of the SARFAESI Act the word is used is “amount of debt due”, which means, the borrower is liable to deposit 50% of the amount of debt due and not the entire debt before filing an appeal before the DART under section 18 of the SARFAESI Act.</p> <p>The second proviso of second 18 further makes it clear that 50% or 25% as the case may be, of the amount of debt due from him as claimed by the secured creditor or determined by the Tribunal whichever is less.</p> <p>Section 20 of the Act of 1993 provides an appeal to the DRAT against the order of DRT. Section 21 of the Act of 1993 provides the pre-condition of deposit of 75% of the amount of debt so due from him as determined by the DRT u/s. 19. Here in the Act of 1993 also, there is no precondition of deposit of 75% of the entire debt amount, but 75% of the</p>

- : 15 :-

W.P. Nos. 5494/2021, 5470/2021,
5478/2021, 6062/2021, 6065/2021 & 6069/2021.

	amount determined by the DRT under section 19.
Significant paragraph numbers	10 to 15

[VIVEK RUSIA]

JUDGE.

[AMAR NATH (KESHARWANI)]

JUDGE.

Alok/-