Axis Bank vs Sbs Organics Pvt. Ltd & Anr on 22 April, 2016

Equivalent citations: AIR 2016 SUPREME COURT 2024, 2016 (12) SCC 18, 2016 ACD 861 (SC), 2016 (3) ALJ 566, 2016 (3) ABR 592, 2016 (2) AKR 669, AIR 2016 SC (CIVIL) 1639, (2016) 132 REVDEC 507, (2016) 3 ICC 79, (2016) 2 JLJR 389, (2016) 3 CAL HN 17, (2016) 4 ANDHLD 35, (2016) 4 SCALE 296, (2016) 2 CLR 1174 (SC), (2016) 3 PAT LJR 35, (2016) 3 PUN LR 551, (2016) 3 ALLMR 907 (SC), (2016) 3 MAD LJ 854, (2016) 1 WLC(SC)CVL 772, (2016) 3 JCR 82 (SC), (2016) 162 ALLINDCAS 65 (SC), (2016) 116 ALL LR 865, (2016) 4 ALL WC 3470, ILR 2016 SC 810, 2016 (2) KCCR SN 151 (SC)

Bench: Rohinton Fali Nariman, Kurian Joseph

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4379 OF 2016
(Arising out of SLP (C) No. 13861/2015)

AXIS BANK ... APPELLANT (S)

VERSUS

SBS ORGANICS PRIVATE LIMITED AND
ANOTHER ... RESPONDENT (S)

J U D G M E N T

KURIAN, J.:

Leave granted.

An appeal under Section 18 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') before the Debt Recovery Appellate Tribunal (hereinafter referred to as 'DRAT') can be entertained only if the borrower deposits fifty per cent of the amount in terms of the order passed by the Debt Recovery Tribunal (hereinafter referred to as 'DRT') under Section 17 of the Act or fifty per cent of the amount due from the borrower as claimed by the secured creditor, whichever is less. The Appellate Tribunal may reduce the amount to twenty five per cent. What is the fate of such deposit on the disposal of the appeal is the question arising for consideration in this case.

Being a pure legal issue, it may not be necessary for us to refer to the factual position in detail. The first respondent, being a borrower and aggrieved by the steps taken by the secured creditor, filed Securitisation Application No. 152 of 2010 before the Debt Recovery Tribunal, Ahmedabad. Though, initially an interim relief was granted, the same was vacated by order dated 20.01.2011. Therefore, the first respondent moved the Debt Recovery Appellate Tribunal, Mumbai under Section 18 of the SARFAESI Act. In terms of the proviso under Section 18, the first respondent made a deposit of Rs.50 lakhs before the Appellate Tribunal. During the pendency of the appeal before the DRAT, Securitisation Application itself came to be finally disposed of before the Debt Recovery Tribunal at Ahmedabad, setting aside the sale. Realising that the appeal did not survive thereafter, the first respondent sought permission to withdraw the same and also for refund of the deposit of Rs. 50 lakhs. Permission was granted, however, making it subject to the disposal of the appeal. As the appeal itself was being withdrawn, the first respondent moved the High Court of Gujarat at Ahmedabad by way of Writ Petition (Special Civil Application), aggrieved by the observation that the withdrawal would be subject to the result of the appeal. The same was disposed of by order dated 05.03.2015 by the learned Single Judge, setting aside the said condition and permitting the first respondent herein to withdraw the amount unconditionally. Aggrieved, the appellant-Bank filed an intra-Court appeal. That appeal was dismissed by order dated 01.04.2015 by a Division Bench, and thus aggrieved, the Bank has come up in appeal before this Court.

Heard learned Senior Counsel Shri C. U. Singh appearing for the appellant- Bank and learned Counsel Vipul Jai appearing for the respondents. The learned Senior Counsel appearing for the appellant-Bank submits that the first respondent has no right to get back the deposit made by it as a pre-condition for entertaining the appeal. The said amount has to be set off against the dues of the first respondent, which has actually been quantified and for which, Section 13 recovery steps have been permitted. It is submitted that the appellant-Bank has to secure the entire debt by proceeding against the secured assets, and therefore, the deposit is liable to be appropriated by the Bank. Reference is also made to Section 13(10) of the SARFAESI Act and Rule 11 of The Security Interest (Enforcement) Rules, 2002, which read as follows:

> "13(10) Where 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 Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower." "11. Procedure for Recovery of shortfall of secured debt.- (1) An application for recovery of balance amount by any secured creditor pursuant to sub-section (10) of section 13 of the Act shall be presented to the Debts Recovery Tribunal in the form annexed as Appendix VI to these rules by the authorised officer or his agent or by a duly authorised legal practitioner, to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar of Debts Recovery Tribunal.
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> (2) The provisions of the Debts Recovery Tribunal (Procedure) Rules, 1993 made under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), shall mutatis mutandis apply to any application filed by under sub-rule (1).

> (3) An application under sub-rule (1) shall be accompanied with fee as provided in rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993." Learned Senior Counsel further submits that the Bank has a lien on the amount under Section 171 of The Indian Contract Act, 1872. The decision of the High Court of Gujarat in Babu Ganesh Singh Deepnarayan v. Union of India and another[1], which has been followed by the Division Bench in the impugned judgment, does not reflect the true legal position, it is further submitted.

Babu Ganesh (supra) was a case involving a challenge on the vires of the second proviso under Section 18 of the SARFAESI Act, on the mandatory pre- deposit. While upholding the provision, at paragraphs-5 and 6, it was observed that, in case the appeal is dismissed, the amounts deposited for entertaining the appeal would be refunded. To quote:

> "5. Right of appeal is a creature of the statute. Legislature can impose conditions under which it is to be exercised. Without a statutory provision creating such a right, a person aggrieved is not entitled to prefer an appeal. Legislature while granting right of appeal can impose conditions which it thinks reasonable. Such conditions merely regulate the exercise of right of appeal so that the same is not abused by a recalcitrant party, and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. Imposition of such a condition is essential, so that frivolous appeals would not be filed. Ultimately if the appeal is dismissed, the aggrieved party can always seek refund of the amount deposited and therefore, he is not in any way aggrieved. Further the Third Proviso to Section 18 (1) of the Securitization Act also enables the Appellate Tribunal, for the reasons to be recorded in writing, reduce the amount to not less than 25% of the debt referred to in the Second Proviso. We are not prepared to accept the contention that conditions imposed in the second and third proviso to Section 18(1) of the Securitization Act are onerous in nature so as to make the right of appeal illusory. Delhi High Court in R.V. Saxena's case (supra) also upheld the validity of Second Proviso to Section 18(1) of the Securitization Act with which we fully concur.
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> 6. We have also not come across any provision in the Statute, enabling the secured creditor to adjust or appropriate the amount deposited by the borrower to prefer an appeal under Section 18(1) of the Act. On dismissal of the appeal the amount deposited as a pre-condition for filing the appeal will be refunded to the appellant and therefore, he is no way prejudiced.

We therefore, find no merit in the contention raised by the petitioner that the second proviso to Section 18(1) of the Act is discriminatory or violative of Article 14 of the Constitution of India. Petitions lack merit and the same are dismissed." At this juncture, it may be necessary to refer to the scheme of the SARFAESI Act. The Act was intended to facilitate easy and faster recovery of loans advanced by banks and financial institutions. The ordinary recovery mechanism contemplated in The Code of Civil Procedure, 1908 was not considered sufficient. Thus, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was introduced for a special and speedier mechanism for

the recovery. Almost a decade of experience proved that the recovery process was not achieving the intended objects and hence, the SARFAESI Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest was enacted. The Act incorporates a system whereby direct action for recovery of secured debt may be initiated against the secured assets of a borrower after the debt is declared to be a non performing asset (NPA).

"Borrower" is defined under Section 2(1)(f), which reads as follows:

> "2(1)(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;" "Secured Asset", under Section 2(1)(zc), is defined as:
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> "2(1)(zc) "secured asset" means the property on which the security interest is created" "Section 2(1)(zd) provides for definition of "secured creditor", which reads as follows:
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> "2(1)(zd) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes—
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> (i) debenture trustee appointed by any bank or financial institution; or
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> (ii) securitisation company or reconstruction company, whether acting as such or managing a trust set up by such securitisation company or reconstruction company for the securitisation or reconstruction, as the case may be; or any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;" Section 2(1)(ze) defines "secured debt" to mean "a debt which is secured by any security interest".

"Security interest" is defined under Section 2(1)(zf):

> "(zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;" The mechanism for enforcement of security interest is contemplated under Section 13 of the Act. Sub- Sections (1), (2),(3),(3A) and (4) of Section 13 are relevant for the purposes of the present case and they are extracted below:
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> "13. Enforcement of security interest (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without

the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) 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 installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4). (3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A. (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt.

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt." A conspectus of the aforesaid provisions shows that under the scheme of the SARFAESI Act, a secured creditor is entitled to proceed against the borrower for the purpose of recovering his secured debt by taking action against the secured assets, in case the borrower fails to discharge his liability in full within the period specified in the notice issued under Section 13(2) of the Act. It is the mandate of Section 13(3) of the Act that the notice issued under Section 13(2) should contain details of the amount payable by the borrower and also the secured assets intended to be enforced by the secured creditor in the event of non-payment of the dues as per Section 13(2) notice. Thus, the secured creditor is entitled to proceed only against the secured assets mentioned in the notice under Section 13(2). However, in terms of Section 13(11) of the Act, the secured creditor is also free to proceed first against the guarantors or sell the pledged assets. To quote:

"13(11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses(a) to (d) of sub-section (4) in relation to the secured assets under this Act." Section 17 of the Act provides for a right to appeal to the DRT in respect of the grievances on the measures taken by the secured creditor under Section 13 of the Act. To quote for easy reference, Section 17 of the Act:

"17. Right to appeal.-(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower. Explanation: For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1). (2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

> (3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-

section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

> Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1). (6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.
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> (7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder." Though Section 17 of the Act is titled as a 'Right to appeal', the liberty granted to the aggrieved person is to make an application to the DRT and the parties are at a liberty to lead evidence before the tribunal. And thus, it is actually a trial before the DRT on the grievances of the aggrieved persons in the respect of the measures taken by the secured creditor for recovery of dues of the borrower in proceeding against the secured assets.(See Mardia Chemicals v. Union of India[2]) The actual appeal is contemplated under Section 18 of the SARFAESI Act. The

provision 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 alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:
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> Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:
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> 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:
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> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.
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> (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder." Any person aggrieved by the order of the DRT under Section 17 of the SARFAESI Act, is entitled to prefer an appeal along with the prescribed fee within the permitted period of 30 days. For 'preferring' an appeal, a fee is prescribed, whereas for the Tribunal to 'entertain' the appeal, the aggrieved person has to make a deposit of fifty per cent of the amount of debt due from him as claimed by the secured creditors or determined by the DRT, whichever is less. This amount can, at the discretion of the Tribunal, in appropriate cases, for recorded reasons, be reduced to twenty- five per cent of the debt.

This Court, in Lakshmi Rattan Enginerring Works Limited v. Assistant Commissioner Sales Tax, Kanpur and Another[3], had the occasion to consider the meaning of the expression 'entertain' in the context of a similar provision in the Uttar Pradesh Sales Tax Act,1948 where it was held that in such context, the expression has the meaning of "admitting to consideration". The relevant discussion is available at paragraphs - 9 and 10:

> "9. The word 'entertain' is explained by a Divisional Bench of the Allahabad High Court as denoting the point of time at which an application to set aside the sale is heard by the court. The expression 'entertain', it is stated, does not mean the same thing as the filing of the application or admission of the application by the court. A similar view was again taken in Dhoom Chand Jain v. Chamanlal Gupta & Anr. AIR 1962 All. 543, in which the learned Chief Justice Desai and Mr. Justice Dwivedi gave the same meaning to the expression 'entertain'. It is observed by Dwivedi J. that the

word 'entertain' in its application bears the meaning 'admitting to consideration'. and therefore when the court cannot refuse to take an application which is backed by deposit or security, it cannot refuse judicially to consider it. In a single bench decision of the same court reported in Bawan Ram & Anr. v. Kuni Beharilal A.I.R. 1961 All. 42, one of us (Bhargava, J.) had to consider the same rule. There the deposit had not been made within the period of limitation and the question had arisen whether the court could entertain the application or not. It was decided that the application could not be entertained because proviso (b) debarred the court from entertaining an objection unless the requirement of depositing the amount or furnishing security was complied with within the time prescribed. In that case of the word 'entertain' is not interpreted but it is held that the court cannot proceed to consider the application in the absence of deposit made within the time allowed by law. This case turned on the fact that the deposit was made out of time. In yet another case of the Allahabad High Court reported in Haji Rahim Bux & Sons and Ors. v. Firm Samiullah & Sons A.I.R. 1963 All. 326, a division bench consisting of Chief Justice Desai and Mr. Justice S. D. Singh interpreted the words of O. 21, r. 90, by saying that the word 'entertain' meant not 'receive' or 'accept' but proceed to consider on merits' or 'adjudicate upon'.

10. In our opinion these cases have taken a correct view of the word 'entertain' which according to dictionary also means 'admit to consideration'. It would therefore appear that the direction to the court in the proviso to s. 9 is that the court shall not proceed to admit to consideration an appeal which is not accompanied by satisfactory proof of the payment of the admitted tax. This will be when the case is taken up by the court for the first time. In the decision on which the Assistant Commissioner relied, the learned Chief Justice (Desai C.J.) holds that the words 'accompanied by' showed that something tangible had to accompany the memorandum of appeal. If the memorandum of appeal had to be accompanied by satisfactory proof, it had to be in the shape of something tangible, because no intangible thing can accompany a document like the memorandum of appeal. In our opinion, making 'an appeal' the equivalent of the memorandum of appeal is not sound. Even under O. 41 of the Code of Civil Procedure, the expression "appeal" and "memorandum of appeal" are used to distinct two distinct things. In Wharton's Law Lexicon, the word "appeal" is defined as the judicial examination of the decision by a higher Court of the decision of an inferior court. The appeal is the judicial examination; the memorandum of appeal contains the grounds on which the judicial examination is invited. For purposes of limitation and for purposes of the rules of the Court it is required that a written memorandum of appeal shall be filed.

When the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax." We are also conscious of the fact that such a pre-condition is present in several statutes while providing for statutory appeals, like The Income-Tax Act, 1961, The Central Excise Act, 1944, The Consumer Protection Act, 1986, The Motor Vehicles Act, 1988, etc. However, unlike those statutes, the purpose of the SARFAESI Act is different, it is meant only for speedy

recovery of the dues, and the scheme under Section 13(4) of the Act, permits the secured creditor to proceed only against the secured assets. Of course, the secured creditor is free to proceed against the guarantors and the pledged assets, notwithstanding the steps under Section 13(4) and without first exhausting the recovery as against secured assets referred to in the notice under Section 13(2). But such guarantor, if aggrieved, is not entitled to approach DRT under Section 17. That right is restricted only to persons aggrieved by steps under Section 13(4) proceeding for recovery against the secured assets.

The Appeal under Section 18 of the Act is permissible only against the order passed by the DRT under Section 17 of the Act. Under Section 17, the scope of enquiry is limited to the steps taken under Section 13(4) against the secured assets. The partial deposit before the DRAT as a pre-condition for considering the appeal on merits in terms of Section 18 of the Act, is not a secured asset. It is not a secured debt either, since the borrower or the aggrieved person has not created any security interest on such pre- deposit in favour of the secured creditor. If that be so, on disposal of the appeal, either on merits or on withdrawal, or on being rendered infructuous, in case, the appellant makes a prayer for refund of the pre- deposit, the same has to be allowed and the pre-deposit has to be returned to the appellant, unless the Appellate Tribunal, on the request of the secured creditor but with the consent of the depositors, had already appropriated the pre-deposit towards the liability of the borrower, or with the consent, had adjusted the amount towards the dues, or if there be any attachment on the pre-deposit in any proceedings under Section 13(10) of the Act read with Rule 11 of The Security Interest (Enforcement) Rules, 2002, or if there be any attachment in any other proceedings known to law. We are also unable to agree with the contention that the Bank has a lien on the pre-deposit made under Section 18 of the SARFAESI Act in terms of Section 171 of The Indian Contract Act, 1872. Section 171 of The Indian Contract Act, 1872 on general lien, is in a different context:

> "171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.—Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect." Section 171 of The Indian Contract Act, 1872 provides for retention of the goods bailed to the bank by way of security for the general balance of account. The pre-deposit made by a borrower for the purpose of entertaining the appeal under Section 18 of the Act is not with the bank but with the Tribunal. It is not a bailment with the bank as provided under Section 148 of The Indian Contract Act, 1872. Conceptually, it should be an argument available to the depositor, since the goods bailed are to be returned or otherwise disposed of, after the purpose is accomplished as per the directions of the bailor.
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> In the case before us, the first respondent had in fact sought withdrawal of the appeal, since the appellant had already proceeded against the secured assets by the time the appeal came up for consideration on merits. There is neither any order of appropriation during the pendency of the appeal nor any attachment on the

pre-deposit. Therefore, the deposit made by the first respondent is liable to be returned to the first respondent. Though for different reasons as well, we endorse the view taken by the High Court. Thus, there is no merit in the appeal. It is accordingly dismissed. We make it clear that the dismissal of the appeal is without prejudice to the liberty available to the appellant to take appropriate steps under Section 13(10) of the SARFAESI Act read with Rule 11 of the Security Interest (Enforcement) Rules, 2002.

There shall be no order as to costs.

.....J. (KURIAN JOSEPH) .....J. (ROHINTON FALI NARIMAN) New Delhi;

April 22, 2016.

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[1] AIR 2009 Guj. 98
[2] (2004) 4 SCC 311
[3] AIR 1968 SC 488

REPORTABLE
