

STATE BANK OF PATIALA

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v.

MUKESH JAIN & ANR.

(Civil Appeal No. 210 of 2007)

NOVEMBER 08, 2016

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[ANIL R. DAVE AND L. NAGESWARA RAO, JJ.]

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – ss. 13(4), 17 and 34 – Suit against proceedings initiated u/s. 13(4) – Involving debt less than Rs. 10 lakhs – Whether the suit is not maintainable in view of bar u/s. 34 or is it maintainable in view of s. 1(4) of DRT Act which debars the jurisdiction of the Tribunal in respect of debts below Rs. 10 lakhs – Held: The jurisdiction of civil court is barred in respect of action taken under the SARFAESI Act and the remedy available is before the Tribunal under DRT Act – As per s. 1(4) of DRT Act, provisions of DRT Act would not apply where the amount of debt is less than Rs. 10 lakhs – But the aggrieved debtor cannot be left without any remedy – Therefore the provision u/s. 1(4) of DRT Act can be interpreted in such a manner which would not adversely affect legal remedy to a debtor – Bar u/s. 1(4) can be interpreted as limited to the original jurisdiction of the Tribunal – Tribunal will have the jurisdiction to entertain the case in respect of proceedings under the Act (where the amount involved is less than Rs. 10 lakhs) in exercise of its appellate jurisdiction u/s. 17 – Recovery of Debts Due to Banks and Financial Institutions Act, 1993 – s. 1(4).

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Allowing the appeal, the Court

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HELD: 1 Upon perusal of Section 34 of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002, (SARFAESI Act), it is very clear that no Civil Court is having jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the appellate Tribunal is empowered by or under the SARFAESI Act to determine the dispute. Further, the Civil Court has no right to issue any injunction in pursuance of any action taken under the SARFAESI Act or under the provisions of the

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- A Recovery of Debts Due to Banks and financial Institutions Act, 1993 (DRT Act). In view of a specific bar, no Civil Court can entertain any suit wherein the proceedings initiated under Section 13 of the SARFAESI Act are challenged. SARFAESI Act had been enacted in 2002, whereas the DRT Act had been enacted in 1993. The legislature is presumed to be aware of the fact that the
- B Tribunal constituted under the DRT Act would not have any jurisdiction to entertain any matter, wherein the subject matter of the suit is less than Rs.10 lakh. In the aforesaid circumstances, one will have to make an effort to harmonize both the statutory provisions. [Paras 15, 16 and 17][433-D-G]

- C 2.1 In normal circumstances, there cannot be any action of any authority which cannot be challenged before a Civil Court unless there is a statutory bar with regard to challenging such an action. Section 34 specifically provides the bar of jurisdiction and therefore, the order passed under Section 13 of the SARFAESI
- D Act could not have been challenged by respondent No. 1-debtor before any Civil Court. In the aforesaid circumstances, the only remedy available to respondent No.1-debtor can be to approach the Tribunal under the provisions of the DRT Act read with the provisions of the SARFAESI Act. But, as per Section 1(4) of the DRT Act, provisions of the DRT Act would not apply where the
- E amount of debt is less than Rs.10 lakh. The aggrieved debtor can never be without any remedy and the legislature would normally not leave a person without any remedy when a harsh action against him is initiated under the provisions of the SARFAESI Act. Therefore, the provision of Section 1(4) of the
- F DRT Act must be read in a manner which would not adversely affect a debtor, who wants to have some remedy against an action initiated under the provisions of Section 13 of the Act. [Paras 18, 19, 20 and 24][434-A-D; 435-B-C]

- G *Mardia Chemicals Ltd. and Ors. v. Union of India and Ors.* 2004 (4) SCC 311; 2004 (3) SCR 982 – relied on.

- 2.2 So, when the jurisdiction of the Tribunal has been referred to in Section 1(4) of the DRT Act, which limits the jurisdiction of the Tribunal to Rs.10 lakh, *prima facie*, the intention
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of the legislature is to limit the original jurisdiction of the Tribunal. Thus, the Tribunal would be exercising its appellate jurisdiction u/s. 17 of the SARFAESI Act when the action initiated under the provisions of Section 13 of the Act is challenged before the Tribunal. Section 17 specifically provides a right to the aggrieved debtor to challenge the validity of an action initiated under Section 13(4) of the SARFAESI Act before the Tribunal. Moreover, the SARFAESI Act was enacted in 2002 and the legislature is presumed to have knowledge about the provisions of Section 1(4) of the DRT Act. So harmonious reading of both the aforesaid Sections would not be contrary to any of the legal provisions. [Paras 21, 23 and 25][434-E, G; 435-A, C-D]

3. Application submitted by the appellant-bank under Order VII Rule 11 of the CPC should have been granted by the trial Court as according to Section 34 of the SARFAESI Act, a civil court has no jurisdiction to entertain any appeal arising under the SARFAESI Act. The Debt Recovery Tribunal constituted under the DRT Act has jurisdiction to entertain an appeal as per Section 17 of the SARFAESI Act even if the amount involved is less than Rs.10 lakh. But, the said appellate jurisdiction need not be misunderstood with the original jurisdiction of the Tribunal. [Paras 26 and 27][435-E-F]

Case Law Reference

2004 (3) SCR 982 relied on Paras 10, 24

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 210 of 2007.

From the Judgment and Order dated 08.04.2005 of the High Court of Delhi at New Delhi in Revision Petition No. 242 of 2004.

Vishnu Mehra, (For B. K. Satija), Adv. for the Appellant.

The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Being aggrieved by the judgment dated 8th April, 2005 delivered in Civil Revision Petition No.242 of 2004 by the High Court of Delhi, this appeal has been filed by the appellant, whose application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 had been rejected by the trial Court and being aggrieved by the

A order of rejection dated 9th February, 2004, the aforesaid Civil Revision Petition was filed before the High Court, but the said Civil Revision Petition was also rejected by the impugned order and therefore, this appeal has been filed.

B 2. The facts giving rise to the present litigation, in a nutshell, are as under:

C The appellant is a nationalized bank which had lent Rs.8,00,000/- (Rupees eight lakh) to respondent no.1 by way of a term loan on certain conditions and so as to secure the said debt, respondent no.1 debtor had mortgaged his immovable property forming part of premises bearing no.C-8/298, Yamuna Vihar, Delhi. As respondent no.1 committed default in re-payment of the said loan, the appellant initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act'). When notice under Section 13(2) of the Act had been issued and further proceedings were sought to be initiated by the appellant against respondent no.1, the said proceedings had been challenged by respondent no.1 by filing Civil Suit No.4 of 2003 in the Court of Civil Judge, Delhi.

E 3. In the said suit, the appellant filed an application under Order VII Rule 11 of the CPC contending that the Court had no jurisdiction to entertain the suit in view of the provisions of Section 34 read with Section 13(2) of the Act, which prohibits a Civil Court from dealing with the matters arising under the provisions of the Act. After considering the averments made in the application as well as the reply given by respondent no.1 and upon hearing the concerned counsel, the said application had been rejected by the trial Court by an order dated 9th February, 2004.

G 4. Being aggrieved by the rejection of the said application, the appellant filed Civil Revision Petition No.242 of 2004 in the High Court of Delhi. The said petition was also rejected by the impugned judgment dated 8th April, 2005 and being aggrieved by the said judgment, the present appeal has been filed by the appellant.

H 5. The reason for which the application filed under Order VII Rule 11 of the CPC had been rejected by the trial Court was that the suit was maintainable in view of the fact that the subject matter of the suit i.e. the amount which was sought to be recovered by the appellant from respondent no.1 (original plaintiff) was less than Rs.10,00,000/- (Rupees

Ten lakh) and according to the provisions of Section 1(4) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the DRT Act'), the provisions of the DRT Act would not apply, where the amount of debt due to any bank or financial institution is less than Rs.10 lakh and therefore, it was not open to the Debt Recovery Tribunal (hereinafter referred to as "the Tribunal") to entertain the matter as the amount claimed in the suit was less than Rs.10 lakh.

6. In the aforesaid circumstances, the trial Court was of the view that as the DRT Act had no jurisdiction to entertain an appeal against the order passed under the provisions of the Act, a civil suit was maintainable and therefore, the application made under Order VII Rule 11 of the CPC had been rejected by the trial Court. The High Court confirmed the said view of the trial Court.

7. The learned counsel appearing for the appellant, challenging the validity of the impugned judgment, submitted that the view expressed by the High Court confirming rejection of the application under Order VII Rule 11 is not correct because the Civil Court has no jurisdiction to entertain any proceedings under the Act as per the provisions of Section 34 of the Act. Section 34 of the Act expressly bars the jurisdiction of the Civil Court from dealing with any matter which arises under the Act.

8. The learned counsel submitted that the trial Court as well as the High Court were not correct while coming to the conclusion that the Tribunal had no jurisdiction to entertain an appeal against the order passed under the Act in pursuance of the provisions of Section 1(4) of the DRT Act.

9. He also submitted that the Act was enacted in 2002, whereas the DRT Act was enacted in 1993. As the Act was enacted later in point of time, provisions of Section 34 of the Act would prevail and therefore, no proceedings of any type arising under the Act can be entertained by a Civil Court. He, therefore, submitted that the application filed by the appellant before the trial Court under Order VII Rule 11 should have been granted by the trial Court.

10. So as to substantiate his submission, the learned counsel relied upon a judgment delivered in the case of Mardia Chemicals Ltd. and others v. Union of India and others 2004(4) SCC 311. For the aforesaid reasons he submitted that the appeal deserved to be allowed and the impugned judgment should be set aside so that the Civil Court

- A can be restrained from proceeding further with the suit on the ground of lack of jurisdiction.

11. Though served, nobody appeared for the respondents.

- B 12. We have heard the learned counsel at length and also considered the relevant provisions of law referred to and the judgment cited by him.

- C 13. The issue involved in the appeal is whether, in the instant case, the suit was maintainable against the proceedings initiated under the provisions of the Act. The application filed by the appellant under Order VII Rule 11 of the CPC was rejected mainly for the reason that the Tribunal had no jurisdiction to entertain the proceedings under the provisions of Section 1(4) of the DRT Act as the value of the suit was less than Rs.10 lakh and therefore, the Civil Suit was the only remedy available to the respondents (original plaintiffs).

- D 14. It would be beneficial to consider the relevant provisions of the Act referred to hereinabove:

- E “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 authorized officer under this Chapter, [may make an application along with 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 measures had been taken:

- F Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

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- G “34. Civil Court not to have jurisdiction.- No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be

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taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”

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Section 1(4) of the DRT Act reads as under:

“1. Short title, extent, commencement and application. -

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(4) The provisions of this Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify.”

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15. Upon perusal of Section 34 of the Act, it is very clear that no Civil Court is having jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the appellate Tribunal is empowered by or under the Act to determine the dispute. Further, the Civil Court has no right to issue any injunction in pursuance of any action taken under the Act or under the provisions of the DRT Act.

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16. In view of a specific bar, no Civil Court can entertain any suit wherein the proceedings initiated under Section 13 of the Act are challenged. The Act had been enacted in 2002, whereas the DRT Act had been enacted in 1993. The legislature is presumed to be aware of the fact that the Tribunal constituted under the DRT Act would not have any jurisdiction to entertain any matter, wherein the subject matter of the suit is less than Rs.10 lakh.

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17. In the aforesaid circumstances, one will have to make an effort to harmonize both the statutory provisions. According to Section 17 of the Act, any person who is aggrieved by any of the actions taken under Section 13 of the Act can approach the Tribunal under the provisions of the DRT Act.

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- A 18. In normal circumstances, there cannot be any action of any authority which cannot be challenged before a Civil Court unless there is a statutory bar with regard to challenging such an action. Section 34 specifically provides the bar of jurisdiction and therefore, the order passed under Section 13 of the Act could not have been challenged by respondent no.1 debtor before any Civil Court.
- B 19. In the aforesaid circumstances, the only remedy available to respondent no.1 debtor can be to approach the Tribunal under the provisions of the DRT Act read with the provisions of the Act. But, one would feel that as per Section 1(4) of the DRT Act, provisions of the DRT Act would not apply where the amount of debt is less than Rs.10 lakh.
- C 20. The aforesaid provision of Section 1(4) of the DRT Act must be read in a manner which would not adversely affect a debtor, who wants to have some remedy against an action initiated under the provisions of Section 13 of the Act.
- D 21. The DRT Act mainly pertains to institution of proceedings by a bank for recovery of its debt when the debt is not less than Rs.10 lakh. If the debt is less than Rs.10 lakh, no suit can be filed by the creditor bank in the Tribunal under the provisions of the DRT Act. So, when the jurisdiction of the Tribunal has been referred to in Section 1(4) of the DRT Act, which limits the jurisdiction of the Tribunal to Rs.10 lakh,
- E *prima facie*, the intention of the legislature is to limit the original jurisdiction of the Tribunal. If any claim is to be made before the Tribunal, the amount must be more than Rs.10 lakh and if the amount is less than Rs.10 lakh, the creditor bank will have to file a suit in a Civil Court. So,
- F one can safely interpret the provisions of Section 1(4) of the DRT Act to the effect that it deals with original jurisdiction of the Tribunal under the provisions of the DRT Act.
- G 22. In the instant case, we are concerned with the challenge to the proceedings initiated under Section 13 of the Act. There is a specific provision in the Act to the effect that the proceedings initiated under the Act cannot be challenged before a Civil Court because the Civil Court has no jurisdiction to entertain any matter arising under the Act and in that event, the concerned debtor has to approach the Tribunal under the provisions of Section 17 of the Act.
- H 23. Thus, the Tribunal would be exercising its appellate jurisdiction

when the action initiated under the provisions of Section 13 of the Act is challenged before the Tribunal. There is a difference between the Tribunal's original jurisdiction under the provisions of the DRT Act and the appellate jurisdiction under the Act. A

24. The issue with regard to availability of a forum for challenging the action under the provisions of the Act had been dealt with by this Court in the case of Mardia Chemicals Ltd. (supra). This Court, in the said case, unequivocally held that the aggrieved debtor can never be without any remedy and we firmly believe that the legislature would normally not leave a person without any remedy when a harsh action against him is initiated under the provisions of the Act. B

25. So as to know the appellate jurisdiction of the Tribunal, one has to look at the provisions of the Act as Section 17 of the Act specifically provides a right to the aggrieved debtor to challenge the validity of an action initiated under Section 13(4) of the Act before the Tribunal. Moreover, the Act was enacted in 2002 and the legislature is presumed to have knowledge about the provisions of Section 1(4) of the DRT Act. So harmonious reading of both the aforesaid Sections would not be contrary to any of the legal provisions. C D

26. For the aforesaid reasons, we are of the view that the application submitted by the appellant bank under Order VII Rule 11 of the CPC should have been granted by the trial Court as, according to Section 34 of the Act, a Civil Court has no jurisdiction to entertain any appeal arising under the Act. E

27. Thus, we hold that the Debt Recovery Tribunal constituted under the DRT Act has jurisdiction to entertain an appeal as per Section 17 of the Act even if the amount involved is less than Rs.10 lakh. But, the said appellate jurisdiction need not be misunderstood with the original jurisdiction of the Tribunal. F

28. For the aforesaid reasons, the impugned judgment as well as the order rejecting the application filed under Order VII Rule 11 are set aside. The appeal is allowed with no order as to costs. G