(2012) 09 DEL CK 0183

In the Delhi High Court

Case No : Writ Petition (C) No. 3957 of 2012

Amish Jain and Another APPELLANT

Vs

ICICI Bank Ltd. RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 14, 16, 20, 21
Hindu Marriage Act, 1955 — Section 21
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 13(9), 14

Citation : (2012) 8 AD 497 : AIR 2013 Delhi 172 : (2013) 112 CLA 351 : (2012) 6 CTC 369 : (2012) 192 DLT 701 : (2012) 132 DRJ 69 : (2012) 6 ILR Delhi 377 : (2013) 2 RCR(Civil) 252

Hon'ble Judges : Rajiv Sahai Endlaw, J;Kailash Gambhir, J

Bench : Division Bench

Advocate : Rajiv Bansal, Amicus Curiae with Mr. Saurav Suman Sinha and Mr. Rahul Bhandari and the Petitioner No. 1 in Person, for the Appellant; Punit K. Bhalla and Ms. Chetna Bhalla, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—A doubt having arisen as to the correctness of the judgment of the Division Bench of this Court in Smt. Indira Devi and Another Vs. Debt Recovery Appellate Tribunal and Others, insofar as holding that an appeal u/s 17 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) can be filed not only in the Debt Recovery Tribunal (DRT) having jurisdiction where the mortgaged property is situated but also in DRT having jurisdiction where the branch of the Bank / Financial Institution which has disbursed the loan is situated as well as in all DRTs which would have jurisdiction in terms of Section 19(1) of The Recoveries of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act) read with Rule 6 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (DRT Rules), this Full Bench was constituted. This petition was filed impugning the order dated 7th June, 2012 of DRT-III, Delhi holding that it has no jurisdiction to entertain the appeal preferred by the petitioners u/s 17 of the SARFAESI Act for the reason of, i) the petitioners being residents of Meerut; ii) the loan in their favour having been sanctioned by the branch at Meerut of the respondent ICICI Bank Limited and being re-payable at Meerut; and, iii) the mortgaged property being also situated at Meerut. It was further held that merely because the notice u/s 13(2) of the SARFAESI Act had been issued by the Jhandewalan, New Delhi Branch of the respondent Bank, would not vest the DRT Delhi with a jurisdiction to entertain the appeal at Delhi. Yet another reason given is, that even if action u/s 13(4) or Section 14 of the SARFAESI Act is to be taken by the Bank, the Bank will have to approach the concerned District Magistrate at Meerut for appointment of Receiver, for taking possession of the property.

2. It is the contention of the petitioners in the writ petition, that DRT, Delhi has jurisdiction by virtue of the provisions of Section 19(1)(c) of the DRT Act read with Rule 6(d) of the DRT Rules, to entertain and decide such an appeal. Reliance is placed on State of Rajasthan and Others Vs. Swaika Properties and Another, and Smt. Indira Devi and Another Vs. Debt Recovery Appellate Tribunal and Others, It is further pleaded, that the Bank cannot sell the mortgaged property of the petitioners by violating the procedure laid down in SARFAESI Act and the Rules framed thereunder; that the notices under Sections 13(2) and 13(4) of the SARFAESI Act are illegal and the Bank cannot take possession of or sell the property in pursuance thereto. It is yet further pleaded that since the challenge in the appeal preferred by the petitioners before DRT, Delhi is to the validity of the notices and which notices have been issued by the branch of the respondent Bank at Delhi within the jurisdiction of DRT, Delhi, DRT, Delhi would have jurisdiction. The petition contains numerous averments pointing out the defects in notices u/s 13(2) and 13(4) of the SARFAESI Act, but which it is not necessary to discuss.

3. Finding the question raised to be one purely of law, notwithstanding the availability of the remedy of appeal to Debt Recovery Appellate Tribunal (DRAT), notice of the petition was issued to the respondent Bank. The counsel for the Bank appeared on 19th July, 2012 and though supporting the reasoning in the impugned order, contended that it is rather in the interest of the Bank also if the jurisdiction of DRT Delhi is permitted to be invoked; it was submitted that on the same parity, the Bank should also have the freedom to approach the Chief Metropolitan Magistrate (CMM) at Delhi for assistance for taking possession of the mortgaged property, even if situated outside Delhi. Since the petitioner No. 1 was appearing in person, Mr. Rajiv Bansal, Advocate was appointed as Amicus Curiae.

4. We have heard the petitioner No. 1 appearing in person, the learned Amicus Curiae and the counsel for the respondent Bank.

5. The Amicus Curiae has supported the petitioners and has contended that the appeal can be filed before the DRT having jurisdiction wherever the cause of action has accrued. It is contended that the application u/s 17(1) of the SARFAESI Act is against the measures u/s 13(4) of the SARFAESI Act taken by

the Bank / Financial Institution as a Secured Creditor or its "Authorized Officer" and thus can be filed wherever the "Authorized Officer" of the Secured Creditor i.e. the Bank or Financial Institution is situated. Attention is also invited to Section 17(7) of the SARFAESI Act providing for disposal of such appeal in accordance with the provisions of the DRT Act and the Rules made thereunder. On the basis thereof, it is argued that the jurisdiction of the DRT before which appeal u/s 17(1) of the SARFAESI Act can be filed shall be determined as per the DRT Act and the Rules made thereunder. Reference thereafter is made to Section 19(1) of the DRT Act to contend that the jurisdiction thereunder is of the DRT where the defendants or any of them resides or carries on business or where the cause of action wholly or in part arises. It is contended that since the event which triggers the appeal u/s 17(1), is the action of the Authorized Officer of the Bank / Financial Institution, the DRT within whose jurisdiction the said Authorized Officer is situated would have jurisdiction. It is thus argued that since in the present case, the Authorized Officer of the respondent Bank has issued notice to the petitioners from within the jurisdiction of Delhi, the DRT having jurisdiction over Delhi would definitely have jurisdiction to entertain the appeal. Attention is next invited to Rule 6 supra and it is highlighted that prior to amendment thereof on 21.01.2003, the same provided for the jurisdiction only of the DRT where the applicant was functioning as a Bank or Financial Institution but after amendment, the same has been amended to provide for the jurisdiction not only of the DRT where the applicant is functioning as a Bank or Financial Institution but also of the DRTs within whose jurisdiction the defendants or any of them resides or carry on business or where the cause of action wholly or in part arises. It is contended that the said amendment dated 21.01.2003 of Rule 6 is after the SARFAESI Act came into force on 17.12.2002 and the Legislature should be deemed to have amended the Rule to provide for the jurisdiction of the DRT qua appeal u/s 17(1) of the SARFAESI Act also. Learned Amicus Curiae, besides Indira Devi (supra), has also referred to i) Transcore Vs. Union of India (UOI) and Another, ii) Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., iii) State of Rajasthan and Others Vs. Swaika Properties and Another, iv Harman Electronics (P) Ltd. and Another Vs. National Panasonic India Ltd., and Elements Coke Pvt. Ltd. Vs. UCO Bank, Attention is also invited to the definition of "defendant" in Pramanatha Aiyar''s, The Major Law Lexicon, 4th Edition 2010.

6. The counsel for the respondent Bank, though contending as aforesaid that it would be in the interest of the Bank also if they are permitted to approach, the District Magistrate / CMM, u/s 14 of the SARFAESI Act of any of the aforesaid jurisdiction, has on the question of law argued that if the aforesaid argument were to be accepted, then the Bank / Financial Institution would be entitled to create jurisdiction of any DRT by sending the notice under the SARFAESI Act therefrom.

7. It is important to highlight the context in which the question had arisen before the Division Bench in Indira Devi. The appeal u/s 17(1) of the SARFAESI Act, in that case, had been filed before the DRT within whose jurisdiction the secured

asset was situated. There it was the contention of the creditor Bank that since under Rule 6 supra (as it stood prior to the amendment) the Bank could file recovery proceedings only in the DRT within whose jurisdiction the branch of the Bank / Financial Institution which had disbursed the loan was functioning and in no other DRT, similarly the appeal u/s 17(1) of the SARFAESI Act could also be filed in that DRT only and in no other. The said contention was negated by the Division Bench observing that even the Bank under Rule 6 (as it stood after the amendment and without noticing that the argument of the Bank was predicated on the un-amended Rule) could file recovery proceedings in the DRT in which its branch, which had disbursed the loan, was situated or in the DRT where any of the defendants was residing or carrying on business or in the DRT in which the cause of action has arisen and hence even the appeal u/s 17(1) of the SARFAESI Act can be filed in any of the said DRT. It would thus be seen that before the Division Bench, it was not the contention of either of the parties that the jurisdiction should be confined only to the place where the property was situated, though notice is taken by the Division Bench that u/s 16 of the CPC, legal proceedings, subject matter whereof was a mortgaged property, could be filed only in the Court within whose territorial jurisdiction the mortgaged property was situated. It was however held that the DRT Act made a specific departure from the provision of Section 16 of CPC inasmuch as the Bank was not required to file recovery proceedings only with the DRT which had territorial jurisdiction over the mortgaged property and could file the proceedings for recovery either where the defendant resides or carries on business or where whole or part of cause of action arose including where the branch which had advanced the loan was situated, although the mortgaged property was situated elsewhere. Having held so, the Division Bench held that since there was no restriction on the Bank, u/s 19(1) of the DRT Act, to institute recovery proceedings at any one place, no such restriction could be placed on the borrower/mortgagor also. Accordingly, option of choosing territorial jurisdiction, as available to the Bank u/s 19(1) of the DRT Act, was held to be available to the borrower / mortgagor also u/s 17(1) of the SARFAESI Act. Relying on Mardia Chemicals Ltd. supra, it was also held that in an application u/s 17(1) of the SARFAESI Act, the aggrieved person has a right also to challenge the amount being claimed by the Bank / Financial Institution u/ s 13 of the SARFAESI Act. The judgment of a Single Judge of the Calcutta High Court in Elements Coke Pvt. Ltd. supra laying down that only DRT of the place where the mortgaged property is situated would have jurisdiction to decide the appeal u/s 17(1) of the SARFAESI Act was dissented from by observing that the proceedings u/s 17(1) of the SARFAESI Act though titled as "Appeal Proceedings" are "Original Jurisdiction Proceedings".

8. The reasons for which a doubt was entertained as to the correctness of the view taken in Indira Devi, are stated in para 6 of the referral order dated 26.07.2012 as under:

6. The right of appeal u/s 17(1) of SARFAESI Act is only against measures u/s 13(4) of the Act and not against a notice u/s 13(2) of the Act. A notice u/s 13(2)

of the Act cannot thus be the cause of action for an appeal u/s 17(1) of the Act, even if it be defective or invalid. The measures u/s 13(4) of the Act are inter alia of taking possession of the secured assets of the borrowers and transferring the same by way of lease, assignment or sale, for realizing the said secured assets or taking over management of the business or of appointment of any person to manage the secured assets etc. The manner of so taking over possession is provided in Section 14 of the SARFAESI Act which requires the secured creditor to approach the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured assets may be situated. Thus the secured creditor i.e., the Bank has no choice but to approach the Chief Metropolitan Magistrate or District Magistrate having jurisdiction over the area where the secured asset is situated. Once the grievance is against the action of so taking over the assets with the assistance of the Chief Metropolitan Magistrate or the District Magistrate, it prima facie appears that the jurisdiction to entertain an appeal against such action also will be of the DRT having jurisdiction over the area where the secured asset is situated and over the area whose Chief Metropolitan Magistrate or District Magistrate has been approached for so taking over the secured assets. It may be noticed that the DRT, in such appeal u/s 17(3) of the SARFAESI Act, if finds that the measures taken u/s 13(4) are not in accordance with SARFAESI Act and the Rules made thereunder, is authorized to declare such measures to be invalid and to restore the possession of the secured assets to the borrowers. We have wondered whether the DRT not having jurisdiction over the Chief Metropolitan Magistrate/District Magistrate would be entitled to direct such restoration of possession. It is not as if DRT exercises jurisdiction over the entire country. Section 3 of the DRT Act providing for establishment of DRTs, in sub-Section (2) thereof requires the notification establishing a DRT to specify the areas within which the said DRT shall exercise jurisdiction for entertaining and deciding an application filed before it. From the same it appears that DRT at Delhi is unlikely to have jurisdiction over the area of Meerut for it to declare any action of Chief Metropolitan Magistrate / District Magistrate of Meerut as invalid if finds in favour of the petitioners or to direct the secured assets to be restored etc. We are further prima facie of the view that the principle applicable to a suit for enforcement of mortgage i.e., of it being maintainable only in the Courts within whose jurisdiction the mortgaged property is situated, would also apply. The provisions of Section 19 of the DRT Act and of Rule 6 of the DRT Rules are intended for applications before the DRT for recovery of money and which can be filed in the DRT within whose jurisdiction any part of the cause of action has accrued and would have no application to an action for enforcement of security interest under the SARFAESI Act.

9. We have considered the matter. The reason which prevailed with the Division Bench in Indira Devi, to hold that an appeal u/s 17(1) of the SARFAESI Act can be filed in any of the DRTs where the Bank u/s 19(1) of the DRT Act could initiate proceedings, was predicated on the DRT Act making a departure from Section 16 of the CPC in enabling the Bank to initiate proceedings not necessarily within the

jurisdiction of the DRT where the mortgaged property is situated but in any of the DRTs. The Division Bench was also guided by the consideration of giving the same opportunity of choosing jurisdiction to the borrower, as available to the Bank.

10. We are however of the opinion that the Division Bench fell in error in assuming the debt / money recovery proceedings to be initiated by the Bank under the DRT Act as equivalent to legal proceedings subject whereof is a mortgaged property, within the meaning of Section 16 of the CPC. The proceedings referred to in Section 19(1) of the DRT Act are merely proceedings for recovery of debt and not for enforcement of mortgage. Even prior to coming into force of the DRT Act, the Bank, even if a mortgagee, was not mandatorily required to enforce the mortgage and which u/s 16 of the CPC could be done only within the territorial jurisdiction of the Court where the mortgaged property was situated and the Bank was free to institute a suit, only for recovery of money and territorial jurisdiction whereof was governed by Section 20 of CPC, containing the same principles as in Section 19(1) of the DRT Act. We are therefore unable to accept that any departure qua territorial jurisdiction has been made in the DRT Act, as has been observed by the Division Bench in Indira Devi.

11. The proceedings in the DRT for recovery of debt, culminate in a "Certificate of Recovery" which is equivalent to a Money Decree of a Civil Court. Just like a Money Decree of a Civil Court, can be transferred for execution to another Court where the assets of the Judgment Debtor from which recovery is to be effected are situated, u/s 19(23) of the DRT Act also, where the property from which recoveries are to be effected, is situated outside the local limits of the jurisdiction of the DRT which has issued the Certificate, the DRT is required to send a copy of the Certificate for execution to the DRT within whose jurisdiction the property is situated. Section 25 provides for modes of recovery of the debts specified in the Certificate, including by attachment and sale of property. The recovery proceedings under the DRT Act are thus equivalent to a suit for recovery of money before a Civil Court and cannot be said to be for enforcement of mortgage. Thus it cannot be said that the DRT Act has made any departure from Section 16 of the CPC.

12. We may however notice that in State Bank of India Vs. Samneel Engineering Company and Others, an argument was raised that a proceeding u/s 19(1) of the DRT Act for recovery of debt did not include a debt which was secured by a mortgage. This contention was negatived by this Court holding a mortgage debt to be included in "debt" within the meaning of Section 2(g) of the DRT Act. It was further held that the modes of recovery prescribed in the DRT Act are inclusive of the rights of the Bank as a mortgagee and the rights under Order 34, CPC of the mortgagor, have been taken away by the DRT Act. This Court explained that the DRT Act had made the recovery of debt as distinct from enforcement of mortgage, a cause of action and for this reason the situs of mortgaged property, relevant u/s 16 of the CPC, had become irrelevant. We

respectfully concur. Though this judgment of a Single Judge of this Court was cited before the Division Bench in Indira Devi but was held to be not applicable. The Division Bench did not notice that this Court in Samneel Engineering Co. has held, the DRT Act to be not in departure from Section 16 of the CPC, and the situs of the mortgaged property being irrelevant to the proceedings u/s 19(1) of the DRT Act which are for recovery of debt. We find the Debt Recovery Appellate Tribunal (DRAT) also in Bank of Baroda Vs. Teg''s Musrado Ltd. (2006) 129 CompCas 275 (NULL) to have held that the relief sought u/s 19(1) of the Act is for a money decree and even if consequent reliefs are also sought, that cannot be a ground to construe the proceeding as for enforcement of mortgage. We further find Samneel Engineering Co. to have been followed in State Bank of India and Others Vs. Gujarmal Modi Hospital and Research Centre for Medical Sciences, as well as in Hindusthan Laminators Pvt. Ltd. and Others Vs. Central Bank of India,

13. For enforcement of the mortgage, the SARFAESI Act was enacted. While the Preamble of the DRT Act describes the same as to provide for establishment of Tribunals for expeditious adjudication and recovery of debts due to the Banks and Financial Institutions, the Preamble to the SARFAESI Act describes the same as an act inter alia for enforcement of security interest. The Supreme Court in Transcore supra, on analysis of provisions of DRT Act in juxtaposition to SARFAESI Act, held the DRT Act to be providing for adjudication of disputes, as far as debt due is concerned, whether it be a secured or an unsecured debt.

14. We may mention, that while in the DRT Act, there is no mention of mortgage and even an application u/s 19(1) is required to only specify the properties required to be attached and which may not necessarily be mortgaged property, Section 2(l) of the SARFAESI Act while defining "financial asset" expressly includes "mortgage" and Sections 2(zc), 2(ze) and 2(zf) define the "secured asset", "secured debt" and "secured interest" as meaning the property on which security interest is created and rights under a mortgage. Section 13 of the SARFAESI Act provides for enforcement of such mortgage without the intervention of the Court or the DRT.

15. We are therefore of the view that the question of territorial jurisdiction for the remedy of appeal provided in Section 17(1) of the SARFAESI Act has to be construed in the said light and not in the light of the DRT Act making a departure from the principle enshrined in Section 16 of the CPC.

16. Section 17(1) of the SARFAESI Act provides for filing of the appeal / application thereunder not to any DRT but only to the "DRT having jurisdiction in the matter". However, such jurisdiction is not specified. To determine which DRT will have jurisdiction in the matter, we have to find as to what is to be the matter for adjudication in a proceeding u/s 17(1) of the SARFAESI Act and what relief the DRT is empowered to grant in the said proceeding. The scope of a proceeding u/s 17(1) of the SARFAESI Act is described in Section 17(2) of the SARFAESI Act as of "whether any of the measures referred to in Sub-Section (4) of Section 13

of the SARFAESI Act taken by the secured creditor for enforcement of security are in accordance with the provisions of the SARFAESI Act and the Rules made thereunder". The measures which the Bank / Financial Institution is empowered to take u/s 13(4) of the SARFAESI Act are of taking over possession or management as aforesaid of the secured asset. Of course, the action of so taking over possession or management is to be preceded by (a) the borrower under a liability under a secured agreement making any default in repayment of the secured debt or any installment thereof; (b) the borrower''s account in respect of such debt being classified as non-performing asset; (c) the Bank / Financial Institution requiring the borrower by notice in writing to discharge in full his liabilities within sixty days and giving details of the amount payable and the secured asset intended to be enforced in the event of non-payment; d) consideration of representation if any made by the borrower thereagainst and communication to the borrower of the reasons for non-acceptance of such representation. Though, it could well be argued that the DRT within whose jurisdiction Bank / Financial Institution to whom the borrower is indebted is situated, would also have jurisdiction to adjudicate whether the action u/s 13(4) of taking over possession / management is in accordance with the aforesaid procedure but the explanation to Section 17(1) of the SARFAESI Act clarifies that the communication of the reasons to the borrower for not accepting the representation or the likely action of the Bank / Financial Institution shall not entitle the borrower to make an application u/s 17(1) of the SARFAESI Act. Thus the cause of action for the appeal u/s 17(1) of the SARFAESI Act is the taking over of the possession / management of the secured asset and which cause of action can be said to have accrued only within the jurisdiction of the DRT where the secured asset is so situated and the possession thereof is taken over. We are thus of the view that it is the said DRT only which can be said to be having "jurisdiction in the matter" within the meaning of Section 17(1) of the Act.

17. Further, the relief to be granted by the DRT in an appeal u/s 17(1) of the SARFAESI Act, if successful, is (under Section 17(3)) of restoration of possession / management of the secured asset to the borrower and to pass such order as it may consider appropriate and necessary in relation to the recourse taken by the Banks / Financial Institution under Sub-Section (4) of Section 13 of the SARFAESI Act. This relief also, we find, the DRT within whose jurisdiction the secured asset to be so restored to the borrower is situated, to be the most competent to grant and implement. The orders which the DRT u/s 17(3) of the SARFAESI Act may be required to pass may also entail exercising jurisdiction over the CMM / DM which is approached by the Bank / Financial Institution for assistance for taking over possession / management. Notice in this regard may be taken of Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, and of United Bank of India Vs. Satyawati Tondon and Others, suggesting that appeal u/s 17(1) can be filed after the Bank has filed application u/s 14, even if possession / management has not been taken. In such a situation, DRT may be required to issue direction to the CMM / DM approached

by the Bank / Financial Institution. As already noticed in the referral order dated 26.07.2012, Section 3(2) of the DRT Act requires the notification constituting the DRT to specify the area within which the said DRT shall exercise jurisdiction. A DRT at Delhi, as in the facts of the present case, would have no jurisdiction over the DM at Meerut or for that matter over the property at Meerut. We are of the view that exercise of jurisdiction u/s 17(1) of the SARFAESI Act by DRTs of a place other than where the secured asset is situated is likely to lead to complexities and difficulties and which are best avoided. It may also be mentioned that the remedy u/s 17(1) is available not only to the borrower or mortgagor, but also to any other person aggrieved from the measures u/s 13(4). In Satyawati Tandon supra it was invoked by the guarantor. If it were to be held that more than one DRT will have jurisdiction, it may also lead to remedy u/s 17(1) against same action u/s 13(4) being invoked by different persons before different DRTs. There is no provision in the DRT Act for transfer of proceedings from one DRT to another. The Supreme Court, in Authorized Officer, Authorized Officer, Indian Overseas Bank and Another Vs. Ashok Saw Mill, has held the scope of a proceeding u/s 17(1) to be extending to scrutinizing even the steps taken by the Bank / Financial Institution subsequent to measures u/s 13(4). Such scrutiny by the DRT may entail adjudication of disputes as to preservation and protection of the secured asset (see Rule 4 of the Security Interest (Enforcement) Rules, 2002), valuation of the secured asset (Rule 5), sale thereof (Rules 6 to 8) and in the case of the borrower being a company in liquidation, distribution of sale proceeds thereof or between more than one secured creditor of the secured asset (see Section 13(9) of the SARFAESI Act). Such scrutiny by DRT of post Section 13(4) measures may yet further enlarge the number of persons interested in invoking the remedy u/s 17(1). Also, all these disputes bear closest proximity to the place where the secured asset is situated and the DRT having jurisdiction over that place would be the most suitable DRT to entertain such disputes.

18. As far as Section 17(7) of the SARFAESI Act requiring disposal of appeals u/s 17(1) of the SARFAESI Act, "as far as may be" in accordance with the provisions of the DRT Act and the Rules framed thereunder is concerned, though the learned Single Judge of this Court in Upendra Kumar Vs. Harpriya Kumar, had held that Section 21 of the Hindu Marriage Act, 1955 providing for the proceedings thereunder to be regulated "as far as may be" by the CPC, could not be read as incorporating every provision of CPC or making applicable the provisions of CPC to substantive aspects like jurisdiction but the Supreme Court in Guda Vijayalakshmi Vs. Guda Ramachandra Sekhara Sastry, took a contrary view and held that Section 21 of the Hindu Marriage Act does not make a distinction between procedural and substantive provisions of CPC and thus the provisions of CPC as partake of the character of substantive law are also by implication to apply to the proceedings under the Hindu Marriage Act and the use of the expression "as far as may be" is intended to exclude only such provisions of CPC as may be inconsistent with any of the provisions of the Hindu Marriage

Act. Applying the said law, Section 17(7) of the SARFAESI Act is to be read as providing for disposal of appeal u/s 17(1) of the SARFAESI Act in accordance with the provisions of the DRT Act and the Rules made thereunder save as otherwise provided in the SARFAESI Act.

19. The expression "as far as may be" still means "to the extent necessary and practical". Supreme Court in Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others, held that the expression "so far as may be" has always been construed to mean that those provisions may be generally followed to the extent possible but if a deviation becomes necessary to carry out the purposes of the Act in which reference to another legislation is made, it would be permissible. Similarly, in Ujagar Prints Vs. Union of India (1989) 3 SCC 488 a five Judge Bench of the Supreme Court held that the Legislature sometimes takes a shortcut and tries to reduce the length of a statute by omitting elaborate provisions where such provisions have already been enacted earlier and can be adopted for the purpose in hand. The expression "so far as may be" was held to be meaning "to the extent necessary and practical".

20. What we however find is that the DRT Act is not containing any provision for territorial jurisdiction of an appeal as u/s 17(1) of the SARFAESI Act, even if it were to be construed not as an appeal and as an original application. The jurisdictional provision u/s 19(1) of the DRT Act is only for applications by the Bank / Financial Institution for recovery of debt from any person. An application by a Bank / Financial Institution for recovery of debt can by no stretch of imagination be equated with an appeal u/s 17(1) of the SARFAESI Act. We are therefore of the view that there is no provision in the DRT Act providing for territorial jurisdiction of an appeal u/s 17(1) of the SARFAESI Act and the question of application thereof u/s 17(7) does not arise. u/s 17(7) of the SARFAESI Act only that much of the DRT Act can be said to be incorporated therein as is contained in the DRT Act and not more. Whether a particular provision of DRT Act would apply or not, would depend upon the nature and scope of proceeding under the SARFAESI Act.

21. Once it is held that an appeal u/s 17(1) of the SARFAESI Act cannot be equated with an application by the Bank / Financial Institution for recovery of debt u/s 19 of the DRT Act, the limits of territorial jurisdiction described u/s 19(1) of the DRT Act cannot be made applicable to Section 17(1) of the SARFAESI Act.

22. It would thus be seen that the provision for territorial jurisdiction u/s 19 (1) of the DRT Act is only qua the applications to be made by the Bank or Financial Institution for recovery of its debt. However, a proceeding u/s 17(1) of the SARFAESI Act is initiated not by the Bank or the Financial Institution but by a person including the borrower aggrieved from the measures taken by the Bank or Financial Institution u/s 13(4) of the SARFAESI Act. We are thus of the view that notwithstanding Section 17(7) of the SARFAESI Act providing for the

disposal of the proceedings u/s 17(1) of the SARFAESI Act in accordance with the provisions of the DRT Act and the Rules made thereunder, the same cannot make the provisions of Section 19(1) of the DRT Act applicable to proceedings u/s 17(1) of the SARFAESI Act. As aforesaid, Section 19(1) of the DRT Act is not an omnibus provision qua territorial jurisdiction. It is concerned only with providing for territorial jurisdiction for applications for recovery of debts by the Banks / Financial Institutions. The same can have no application to the appeals u/s 17(1) of the SARFAESI Act which are to be preferred, not by the Banks / Financial Institutions, but against the Banks / Financial Institutions.

23. We are further of the view that the use, in Section 17(7) of the SARFAESI Act, of the words "as far as may be" and "save as otherwise provided in this Act" also exclude applicability even of the principles contained in Section 19(1) of the DRT Act to determine the territorial jurisdiction of an appeal u/s 17(1) of the SARFAESI Act. Our reasons therefor are stated herein below.

24. The provisions of Sections 14 and 17A of the SARFAESI Act clearly establish the nexus of the appeal u/s 17(1) to the place where the secured asset is situated. Section 14 of the SARFAESI Act vests the territorial jurisdiction, for filing of an application by the Bank / Financial Institution for assistance in taking over possession of the secured asset, in the Chief Metropolitan Magistrate (CMM) or the District Magistrate (DM) within whose jurisdiction the secured asset is situated. Similarly, Section 17A of the SARFAESI Act, while making a provision for appeal u/s 17(1) of the SARFAESI Act for borrowers residing in the State of Jammu & Kashmir (to which the DRT Act does not apply and where there are no DRTs), provides for filing of such appeals in the Court of District Judge in that State having jurisdiction over the borrower. If an appeal u/s 17(1) of the SARFAESI Act was maintainable in any of the DRTs as mentioned in the DRT Act and the DRT Rules or as found by the Division Bench in Indira Devi i.e. either in the DRT having jurisdiction where the Branch of the Bank / Financial Institution which has disbursed the loan is situated or in the DRT where the Bank carries on business or in the DRT where cause of action wholly or in part arises, there was no need for insertion of Section 17A of the SARFAESI Act with effect from 11.11.2004 to provide for an appeal u/s 17 of the SARFAESI Act by borrowers residing in the State of Jammu & Kashmir. Further, the jurisdiction u/s 17A of the SARFAESI Act being limited to only one DRT i.e. the DRT having jurisdiction over the borrower, is also indicative of the DRT having jurisdiction in the matter u/s 17(1) of the SARFAESI Act being only one and the multiple choice available u/s 19(1) of the DRT Act being not applicable to an appeal u/s 17(1) of the SARFAESI Act.

25. It would thus be seen that the principles of Section 16 of the CPC are reflected in the Sections 14 and 17A of the SARFAESI Act. Assistance to the Secured Creditor has not been provided of any Court but only of the Court within whose jurisdiction secured asset is situated. This is not without reason. It is only the CMM / DM within whose jurisdiction such secured asset is situated who can

render such assistance.

26. Mention at this stage may also be made of the dicta of the Supreme Court in Harshad Chiman Lal Modi Vs. DLF Universal and Another, holding that Section 16 of the CPC recognizes a well established principle that actions against res or property should be brought in the forum where such res is situated and a Court within whose territorial jurisdiction the property is not situated has no power to deal with and decide the rights or interests in such property or to give an effective judgment with respect thereto. The Supreme Court met the plea raised, of Section 21 of the CPC, by holding that when a Court has no jurisdiction owing to the property being not situated within its jurisdiction, the objection goes to the extent of making the order of that Court a nullity on the ground of want of jurisdiction and jurisdiction could not have been conferred by non traverse or consent. The importance given to territorial jurisdiction in the context of immovable property can thus be deciphered from the said judgment.

27. We are thus unable to concur with the second reasoning given by the Division Bench in Indira Devi of any need to provide parity to the borrower with the Bank, in the matter of territorial jurisdiction. Principles of parity do not apply to territorial jurisdiction. Merely because the defendant if were to sue, can sue at the place of the residence of the plaintiff, does not entitle the plaintiff to sue at the place of his residence if that place would otherwise not have territorial jurisdiction. We re-emphasize that the scope of the proceedings u/s 19(1) of the DRT Act is entirely different from a proceeding u/s 17(1) of the SARFAESI Act and no need for parity exists.

28. For all the aforesaid reasons, we set aside the judgment of the Division Bench in Indira Devi supra and hold that an appeal / application u/s 17(1) of the SARFAESI Act can be filed only before the DRT within whose jurisdiction the property / secured asset against which action is taken is situated and in no other DRT. Axiomatically, we do not find any error in the order of the DRT, Delhi impugned in this petition holding it to have no jurisdiction to entertain the appeal / application u/s 17(1) of the SARFAESI Act, the mortgaged property against which action is to be taken being situated at Meerut.

No costs.

