

(2018) 10 DEL CK 0381

In the Delhi High Court

Case No : Civil Writ Petition No.2431 Of 2018

Anup Deb And Anr

APPELLANT

Vs

Pratibha Deb And Anr

RESPONDENT

Date of Decision : 26-10-2018

Acts Referred:

Debts Recovery Tribunal (Procedures) Rule, 1993 — Rule 18
Code of Civil Procedure, 1908 — Order 38 Rule 5
Recovery of Debts due to Banks and Financial Institutions Act, 1993 — Section 19, 19(12), 19(13), 19(14), 19(15), 19(16), 19(18), 19(22), 19(25)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 17

Citation : (2018) 10 DEL CK 0381

Hon'ble Judges : Rajendra Menon, Cj;V. Kameswar Rao, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioners challenging the impugned order dated 13th March, 2018 passed by the Debt Recovery

Appellate Tribunal, New Delhi (DRAT in short) whereby the DRAT has attached the residential house of the petitioners bearing no. A-1-1752, First

Floor, Green Field, Faridabad, Haryana and various jewellery available in the shop of the petitioner no.1.

2. It is the case of the petitioners that the order came to be passed when an appeal filed by the respondent no.1 namely Pratibha Devi arising from an

order dated 20th December, 2017 passed by the DRT-III, New Delhi in SA No.111/2017 whereby the interim stay of proceedings initiated under

Section 13 of the SARFAESI Act, 2002 was rejected. It is their case that the respondent no.2 is the assignee of two loans, from M/s. DCB Bank

Limited, which loans were secured by way of mortgage of a property bearing house no.40, South City-I, Gurugram, Haryana. The said property is

under the possession of the respondent no.1 and her husband who is the son of the petitioners. The assignor Bank has also initiated recovery

proceedings against the petitioners before the DRT-III, New Delhi in Original Application No. 713/2015.

3. During the pendency of the OA, the Bank had moved an application under Section 19 (12) to (16) read with Sections 19(25) and 22 of the

Recovery of Debts due to Banks and Financial Institutions Act, 1993 read with Rule 18 of the Debts Recovery Tribunal (Procedures) Rule 1993 read

with Section 38 Rule 5 CPC seeking attachment of property being â??Debcos Jewellersâ?, A-Block, Market No.3, Shop No. 10, Chittaranjan Park,

New Delhi. In response to the said application, petitioners offered to surrender the mortgaged property to the Bank since the value of the said

property was sufficient to discharge the liability of the bank. Consequently, the said IA was disposed of by the learned Presiding Officer, DRT-III,

New Delhi vide order dated 3rd April, 2016, which order remained unchallenged till date. The Original Application No. 713/2015 continued to be

pending adjudication and no recovery certificate has been drawn till date.

4. It is the submission of the learned counsel for the petitioners that DRT has exceeded its jurisdiction in passing the impugned order, which is beyond

the provision of the SARFAESI Act while taking cognizance of a proceeding which was not even before itself. He submitted that while hearing the

appeal filed by the respondent no.1 against the order dated 20th December, 2017 record of OA 713/2015 was summoned by the DRAT and vide the

impugned order, order dated 13th April, 2016 passed in IA no. 45/2016 has been set aside without there being any challenge to the said order or any

remedy to that effect in any pleadings. According to him, the impugned orders specifies that the order has been passed by the DRAT in exercise of its

suo moto powers in accordance with the provisions of Section 19 (18) and Section 19 (25) of the Recovery of Debts due to Banks and Financial

Institutions Act, 1993.

5. Mr. R.P. Aggarwal, learned counsel appearing for the respondent no.2 / Bank concedes to the fact that this issue is no more res integra in view of

the judgment of this court in the case of Padam Singhee and Anr. V. M/s. SVOGL,

Oil Gas and Energy Limited and Ors. W.P.(C) 9616/2018 decided

on 18th September, 2018. It is correct that in the said judgment, we have held that the DRAT cannot exercise so-called suo moto powers in public interest.

6. In the case in hand, the appeal has been filed by the respondent no.1 challenging the order dated 20th December, 2017 passed by the DRT-III on an application filed by the petitioners under Section 17 of the SARFAESI Act, 2002 refusing to grant interim relief. The DRAT should have confined itself to the appeal filed before it. We find that the DRAT had gone beyond the issue raised in the appeal and passed the directions as noted above, which are clearly impermissible. In Padam Singhee and Ors. (supra) we have clearly held as under:

“20. In any case, we are of the view, the issue whether the DRAT / DRT, have powers to suo moto initiate any proceedings is no more res integra in view of the judgment of the Supreme Court in the case of Standard Chartered Bank v. Dharminder Bhoji and Ors. v. (2013) 15 SCC 341 wherein the Supreme Court while considering the provisions of Act of 1993 has, in Paras 33 to 38, held as under:

“33. Section 19 of the RDB Act, occurring in Chapter IV of the Act, deals with procedure of tribunals. Sub-section (25) of Section 19 reads as follows:

“19. (25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

The aforesaid provision makes it quite clear that the Tribunal has been given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Thus, the Tribunal is required to function within the statutory parameters. The Tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers.

34. In this context, we may refer to a three-Judge Bench decision in Upper Doab Sugar Mills Ltd. v. Shahdara (Delhi) Saharanpur Light Railway Co.

Ltd. [AIR 1963 SC 217] wherein it has been held that when the tribunal has not been conferred with the jurisdiction to direct for refund, it cannot do

so. The said principle has been followed in Union of India v. Orient Paper and

Industries Ltd. [(2009) 16 SCC 286]

35. In *Union of India v. Madras Bar Assn.* [(2010) 11 SCC 1] the Constitution Bench, after referring to the opinion of Hidayatullah, J. in *Harinagar*

Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala [AIR 1961 SC 1669] , the pronouncements in *Jaswant Sugar Mills Ltd. v. Lakshmi Chand* [AIR 1963

SC 677] , *Associated Cement Companies Ltd. v. P.N. Sharma* [AIR 1965 SC 1595] and *Kihoto Hollohan v. Zachillhu* [1992 Supp (2) SCC 651] , ruled

thus: (*Madras Bar Assn. case* [(2010) 11 SCC 1] , SCC p. 35, para 45)

“45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences

between courts and tribunals. They are: (i) Courts are established by the State and are entrusted with the State's inherent judicial power for

administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a

specified nature. Therefore, all courts are tribunals. But all tribunals are not courts. (ii) Courts are exclusively manned by Judges. Tribunals can have a

Judge as the sole member, or can have a combination of a judicial member and a technical member who is an “expert” in the field to which the

tribunal relates. Some highly specialised fact-finding tribunals may have only technical members, but they are rare and are exceptions. (iii) While

courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate

procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is

required, and without being restricted by the strict rules of the Evidence Act.”

36. From the principles that have been culled out by the Constitution Bench, it is perceptible that a tribunal is established under a statute to adjudicate

upon disputes arising under the said statute. The Tribunal under the RDB Act has been established with a specific purpose and we have already

focused on the same. Its duty is to see that the disputes are disposed of quickly regard being had to the larger public interest. It is also graphically

clear that the role of the Tribunal has not been fettered by technicalities. The Tribunal is required to bestow attention and give priority to the real

controversy before it arising out of the special legislations. As has been stated earlier, it is really free from the shackles of procedural law and only

guided by fair play and principles of natural justice and the regulations formed by it. The procedure of tribunals has been elaborately stated in Section

19 of the RDB Act.

37. It is apt to note here that Section 34 of the SARFAESI Act bars the jurisdiction of the civil court. It reads as follows:

â??34. Civil court not to have jurisdiction.â?"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 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).â??

38. Section 34 of the RDB Act provides that the said Act would have overriding effect. We have referred to the aforesaid provisions to singularly

highlight that the sacrosanct purpose with which the tribunals have been established is to put the controversy to rest between the banks and the

borrowers and any third party who has acquired any interest. They have been conferred jurisdiction by special legislations to exercise a particular

power in a particular manner as provided under the Act. They cannot assume the role of a court of different nature which really can grant â??liberty

to initiate any action against the bankâ??. They are only required to decide the lis that comes within their own domain. If it does

not fall within their sphere of jurisdiction they are required to say so. Taking note of a submission made at the behest of the auction-purchaser and

then proceed to say that he is at liberty to file any action against the bank for any omission committed by it has no sanction of law. The said

observation is wholly bereft of jurisdiction, and indubitably is totally unwarranted in the obtaining factual matrix. Therefore, we have no hesitation in

deleting the observation, namely, â??liberty is also given to the auction purchaser to file action against the bank for any omission committed by itâ??.

21. From the reading of the aforesaid paragraphs of the judgement of the Supreme Court, it is clear that:

(1) The Tribunal / DRAT does not have inherent powers and even Section 19 (25) confers limited powers.

(2) The power of the Tribunal / DRAT under Section 19(25) is limited to pass

such other orders and give such directions to give effect to the orders or to prevent abuse of its process or to secure the ends of justice.

(3) Courts established by the State are entrusted with the State's inherent judicial power for administration of justice in general. The Tribunal /

DRAT having been established under a statute to adjudicate upon disputes arising under the said statute or disputes of a specialised nature by

regulating the procedure, applying the provisions of CPC only where it is required.

(4) The Tribunal / DRAT are required to function within the statutory parameters.

(5) The Tribunal /DRAT have been conferred jurisdiction by special statute to exercise a particular power in a particular manner as provided under

the Act.

(6) The Tribunal / DRAT are required to decide the lis that come within their domain.

22. A Coordinate Bench of this Court also in the case of Prem Kumar Gupta v. Bank of India 2015 SCC Online Del 8232 in W.P.(C) 2630/2014

decided on 9th March, 2015 has, by referring to the judgment of the Supreme Court in Standard Chartered Bank (supra), in paras 23 to 29 held as

under:

“23. The litigation brought before a Debts Recovery Tribunal essentially involves a civil dispute. It concerns primarily the claim of a bank or a

financial institution to “a debt” which it seeks to recover from the person impleaded as a defendant. In dealing with such an application instituted

before it by a bank or financial institution, the DRT may not be strictly bound by the procedure laid down in the Code of Civil Procedure or may have

been vested with the power to regulate its own procedure. But there is nothing in the statutory provisions to indicate that the procedure which DRT

adopts may be what it fancies.

24. As noted earlier, Section 22(2) confers upon DRT, and DRAT, certain specific powers vested by the Code of Civil Procedure in the Civil court.

These include the power to enforce the attendance of a person. But the rider is that the attendance being enforced must be with the objective of

“examining him on oath”. Necessarily, a person required to attend to be examined on oath would be a person called as a witness and not a party

to the suit.

25. The clauses (f) and (g) of Section 22(2) leave no room for doubt that for regulating the appearance of parties and consequences of their non-appearance, DRT (and DRAT) are to be guided generally by the provisions contained in order 9 of the Code of Civil Procedure. If the applicant under Section 19 fails to appear, the application may be dismissed in default. Conversely, if the defendant, duly served, does not appear, the proceedings on the application under Section 19 may be held ex parte. An application dismissed in default may be restored upon application being made on sufficient cause being shown for such order to be set aside. Similarly, the defendant having been set ex parte, may join the proceedings and may be permitted to participate and ex parte proceedings being set at naught subject of course to sufficient cause being shown for earlier non-appearance. This power also extends to setting aside of a judgment rendered ex parte resulting in the hearing on the application being reopened.

26. The forums constituted under RDDBFI Act are not criminal courts. To put simply, they do not adjudicate upon criminal causes or criminal charges. There is nothing in the provisions of the statute which establishes them to show that they are vested with any powers of the criminal court.

These tribunals are expected to follow and be guided by the principles of natural justice. Their obligation is to ensure that no one is condemned

unheard. Their application is to ensure that the dispute brought before them is adjudicated upon after both sides have been given proper

â??opportunity of being heardâ?. It is inherent in this that, having issued summons to the defendant in terms of Section 19(4), the Tribunal must

ensure that the process is duly served. The prime objective of summons is to give opportunity to the defendant â??to show causeâ? as to why relief

prayed for should not be granted. If the defendant, duly served, chooses not to appear, he suffers the proceedings ex parte. The Tribunal is within its

jurisdiction to set such a defendant ex parte and proceed further towards adjudication on the basis of the pleadings and material brought before it by

the applicant. There is no power vested in the Tribunal to compel or enforce the attendance of the defendant at the stage of adjudication on the claim

under Section 19, not the least by issuing a warrant of arrest or for such duress process to be executed through the agency of police. It may be added

that there is, generally speaking, no obligation on the part of one defendant to â??ensureâ? the appearance of a co-defendant, unless there is material

to show collusion or one is the agent (or principal) of the other.

27. The provision contained in Section 19(25) of RDDBFI Act has been referred by the DRAT in the impugned order. The clause reads as under:

“The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

28. In the specific context of Section 19(25) of RDDBFI Act, the Supreme Court in the case reported as *Standard Chartered Bank V. Dharminder*

Bhoi [Judgments Today (2013) 13 SC 69] held that the Debts Recovery Tribunal is required to function within statutory parameters and that “the

Tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers”.

29. We do not approve of the observations of DRAT that the above noted clause Section 19(25), confers upon the DRT a jurisdiction akin to the one

vested in the High Court under Section 482 of the Code of Criminal Procedure. The language employed in the two provisions may be similar but the

import thereof cannot be equated. The provision in Section 19(25) may at best be compared with the one contained in Section 151 of the Code of Civil

Procedure which saves the “inherent power” of the civil court to secure ends of justice or make orders to prevent abuse of the judicial process. It

is trite that such inherent jurisdiction to render justice cannot be taken resort of so as to nullify the other statutory provisions put in position to regulate

the procedure. Where the legislation deals expressly with a particular matter, the provisions so enacted would normally be regarded as exhaustive.”

7. In view of the settled position of law, the directions of the DRAT to the extent that it attached the property no. A-1-1752, First Floor, Green Field,

Faridabad and the jewellery stock lying at Shop no. 10, A-Block, Market No. 3, Chittaranjan Park, New Delhi are illegal and set aside and any

proceeding initiated by the DRAT, in purported exercise of its suo moto power shall also stand quashed.

The petition is allowed. No costs.