

(2015) 12 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No. 73 of 2014

GSL (India) Ltd.

APPELLANT

Vs

Asset Reconstruction Co. (India) Ltd. and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 16(c), 20, 9
Constitution of India, 1950 — Article 226, 227
Hindu Marriage Act, 1955 — Section 21
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 19(1), 19(23)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(10), 13(2), 13(4), 13(6)
Transfer of Property Act, 1882 — Section 69, 69A

Citation : (2016) 2 ABR 291 : (2016) 2 BomCR 182

Hon'ble Judges : S.C. Dharmadhikari and B.P. Colabawalla, JJ.

Bench : Division Bench

Advocate : Pravin Samdani, Senior Counsel, Mayur Khandeparkar, Nishit Dhruva, Prakash Shinde, Ambreen Saheed and Purvi Joshi i/b MDP and Partners, for the Appellant; Chirag Mody and Vinod Kothari i/b Apex Law Partners, for the Respondent

Judgement

B.P. Colabawalla, J.—Rule. Respondents waive service. By consent of parties, rule made returnable forthwith and heard finally.

2. By this Writ Petition under Article 226 of the Constitution of India, challenge is laid to the order passed by the Debt Recovery Appellate Tribunal, Mumbai (for short, the "DRAT") dated 8th October, 2013 whereby the DRAT upheld the order of the Debt Recovery Tribunal - III, Mumbai (for short the "DRT - III, Mumbai") dated 14th August 2011. The DRT - III Mumbai, held that it had no jurisdiction to entertain the Securitization Application filed by the Petitioner and ordered the return of the Securitization Application to the Petitioner so that the same could be filed in the competent DRT. In a nutshell, both the authorities below held that DRT - III, Mumbai would have no jurisdiction to entertain the Securitisation

Application as the secured property was situated in the State of Gujarat and therefore the Securitization Application could be filed only within the jurisdiction of the DRT where the secured property was situated. To come to this conclusion, the DRT as well as the DRAT have both relied upon a decision of the Full Bench of the Delhi High Court in the case of Amish Jain and Another Vs. ICICI Bank Ltd.,

3. The brief facts to decide the present controversy are really undisputed. In the present case, the Petitioner is a company incorporated under the provisions of the Companies Act, 1956 and was the Applicant in Securitization Application No. 136 of 2012 before the DRT - III, Mumbai. Respondent No. 1 is ARCIL which is an asset reconstruction and securitization company and registered with the Reserve Bank of India under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the "SARFAESI Act"). Respondent No. 2 - Company is the successful bidder at the auction sale conducted by Respondent No. 1 of the secured assets belonging to the Petitioner. Respondent No. 3 is a Company in whose favour the Sale Certificate was issued by Respondent No. 1. This was done on the instructions of Respondent No. 2.

4. It is the case of the Petitioner that it was incorporated in the year 1982 and is involved in the business of manufacturing synthetic yarns at its factory in adivasi dominated tribal area in Gujarat. According to the Petitioner, there are about 2,000 adivasi workers, out of which 700 are female workers employed by the Petitioner at its factory unit at Village Amletha, Taluka Rajpipla, District Narmada, Gujarat and about 10,000 villagers in the nearby area are dependent of their livelihood on the Petitioner. The Petitioner had approached certain Banks and Financial Institutions for financial assistance to implement its plan of business expansion and development. However, the Petitioner became a victim of unforeseen circumstances and underwent financial problems. In fact, it also made a reference to the BIFR which declared the Petitioner as a sick company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

5. It appears that some of the Banks and Financial Institutions who had granted financial assistance to the Petitioner, transferred and assigned their security interest in favour of the Respondent No. 1 - ARCIL. In view thereof and the fact that the Petitioner was unable to make payment of its dues, on 16th March 2009, Respondent No. 1 issued a notice under section 13(2) of the SARFAESI Act. This notice was duly replied to by the Petitioner by their letter dated 23rd May 2009. The record indicates that on 4th November 2009, Respondent No. 1 took possession of the assets of the Petitioner situated at its factory premises at Village Amletha, Taluka Rajpipla, District Narmada, Gujarat along with the plant and machinery (for short, the "secured property") and allowed the Petitioner to continue its manufacturing activities.

6. Thereafter, on 19th April, 2011 Respondent No. 1 published a public notice for sale of the secured property and also a tender document detailing the terms and

conditions and modalities of the proposed auction sale. Thereafter correspondence was exchanged between the Petitioner and Respondent No. 1 wherein the Petitioner inter alia brought to the notice of Respondent No. 1 that they should disclose all the liabilities attached to the secured property so that the prospective purchaser would not be misguided and also the fact that the due procedure of law had not been followed whilst conducting the auction sale and the same was not transparent. We are not referring to this correspondence in detail as the same is not really germane to decide the present controversy.

7. Be that as it may, to challenge the aforesaid sale notice dated 19th April 2011, the Petitioner approached DRT - III, Mumbai by filing Securitisation Application No. 136 of 2011 and inter alia sought a declaration that the sale notice dated 19th April, 2011 is illegal and arbitrary and the DRT be pleased to quash and set aside the same. Whilst this Securitisation Application was pending, Respondent No. 1, by public auction, sold the secured property and confirmed the sale in favour of Respondent No. 3 (who is the nominee of Respondent No. 2, the actual bidder in the auction). A Sale Certificate was also issued in favour of Respondent No. 3 dated 2nd July, 2011. In view of these subsequent developments, the Petitioner moved an Interim Application for amendment to the Securitisation Application for bringing these subsequent developments on record.

8. Thereafter, Respondent No. 3 filed an Application (being Exh. 62) inter alia challenging the jurisdiction of the DRT - III, Mumbai. This Application was heard by the DRT - III, Mumbai and by its order dated 14th August 2012, the DRT upheld the contention of Respondent No. 3 and inter alia held that it could not entertain the Securitisation Application filed by the Petitioner as it had no jurisdiction. In a nutshell, the DRT - III, Mumbai held that it had no territorial jurisdiction to entertain the Securitisation Application as the secured property was situated in the State of Gujarat and therefore the same could be filed only within the jurisdiction of the DRT where the secured property was situated. To come to this conclusion, the DRT relied upon a decision of the Full Bench of the Delhi High Court in the case of Amish Jain and Another Vs. ICICI Bank Ltd., In these circumstances, the DRT further ordered that the said Securitisation Application be returned to the Petitioner for filing the same before the competent DRT.

9. Being aggrieved thereby, the Petitioner approached the DRAT. The DRAT too by its order dated 8th October, 2013 upheld the order of the DRT - III, Mumbai and dismissed the Appeal. The DRAT also placed heavy reliance on the Full Bench judgment of the Delhi High Court in the case of Amish Jain and Another Vs. ICICI Bank Ltd., to come to the conclusion that it did. It is in these circumstances that the Petitioner is before us in our writ jurisdiction under Article 226 of the Constitution of India challenging the correctness, legality and validity of the impugned order passed by the DRAT dated 8th October, 2013.

10. In this background, Mr. Samdani, learned senior counsel appearing on behalf of the Petitioner, submitted that the Securitisation Application filed by the

Petitioner was to challenge the Sale Notice dated 19th April, 2011 issued by Respondent No. 1 and other consequential reliefs in relation thereto. He submitted that with reference to this Sale Notice, the entire cause of action arose within the local limits of the DRT - III, Mumbai. As per the tender document issued by Respondent No. 1, the bid for purchasing the secured property was to be submitted to the office of Respondent No. 1 situated in Mumbai. The entire bidding process and opening of the bid was stated to be in Mumbai at the office of Respondent No. 1. The deposit of earnest money as well as the balance amount of the bid was to be made in the name of Respondent No. 1 payable at Mumbai. Further, Mr. Samdani submitted that as per clause 31 of the tender document, disputes if any, were subject to jurisdiction of Mumbai Courts/Tribunals only. According to Mr. Samdani, it is not in dispute that the auction purchaser submitted its bid in the office of Respondent No. 1 situated in Mumbai, which bid was accepted and confirmed in favour of the auction purchaser by Respondent No. 1 in Mumbai. Looking to these facts, Mr. Samdani submitted that the entire cause of action had arisen within the jurisdiction of the DRT - III, Mumbai and which was competent to entertain the Securitisation Application filed by the Petitioner.

11. In addition thereto, Mr. Samdani submitted that Respondent No. 1 and against whom the relief is sought in the Securitisation Application, has not denied or objected to the territorial jurisdiction of the DRT and it is only the auction purchaser (Respondent Nos. 2 and 3) and who are resident outside Mumbai, have taken this objection. The only objection taken by the auction purchaser is that the secured property is situated outside Mumbai and therefore as per section 16 of the Code of Civil Procedure, 1908 (for short, the "CPC"), the DRT - III, Mumbai would have no territorial jurisdiction. In other words, it was the submission of the auction purchaser that by virtue of the provisions of section 16, the Securitisation Application could be filed only where the immovable secured property was situated. In the present case, there is no dispute that the secured property (immovable and movable) is situated in the State of Gujarat. Mr. Samdani submitted that section 16 of the CPC would be wholly inapplicable to a Securitisation Application that is filed under the provisions of section 17 of the SARFAESI Act. It was his submission that firstly the Securitisation Application filed under section 17 of the said Act is not a suit and therefore, section 16 of the CPC would have no application. Secondly, section 17(7) itself provides that save as otherwise provided in the SARFAESI Act, the DRT shall, as far as may be, dispose of the Securitisation Application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the "RDDB Act") and the Rules framed thereunder. He therefore submitted that in view of this specific provision, one must look to the provisions of the RDDB Act to determine the jurisdiction of the tribunal and not the provisions of the CPC.

12. Mr. Samdani submitted that as far as the provisions of the RDDB Act are concerned, section 19(1) thereof clearly defines the jurisdiction of the DRT to entertain an Original Application filed by the Bank or Financial Institution to

recover any debt owed to it from any person. Section 19 inter alia stipulates that the Original Application can be filed in the DRT within the local limits of whose jurisdiction (a) the Defendant or each of the Defendants where there are more than one, at the time of making the Application actually and voluntarily reside or carry on business or personally works for gain; or (b) any of the Defendants, where there are more than one at the time of making the Application, actually and voluntarily reside or carry on business or personally work for gain; or (c) the cause of action, wholly or in part, arises. Mr. Samdani submitted that admittedly the SARFAESI Act does not contain any direct provision which lays down or circumscribes the territorial jurisdiction of the DRT that could entertain a Securitisation Application filed by any aggrieved person (including a borrower). In these circumstances, it was his submission that looking to section 17(7) of the SARFAESI Act and which stipulates that the DRT shall, as far as may be, dispose of the Securitisation Application in accordance with the provisions of the RDDB Act, the provisions of section 19(1) of the RDDB Act are to be applied for determining which DRT would have jurisdiction to entertain the Securitisation Application. In other words, it was his submission that the principles enshrined in section 19(1) of the RDDB Act would determine which DRT would have jurisdiction to entertain and decide a Securitisation Application filed by an aggrieved person (including a borrower). It was therefore his submission that looking to all these factors and there being no dispute about the fact that the cause of action, wholly or in part, had arisen within the jurisdiction of DRT - III, Mumbai, this DRT had territorial jurisdiction to entertain and decide the Securitisation Application filed by the Petitioner.

13. On the other hand, Mr. Joshi, learned counsel appearing on behalf of Respondent Nos. 2 and 3 sought to support the orders of the DRT - III, Mumbai as well as the impugned order of the DRAT on all counts. Mr. Joshi placed heavy reliance on the Full Bench judgment of the Delhi High Court in the case of Amish Jain and Another Vs. ICICI Bank Ltd., and submitted that admittedly, the RDDB Act did not contain any provision for determining the territorial jurisdiction of the DRT to decide a Securitisation Application under section 17(1) of the SARFAESI Act. He submitted that the jurisdictional provisions under section 19(1) of the RDDB Act were only applicable when a Bank/Financial Institution approached the DRT for recovery of their dues from any person. An Original Application filed by a Bank/Financial Institution for recovery of its dues can by no stretch of the imagination be equated with a Securitisation Application filed by the borrower or any other aggrieved person under section 17(1) of the SARFAESI Act. If this be the case, then section 19(1) of the RDDB Act cannot be resorted to in order to determine the territorial jurisdiction of the DRT entertaining a Securitisation Application filed under section 17(1) of the SARFAESI Act, was the submission. Mr. Joshi would therefore submit that the judgment of Delhi High Court in the case of Amish Jain and Another Vs. ICICI Bank Ltd., would apply with full force and therefore, there is no merit in this Writ Petition and the same ought to be dismissed with costs.

14. With the help of learned counsel, we have perused the papers and proceedings in the Writ Petition alongwith the orders passed by the DRT - III, Mumbai dated 14th August, 2012 and the impugned order passed by the DRAT dated 8th October, 2013. On the basis of the arguments advanced and the pleadings before us, the short controversy that needs to be decided in the present Writ Petition is whether the jurisdiction of the DRT for entertaining a Securitisation Application under section 17 of the SARFAESI Act is to be determined on the basis of the principles enshrined in section 16 of the CPC or section 19(1) of the RDDB Act.

15. Before we deal with the relevant provisions, it would be appropriate to set out in brief the reasons for enacting the RDDB Act as well as the SARFAESI Act and the object sought to be achieved thereby. Prior to 1990, Banks and Financial Institutions were experiencing considerable difficulties in recovering loans and enforcement of securities charged with them. The then existing procedure for recovery of debts due to these Banks and Financial Institutions had blocked a significant portion of their funds in unproductive assets, the value of which deteriorated with the passage of time. The Government therefore felt that there was an urgent need to work out a suitable mechanism through which the dues of Banks and Financial Institutions could be realised without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by Banks and Financial Institutions and suggested remedial measures including a change in law. This Committee also suggested setting up a special tribunal for recovery of dues of Banks and Financial Institutions by following a summary procedure. On 30th September 1990, more than 15,00,000 cases filed by public sector Banks and about 304 cases filed by Financial Institutions were pending in various Courts. The recovery of debts involved in these cases was approximately Rs. 6,013 crores. In order to unlock this huge sum of public money, the Legislature enacted the RDDB Act, 1993. Under this Act, special tribunals were set up such as the DRT and the DRAT. The purpose of setting up these tribunals was to ensure that the debts due to Banks and Financial Institutions were exclusively entertained and tried by these tribunals and as per the procedure laid down under the RDDB Act and the Rules framed thereunder.

16. Despite bringing the aforesaid Legislation (the RDDB Act 1993) into force, the Government was of the opinion that further remedial measures were required in the banking sector. The Government was mindful of the fact that the financial sector had been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India was progressively complying with the international prudential norms and accounting practices, there were certain areas in which the banking and financial sector did not have a level playing field as compared to other participants in the financial markets of the world. The Government found that there was no legal provision for facilitating securitisation of financial assets of Banks and Financial Institutions. Further, unlike international Banks, the Banks and Financial

Institutions in India did not have the power to take possession of securities and sell them to recover their dues. The legal framework relating to commercial transactions, as was then existing, had not kept pace with the changing commercial practices and financial sector reforms. This resulted in slow recovery of defaulting loans and mounting levels of non-performing assets. To get over these hurdles, the Government set up two Narsimham Committees and an Andhyarujina Committee for the purpose of further examining banking sector reforms. These Committees, after a detailed study, inter alia suggested the enactment of a new legislation for securitisation and empowering Banks and Financial Institutions to take possession of the securities and sell them without the intervention of the Court. It is acting on these suggestions that the Legislature enacted the SARFAESI Act which came into effect from 21st June, 2002.

17. What can be discerned from the statement of objects and reasons of both these enactments is that they sought to achieve quick and speedy recovery of loans due to Banks and Financial Institutions from the defaulting borrowers. Initially, the Legislature enacted the RDDB Act under which the debts of Banks and Financial Institutions were adjudicated by a special tribunal following a summary procedure. As the Government found that this Legislation was not adequate enough for speedy recovery, in the year 2002, the Legislature enacted the SARFAESI Act giving wide powers to Banks and Financial Institutions to enforce their security without the intervention of the Court but subject to the provisions laid down in the SARFAESI Act. Looking to the purpose for enacting these two legislations and the object sought to be achieved thereby, there can be no doubt that the two Acts complement each other. In fact, a close reading of section 37 of the SARFAESI Act shows that the provisions contained therein or the rules framed thereunder will be in addition to the provisions of the RDDB Act. Section 35 of the SARFAESI Act states that the provisions of the SARFAESI Act will have an over-riding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading sections 35 and 37 together, it would be clear that in the event of any of the provisions of the RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts viz. the SARFAESI Act and the RDDB Act, would be complementary to each other. This is also reiterated by the Supreme Court in the case of Mathew Varghese Vs. M. Amritha Kumar and Others,

18. Having said this, we shall now refer to certain provisions of the SARFAESI Act in so far as they are relevant to decide the controversy before us. This Act was brought on the statute book to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. Section 2 is the definitions clause. The word "debt" is defined in Section 2(ha) and stipulates that the word "debt" shall have the meaning assigned to it in clause (g) of Section 2 of the RDDB Act. The "Debts Recovery Tribunal" has also been defined in Section 2(i) to mean the tribunal established under sub-section (1) of Section 3 of the RDDB Act. Similarly, the

"Appellate Tribunal" is defined in Section 2(a) to mean the "Debts Recovery Appellate Tribunal" established under sub-section 1 of Section 8 of the RDDB Act. The words "secured asset" is defined in Section 2(zc) to mean the property on which the security interest is created and the words "security interest" are defined in Section 2(zf) to mean the 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 of the Act. Finally, the words "secured debt" is also defined in Section (ze) to mean a debt which is secured by any security interest. Chapter II of this Act and which is not really germane to our purpose, deals with the regulation of Securitisation and Reconstruction of Financial Assets of Banks and Financial Institutions.

19. Thereafter, Chapter III deals with Enforcement of Security Interest and contains Sections 13 to 19 . Section 13 of the SARFAESI Act, inter alia stipulates that notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the Court or tribunal in accordance with the provisions of this Act. Section 13(2) postulates that where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of the secured debt or any installment thereof, and his account in respect of such debt is classified as a non-performing asset, then, the secured creditor, by notice in writing, may call upon the borrower to discharge in full his liabilities to the secured creditor within 60 days from the date of the notice, failing which the secured creditor would be entitled to exercise all or any of the rights/measures under Section 13(4) . Sub-section 3 and 3A of Section 13 , inter alia, provide for details and contents of the notice as well as the procedure to be followed before any of the measures under Section 13(4) are initiated by the secured creditor. Thereafter, Section 13(4) inter alia provides that if the borrower fails to discharge his liability in full within the period specified in the Section 13(2) notice, the secured creditor may take recourse to one or more of the following measures mentioned in sub-section (4) of Section 13 . Section 13(4) reads as under:--

"(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."

20. Section 13(6) inter alia, stipulates that after taking over possession or management of the secured assets under Section 13(4) , any transfer of the secured assets by the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred, as if the transfer had been made by the owner of such secured asset. Section 13(8) , thereafter provides for a right of redemption available to the borrower and stipulates that if the dues of the secured creditor together with all costs, charges and expenses are tendered at any time to the secured creditor before the date fixed for sale or transfer of the secured asset, then, the secured asset shall not be sold or transferred and no further steps shall be taken by the secured creditor for transfer or sale of that secured asset. Section 13(10) provides for a situation where even after the sale of the secured assets, the secured creditor is not able to recover his entire dues. In such an event Section 13(10) provides that where the dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an Application in the form and manner as may be prescribed, to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of its balance dues from the borrower.

21. Section 14 of the SARFAESI Act, is a provision which entitles the secured creditor to approach the Chief Metropolitan Magistrate or District Magistrate to assist the secured creditor in taking possession of secured asset. For the purposes of taking possession or control of such secured asset, the secured creditor could request in writing, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, within whose jurisdiction any secured asset or other documents thereto may be situated or found and to take possession thereof and hand over the same to the secured creditor.

22. If any person is aggrieved by any of the measures taken by the secured creditor under section 13(4) , then such aggrieved person can challenge such measure under Section 17 of the SARFAESI Act. Section 17 of the SARFAESI Act reads as under:--

"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

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 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 this sub-section.

(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 subsection (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.

(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 (51 of 1993) and the rules made thereunder."

(emphasis supplied)

23. On a perusal of the said section, it is clear that any person (including a borrower) aggrieved by any of the measures taken by the secured creditor under section 13(4) may make an Application to the DRT having jurisdiction in the matter within 45 days from the date on which such measures have been taken. Section 17(1) does not stipulate as to which DRT would have jurisdiction to entertain the Securitization Application. However, Section 17(7) reproduced above, stipulates that save as otherwise provided in the SARFAESI Act, the DRT shall, as far as may be, dispose of the Securitisation Application in accordance with the provisions of the RDDB Act and the Rules made thereunder.

24. Section 35 stipulates that the provisions of the SARFAESI Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Section 37 provides that the provisions of the SARFAESI Act or the Rules made thereunder shall be in addition to, and not in derogation of the Companies Act, 1956; the Securities Contracts (Regulation) Act, 1956; the Securities and Exchange Board of India Act, 1992; the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; or any other law for the time being in force.

25. On conjoint and harmonious reading of these provisions what becomes clear is that wide powers have been given to Banks and Financial Institutions to enforce their security without the intervention of the Court. If the borrower or any other person is aggrieved by such enforcement, it has to approach the DRT under Section 17 of the Act. The DRT hearing the said Securitization Application would then decide whether the measures taken under Section 13(4) by the secured creditor are valid or otherwise and pass appropriate orders accordingly. This appears to be the basic structure of the SARFAESI Act.

26. On the other hand, the RDDB Act is an Act to provide for the establishment of tribunals for expeditious adjudication and recovery of debts due to Banks and

Financial Institutions and for matters connected therewith or incidental thereto. Section 2 of the RDDB Act is the definitions clause and defines the words "banks", "banking company", "corresponding new bank", Financial Institutions" etc. The definition of the word "Tribunal" means the tribunal established under sub-section (1) of Section 3 of the RDDB Act. The word "debt" is defined in Section 2(g) and reads as under:--

"2. Definitions.--In this Act, unless the context otherwise requires,--

(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;"

27. On a plain reading of this definition, it is ex-facie clear that a very wide meaning has been given to the word "debt" in Section 2(g) and means any liability (inclusive of interest) which is claimed as due from any person by a Bank or a Financial Institution or by a consortium of Banks or Financial Institutions during the course of any business activity undertaken by such Bank or Financial Institution under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise, or under a mortgage and subsisting on, and legally recoverable on, the date of the application.

28. Section 17 of the RDDB Act, stipulates that on and from the appointed day, the jurisdiction, powers and authority to entertain and decide Applications from Banks and Financial Institutions for recovery of their debt, would be exercised by the Debts Recovery Tribunal. Section 18 stipulates that on or from the appointed day, no court or other authority shall have, or be entitled to exercise any jurisdiction, powers or authority (except the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India) in relation to the matters specified in Section 17 . In other words, reading Sections 17 and 18 together, it is ex-facie clear that the Debts Recovery Tribunal has exclusive jurisdiction to decide Applications filed by Banks and Financial Institutions for recovery of their debt.

29. Thereafter comes Chapter IV which comprises of sections 19 to 24 and deals with the procedure to be followed by the DRT and the DRAT. Section 19 prescribes the procedure that is to be followed by the DRT when it is approached by a Bank or Financial Institution for recovery of its debt. The said section also circumscribes the jurisdiction of the DRT which has to entertain such an Application. Section 19(1) of the RDDB Act circumscribes the jurisdiction of the

DRT and reads as under:--

"19. Application to the Tribunal.--(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction,--

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises;

Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor."

30. There are several other sub-sections to section 19 which are not really germane to decide the controversy before us but it would be relevant to make note of section 19(23) which stipulates that where the DRT, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more tribunals, it may send copies of the certificate of recovery for execution to such other DRTs where the property is situated. The word "may" appearing in section 19(23) would indicate that it is at the discretion of the DRT whether or not it wants to execute the Recovery Certificate against a property not situated within its territorial jurisdiction. If it chooses to do so, it certainly can by virtue of the provisions of section 19(23) . We must mention here that this sub-section came up for consideration before a Division Bench of this Court in the case of Tushar P. Shah Vs. International Asset Reconstruction Co. P. Ltd. and Others, The Division Bench, after concurring with the view of the Gujarat High Court in the case of Bank of Baroda Vs. Balbir Kumar Paul and Others, negated the contention that the word "may" should be read as "shall" in section 19(23) . In other words, the Division Bench held that

the DRT that issued the Recovery Certificate had the discretion to decide whether it should itself execute it against a property not within its jurisdiction or whether it should send it to the concerned DRT for execution. We must also note here that just like section 35 of the SARFAESI Act, section 34 of the RDDB Act also gives an overriding effect to the provisions contained therein.

31. From the provisions of the RDDB Act, what can be discerned is that when any liability is claimed as due from any person by a Bank or Financial Institution during the course of any business activity undertaken by it and whether it is secured or unsecured or assigned etc., the concerned Bank/Financial Institution can approach the DRT under section 19 of the RDDB Act for recovery of its dues. The jurisdiction of the DRT would have to be determined on the basis of section 19(1) of the RDDB Act which stipulates that the DRT shall have jurisdiction to entertain the application filed by the Bank/Financial Institution under section 19 where (a) the Defendant, or where there are more than one, any of the Defendants, at the time of making the Application, actually and voluntarily reside or carry on business or personally work for gain; or (b) the cause of action, wholly or in part, arises. What is important to note here is that these are the only conditions that are required to be satisfied for the concerned DRT to be invested with territorial jurisdiction to entertain an Application filed by the Bank or Financial Institution for recovery of its dues. There is no condition in section 19(1) that in case the Bank is suing for enforcement of mortgage, the Application has to be filed within the jurisdiction of the DRT where the mortgaged property is situated. In other words, the situs of the mortgaged property is not determinative of the territorial jurisdiction of the DRT. This is a distinct departure from the provisions of section 16 of the CPC and to which we shall advert to shortly.

32. To understand and deal with the argument of Mr. Joshi that only that DRT would have jurisdiction to entertain a Securitisation Application within whose local limits the secured property is situate, it would also be necessary to refer to certain provisions of the CPC. As the preamble suggests, the CPC is an Act brought into force to consolidate and amend the laws relating to the procedure of Courts of Civil Judicature. Section 9 and which falls in Part I of the CPC, deals with Courts trying all civil suits unless barred. Section 9 stipulates that the Courts shall, subject to the provisions contained in the CPC, have jurisdiction to try all suits of a civil nature excepting those suits of which cognizance is either expressly or impliedly barred. Section 16 provides for institution of suits where the subject matter is situate and reads as under:--

"16. Suits to be instituted where subject-matter situate.--Subject to the pecuniary or other limitations prescribed by any law, suits--

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge

upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.--In this section "property" means property situate in India."

33. Section 16 provides that subject to the pecuniary and other limits prescribed by any law, suits relating to immovable and movable property and of the kinds mentioned in clauses (a) to (f) of section 16, shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. In other words, section 16 of the CPC stipulates that suits of the nature described in clauses (a) to (f) thereof have to be instituted in the Court within the local limits of whose jurisdiction the property is situated. Ordinarily, if a Suit is filed for foreclosure, sale or redemption of a mortgage or charge upon immovable property [section 16(c)], the same would have to be filed where the mortgaged property was situated. In contrast, we do not find any such provision/stipulation in section 19(1) of the RDDB Act. If a Bank/Financial Institution has to recover its dues either by enforcement of its security (immovable or movable or both) or otherwise, it has to approach the DRT under section 19 of the RDDB Act. In such a case, the jurisdiction of the DRT is determined as per section 19(1) of the RDDB Act. In such a scenario, even though the mortgaged property may be situated outside the jurisdiction of the DRT, the same could be entertained by the DRT provided the jurisdictional requirements as set out in section 19(1) are satisfied. In other words, even though, the mortgaged property may be situate outside its jurisdiction, the only condition that would be required to be satisfied to invest the DRT with territorial jurisdiction would be where (a) the Defendant, or where there are more than one, any of the Defendants, at the time of making the Application, actually and/or voluntarily reside or carrying on business or personally work for gain; or (b) the cause of action, wholly or in part, arises. For the DRT to entertain an Original Application filed by the Bank or Financial Institution under section 19 of the RDDB Act, the provisions of section 16 of the CPC would be wholly inapplicable.

34. As noted earlier any person (including borrower) aggrieved by any of the

measures taken by the secured creditor under Section 13(4) of the SARFAESI Act may approach the DRT under Section 17 thereof within 45 days from the date on which such measures are taken. Section 17 does not circumscribe as to which DRT would have jurisdiction to entertain such a Securitization Application. We are, therefore, now called upon to decide whether jurisdiction of the DRT under Section 17 is to be determined on the basis of the principles enshrined in Section 16 of the CPC or whether its jurisdiction ought to be decided on the basis of the provisions of Section 19(1) of the RDDB Act.

35. As noted earlier, the RDDB Act as well as SARFAESI Act were brought into force to ensure quick and speedy recovery of loans and outstandings of Banks and Financial Institutions. This was necessitated in view of the fact that the legal framework that was then existing was highly inadequate for speedy recovery of these dues. It is, therefore, clear that these two legislations seek to achieve the same object and are complementary to each other. Section 17(7) of the SARFAESI Act categorically states that save as otherwise provided therein, the DRT entertaining a Securitization Application, shall, as far as may be, dispose of the Securitization Application in accordance with the provisions of the RDDB Act and the Rules framed thereunder. Looking to this provision as well as the object sought to be achieved by both the Acts (i.e. RDDB Act and SARFAESI Act) and the fact that the two Acts are complementary to each other, we are clearly of the view that the jurisdiction of the DRT entertaining a Securitization Application under Section 17 of the SARFAESI Act has to be decided on the basis of Section 19(1) of the RDDB Act. In other words, the DRT entertaining the Securitization Application filed by a borrower or any other aggrieved person would entertain the same where (a) the Defendants, or where there are more than one, any of the Defendants, at the time of making the application, actually and voluntarily reside or carry on business or personally work for gain; or (b) the cause of action, wholly or in part, arises.

36. We have come to this conclusion because Section 17(7) of the SARFAESI Act categorically stipulates that the Securitization Application filed under Section 17(1) thereof, shall, save as otherwise provided in the Act, be disposed of by the DRT, as far as may be, in accordance with the provisions of the RDDB Act and the Rules made thereunder. In other words, the Securitization Application filed under Section 17 of the SARFAESI Act is to be disposed of by the DRT, in accordance with the provisions of the RDDB Act, insofar as they are applicable. Section 19(1) of the RDDB Act categorically circumscribes the jurisdiction of the DRT to entertain an Original Application filed by a Bank/Financial Institution for recovery of its dues. It stipulates that where a Bank or Financial Institution has to recover any debt from any person, it may make an application to the DRT within the local limits of whose jurisdiction (a) the defendant, or where there are more than one, any of the Defendants, at the time of making the application, actually and voluntarily reside or carry on business, or personally work for gain; or (b) the cause of action, wholly or in part, arises. By virtue of the provisions of Section 17(7) of the SARFAESI Act, we are clearly of the view that the provisions of

Section 19(1) of the RDDB Act would apply for determining the jurisdiction of the DRT to decide a Securitization Application filed under Section 17 of the SARFAESI Act.

37. We do not think that the principles enshrined in Section 16 of the CPC would apply to a Securitization Application filed by a borrower under Section 17 of the SARFAESI Act. As Section 17 itself suggests, an application under the said provision is filed by any person (including a borrower) to challenge any of the measures referred to in sub-section (4) of Section 13 taken by a secured creditor. The measures referred to in Section 13(4) are either to take possession of the secured assets from 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; (c) appoint any person to manage the secured assets, the possession of which has been taken over by the secured creditor; and/or (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.

38. It is these actions of the secured creditor that are challenged by any person aggrieved (including a borrower) under Section 17 of the SARFAESI Act. In other words, the Securitization Application is made to a tribunal with limited jurisdiction to decide whether the measures taken under Section 13(4) of the SARFAESI Act are valid or otherwise. In a Securitization Application, there is no real adjudication of the debt owed by the borrower to the secured creditor and DRT does not pass any decree whilst deciding a Securitization Application filed under Section 17 of the SARFAESI Act. Looking to the nature of the Application filed under Section 17, we do not think that the Securitization Application can be equated with a "suit" as understood under the provisions of the CPC.

39. Section 16 of the CPC, on the other hand, stipulates that subject to the pecuniary or other limitations prescribed by any law, "suits" of the nature prescribed in clauses (a) to (f) thereof shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Since we are of the view that the Securitization Application can never be termed as a "suit" as understood in Section 16 of the CPC, the provisions thereof would be inapplicable to a Securitization Application filed under Section 17 of the SARFAESI Act. It is pertinent to note that whilst enacting the SARFAESI Act, when the Legislature wanted the jurisdiction of a particular authority to be decided on the basis of the situs of the property, it is specifically did so. This would be clear from the provisions of section 14 of the SARFAESI Act which categorically stipulates that where the possession of any secured asset is required to be taken by the secured creditor, or if any secured asset is required to be sold or transferred by the secured creditor under the provisions of the SARFAESI Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset,

request in writing the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, within whose jurisdiction any such secured asset may be situated or found. Despite the fact that the Legislature specifically empowered the concerned Magistrate to pass orders under section 14 of the SARFAESI Act in relation to a secured property situate within his jurisdiction, we do not find any such stipulation in any other provision, either in the SARFAESI Act or the RDDB Act. This would clearly indicate that where the Legislature decided to circumscribe territorial jurisdiction on the basis of situs of the property, it is specifically did so.

40. We must also note here that under the provisions of the SARFAESI Act a Securitisation Application filed under section 17(1) thereof, is to be filed before the DRT. As per the provisions of the SARFAESI Act, it is only the DRT that would have exclusive jurisdiction to entertain any challenge to the measures taken under section 13(4) of the SARFAESI Act. This is clearly spelt out from section 34 of the SARFAESI Act which stipulates that no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the DRT or the DRAT 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 the SARFAESI Act or under the RDDB Act. In other words, a challenge to the measures taken by a secured creditor under section 13(4) of the SARFAESI Act can be laid only by filing an Application under section 17(1) thereof. The jurisdiction of the civil court to entertain such a challenge is expressly barred. What is important to note is that the DRT is a pre-existing tribunal set up under the provisions of the RDDB Act. Its jurisdiction is circumscribed by the provisions of section 19(1) thereof. Considering the fact that the Legislature decided that all Applications filed under section 17(1) of the SARFAESI Act can be entertained only by the DRT (being a preexisting tribunal established under the provisions of the RDDB Act), would also persuade us in taking the view that its jurisdiction ought to be decided on the basis of the principles enshrined in section 19(1) of the RDDB Act and not on the basis of section 16 of the CPC.

41. Another reason for coming to the conclusion that we have is that prior to the enactments of the RDDB Act and SARFAESI Act, Banks and Financial Institutions had to approach the regular civil court for recovery of their dues. The Government found that the then existing legal framework was not conducive for speedy recovery of these public monies which were locked in litigation for years on end. To ensure that the dues of Banks and Financial Institutions are recovered in an expeditious manner, the Legislature first enacted the RDDB Act in 1993 and thereafter the SARFAESI Act in 2002. It is for this very reason that the RDDB Act specifically stipulates (Section 22 thereof) that the DRT and DRAT shall not be bound by the procedure laid down by the CPC but shall be guided by the principles of natural justice, and subject to the other provisions of the Act and Rules, the DRT and DRAT shall have powers to regulate their own procedure including the places at which they shall have their sittings. This provision clearly

spells out the intention of the Legislature to give powers to the DRT and DRAT far beyond those that are granted to the civil court under the CPC. This is to ensure that the delays that occur by approaching the regular civil court were done away with under the aforesaid two legislations. Keeping this object in mind and the fact that the Legislature did not want the DRT and the DRAT to be bound by the procedure of the CPC whilst deciding matters brought before them, we are of the view that Section 16 of the CPC would be inapplicable in the facts of the present case.

42. There is yet another reason for holding that the jurisdiction of the DRT to decide a Securitization Application under Section 17 ought to be decided on the principles enshrined in Section 19(1) of the RDDB Act rather than on the basis of Section 16 of the CPC. In many cases, the Securitization Notice issued under Section 13(2) of the SARFAESI Act, takes within its sweep secured immovable properties situated at different places. For example to secure the loans taken by a single borrower from the Bank/Financial Institution, multiple immovable properties (one situate in Mumbai and the other in Pune) could be mortgaged to secure the Banks dues. If that borrower defaults in payments of its dues, under the provisions of section 13(2) of the SARFAESI Act, the borrower can be called upon to pay his dues failing which the Bank would be entitled to take measures as contemplated under Section 13(4) thereof against all the secured assets. In such a scenario, as per the provisions of Section 16 of the CPC, challenge to the aforesaid measures would have to be filed in two different DRTs and there is every possibility of conflicting decisions being rendered on the measures initiated on the basis of the very same notice issued under section 13(2) of the SARFAESI Act.

43. To elaborate this point further, take for example that a challenge is laid to the measures under Section 13(4) of the SARFAESI Act on the ground that the account of the borrower has been wrongly classified as a non-performing asset and therefore the 13(2) notice could never have been issued. In such a scenario, it is very possible that one DRT could give a finding in the affirmative whereas the other in the negative giving rise to two conflicting decisions on the very same section 13(2) notice. We do not think that the Legislature whilst enacting the SARFAESI Act contemplated such a situation. Furthermore, we think that this would run counter to the very object and purpose of the SARFAESI Act inasmuch as the secured creditor would then be made to run from pillar to post to defend two separate Securitization Applications in two different places thereby further delaying the recovery of its dues.

44. Looking to all these factors, we are clearly of the view that the DRT whilst entertaining a Securitization Application under Section 17 of the SARFAESI Act would have to follow the principles enshrined in Section 19(1) of the RDDB Act to determine whether it has jurisdiction to try and decide the Securitization Application filed before it. The provisions of Section 16 of the CPC would be wholly inapplicable.

45. Having held so, we must now deal with the decision of the Full Bench of the

Delhi High Court in the case of Amish Jain and Another Vs. ICICI Bank Ltd., We are mindful of the fact that the Full Bench of the Delhi High Court has taken the view that a Securitization Application can be filed only in the DRT within whose jurisdiction the secured property is situated. The reasoning of the Delhi High Court can be found in paragraphs 11,12,13,15,16, 17, 21, 22 & 23 thereof which read as under:--

"11. 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 under Section 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.

12. 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, under Section 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.

13. We may however notice that in State Bank of India Vs. Samneel Engineering Company and Others, an argument was raised that a proceeding under Section 19(1) of the DRT Act for recovery of debt did not include a debt which was secured by a mortgage. This contention was negated 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 under Section 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 under Section 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 v. Teg's Musrado Ltd., , (2006) 129 Comp Cas 275 (NULL) to have held that the relief sought under Section 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, .

15. We may mention, that while in the DRT Act, there is no mention of mortgage and even an application under Section 19(1) is required to only specify the properties required to be attached and which may not necessarily be mortgaged property, Section 2(1) 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.

16. 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.

17. 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 under Section 17(1) of the SARFAESI Act and what relief the DRT is empowered to grant in the said proceeding. The scope of a proceeding under Section 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 under Section 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 under Section 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 under Section 17(1) of the SARFAESI Act. Thus the cause of action for the appeal under Section 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.

19. As far as Section 17(7) of the SARFAESI Act requiring disposal of appeals under Section 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 under Section 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.

20. 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 (UOI) and Others etc. etc.*, 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".

21. What we however find is that the DRT Act is not containing any provision for territorial jurisdiction of an appeal as under Section 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 under Section 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 under Section 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 under Section 17(1) of the SARFAESI Act and the question of application thereof under Section 17(7) does not arise. Under Section 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.

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

23. It would thus be seen that the provision for territorial jurisdiction under Section 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 under Section 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 under Section 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 under Section 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 under Section 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 under Section 17(1) of the SARFAESI Act which are to be preferred, not by the Banks/Financial Institutions, but against the Banks/Financial Institutions."

46. We have carefully perused the reasoning of the Full Bench of the Delhi High Court in the case of Amish Jain and Another Vs. ICICI Bank Ltd., and with the great respect and utmost humility, we are unable to agree with the view expressed therein. Firstly, we are unable to agree with the finding of the Delhi High Court that the proceedings referred to in section 19(1) of the RDDB Act are merely proceedings for recovery of debt and not for enforcement of mortgage. According to us, this finding runs counter to the very definition of the word "debt" appearing in section 2(g) of the RDDB Act to inter alia mean any liability (inclusive of interest) which is claimed as due from any person by a Bank or a Financial Institution during the course of any business activity undertaken by it under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the Application. We are therefore clearly of the view that proceedings under section 19(1) of the RDDB Act are not merely proceedings for recovery of debt. In proceedings under section 19(1) of the RDDB Act, the Bank/Financial Institution can certainly seek reliefs for enforcement of its mortgage. This interpretation would also be in consonance with the purpose and object of the RDDB Act. Secondly, we are unable to agree with the reasoning of the Delhi High Court that under section 19(23) of the RDDB Act, the DRT is required to send a copy of the Recovery Certificate for execution to the DRT within whose jurisdiction the property is situated. As mentioned earlier, section 19(23) clearly stipulates that where the tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more tribunals, it may send copies of the Recovery Certificate for execution to such other tribunals where the property is situated. The word "may" clearly indicates that this provision is discretionary and not mandatory in nature. Under section 19(23) , discretion is given to the DRT to either itself execute the Recovery Certificate issued by it against a property not within its jurisdiction, or to send it to the concerned DRT where the property is situated. This is a distinct departure from the provisions of the CPC and more particularly section 39 thereof. In fact, a Division Bench of this Court in the case of Tushar P. Shah Vs. International Asset Reconstruction Co. P. Ltd. and Others, has taken this view and we are in full agreement with the reasoning contained therein.

47. We are also unable to agree with the Delhi High Court judgment that in the RDDB Act, there is no mention of mortgage and an application under section 19(1) thereof is required to only specify the properties required to be attached

and which may not necessarily be the mortgaged property. Section 2(g) of the RDDB Act and which defines the word "debt" would certainly take within its sweep a relief for enforcement of mortgage. For the foregoing reasons and in view of what we have held earlier in this judgment, we are unable to agree with the view of the Full Bench of the Delhi High Court in the case of Amish Jain and Another Vs. ICICI Bank Ltd., .

48. In view of our discussion earlier in this judgment, we hold that the DRT whilst deciding whether it has territorial jurisdiction to entertain a Securitisation Application filed under section 17 of the SARFAESI Act would be guided by the principles enshrined in section 19(1) of the RDDB Act and not by section 16 of the Code of Civil Procedure, 1908. Rule is accordingly made absolute and the Petition is granted in terms of prayer clause (a). Securitisation Application No. 136 of 2011 is restored to the file of the DRT - III, Mumbai, to be decided on merits and in accordance with law. We would request the DRT to dispose of the Securitisation Application as expeditiously as possible and in any event, within a period of three months from today. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.