

(2012) 11 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No. 26256 of 2012 and M.P. No's. 2 and 3 of 2012

IDBI Bank Ltd. and Another

APPELLANT

Vs

Debts Recovery Appellate Tribunal and Others

RESPONDENT

Date of Decision : 16-11-2012

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 17(2), 17A, 17A(1), 17A(2)

Citation : (2013) 2 MLJ 522

Hon'ble Judges : R. Karupiah, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : Jayesh B. Dolia for Aiyar and Dolia, for the Appellant; V. Bhiman for Sampath Kumar Associates, Sivakumar and Suresh, for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—The present Writ Petition is filed by two of the creditor banks, who formed consortium with ICICI Bank in

granting loan to second and third respondents. One of the consortium banks-- ICICI Bank is the fourth respondent herein. It is seen from the

narration of the facts herein, the fourth respondent-ICICI Bank filed a suit before the Bombay High Court for recovery of amount in C.S. No.

4109 of 1997 against the second and third respondents herein, who are the defaulters. The suit was subsequently transferred to DRT, Mumbai

consequent on the constitution of DRT, now pending therein as O.A. No. 1945 of 1999. It is a matter of record that the petitioners herein filed a

petition in O.A. No. 125 of 1999 on the file of DRT, Chennai against the second and third respondents for recovery of Rs. 52,64,31,000/-

claiming pari passu charge over certain assets of the second and third respondents. It is stated that all the three creditors claimed pari passu charge

over the same securities. Since 1999, the O.As before the respective DRTs are pending. Documents relating to the properties in original were filed in Civil Suit filed before the Bombay High Court, since transferred to DRT, Mumbai. As the original applications pending before two Tribunals are contested by the borrowers in M.A. No. 30 of 2011 and that there should not be different orders on the self-same documents. In the light of this, the second and third respondents sought for transfer of those applications pending before DRT, Chennai to DRT, Mumbai to hear the O.A. along with O.A. No. 1945 of 1999. On hearing the parties, the DRAT passed an order that since the O.A. arose out of the same transaction and the cause of action being one and the same, it would be convenient to the parties that if both these O.As were tried by the same Tribunal, so that, multiplicity of proceedings could be avoided. Thus, the DRAT, Chennai directed transfer of the O.As pending on the files of DRT-II, Chennai to DRT, Mumbai to hear the O.A. along with O.A. No. 1945 of 1999 pending on the files of DRT, Mumbai.

2. Aggrieved by this, the present Writ Petition has been filed by the two creditor banks questioning the very authority of the Chairperson of the Appellate Tribunal u/s 17-A of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the "Act") to transfer the case pending on the files of the Chennai Tribunal within his jurisdiction to a different jurisdiction.

3. Learned counsel appearing for the petitioners submitted that going by the provisions u/s 17-A of the Act, the Chairperson of the Appellate Tribunal having jurisdiction over the Tribunal can transfer any case from one Tribunal to another Tribunal within his jurisdiction; consequently, the order of the Chairperson transferring the applications pending before the Tribunal within his jurisdiction, namely, Chennai, to a Western jurisdiction, namely, Mumbai Tribunal, is totally without jurisdiction. Thus, the petitioners sought for quashing of the order of the Chairperson in transferring the petitions.

4. On notice, the second and third respondents have filed their counter. In paragraph No. 4 of the counter, it is stated that the writ petitioners had already entered appearance before the DRT, Mumbai through counsel and two hearings had already taken place on 19.10.2012 and 30.10.2012

and the matter now stands adjourned to December, 2012. It is stated that there was only one set of document and all the originals were with

ICICI Bank; the same were filed before the Bombay High Court by the ICICI Bank and the petitioners were also parties to the suit filed by the

ICICI Bank. The petitioners herein have no separate security and the common security was also sold under the order of the Bombay High Court.

When the post of the Chairperson, Chennai DRAT was vacant, Mumbai DRAT was in-charge to hear and pass orders on the appeals against the

order passed by the DRT, over which Chennai DRAT had jurisdiction. So is the case when the Chairperson of Bombay Tribunal was not there.

Hence, liberal interpretation to Section 17(2) should be given and the order passed by the Mumbai DRT was in the interest of the parties to avoid

multiplicity of proceedings. It is further stated that no serious prejudice would be caused to the Writ Petitioners, who are having their head office in

Mumbai. In the circumstances, the Writ Petition has to be rejected.

5. In support of the contention, learned counsel appearing for second and third respondents referred to the order passed by the Supreme Court in

Transfer Petition (Civil) No. 652 of 2006 dated 17.4.2009 that when the Apex Court had itself recognised the jurisdiction of the Chairperson of

the Appellate Tribunal u/s 17-A of the Act to order transfer of the petition from one jurisdiction to another jurisdiction, it is not open to the

petitioners to question the correctness of the order of transfer. Learned counsel further pointed out that going by Section 17-A(2) of the Act,

liberal interpretation has to be granted to the said provision, thereby, recognising the authority of the Chairperson of an Appellate Tribunal to

transfer the application to any other Tribunal, meaning thereby, even beyond his jurisdiction.

6. The fourth respondent has also filed counter before this Court, wherein it is pointed out that the Receiver appointed by the High Court had

already sold the secured assets, realised the sum of Rs. 8,17,32,000/- and as per the directions of DRT-I, Mumbai under order dated 8.7.2002,

the said amount was kept in fixed deposit in the name of the Registrar, DRT-I, Mumbai and the same has been renewed time and again. It is

further pointed out that the fourth respondent had filed miscellaneous petition seeking direction to distribute the safe proceeds among the secured

lenders including the petitioners and the same was dismissed vide order dated 29.6.2004 by DRT, Mumbai. The said order had been appealed

against. Thus, in respect of the sale, the creditors are not in a position to get any relief in respect of the sale proceeds. The affidavit in short is non-

committal as regards the scope of Section 17-A of the Act.

7. Heard learned counsel appearing for the petitioners and learned counsel appearing for respondents 2 to 4 and perused the materials placed

before this Court.

8. Section 17-A is the relevant provision on the authority of Chairperson of the Appellate Tribunal generally and in particular in ordering transfer of

petitions. The said Section reads as under:

77-A. Power of Chairperson of Appellate Tribunal - (1) The Chairperson of an Appellate Tribunal shall exercise general power of

superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual

confidential reports of Presiding Officer.

(2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own

motion after notice to the parties, and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal.

9. A bare reading of the Section reveals that the Chairperson of an Appellate Tribunal has general power of control and superintendence over the

Tribunal under his jurisdiction. Section 3 is the relevant provision as regards the establishment of one or more Tribunals by the Government to

exercise jurisdiction powers and authority conferred under the Act. Section 3(2) states that the Central Government shall specify the areas within

which the Tribunal may exercise jurisdiction for entertaining and deciding the application filed before it. Section 8 deals with the establishment of

Appellate Tribunal. It empowers the Central Government to establish one or more Appellate Tribunals to exercise jurisdiction power and authority

conferred on such Appellate Tribunal under the Act. Sub-Section (2) empowers the Central Government to specify the jurisdiction of these

Tribunals. Admittedly, the Appellate Tribunal, Southern Region, has control over DRTs in the States of Tamil Nadu, Karnataka, Andhra Pradesh

and Kerala. Section 17 deals with the jurisdiction power and authority of the

Tribunal. Section 17(2) touches on the jurisdiction of the Appellate Tribunal to entertain appeals against any order made or deemed to have been by a Tribunal under this Act. Sub-Section (2) of Section 17-A is a specific provision relating to transfer of any case from one Tribunal to another Tribunal. Read in the context of Section 17-A(1), it is difficult for this Court to accept the plea of the second and third respondents that the Chairperson of an Appellate Tribunal having jurisdiction of DRTs of a particular zone has the authority to transfer any case from a Tribunal under his jurisdiction to another Tribunal beyond his jurisdiction. The Act is silent as regards a course of action that the Chairperson may take in the event of any one of the parties seeking transfer of a pending application before any of the Tribunal under his jurisdiction to a different jurisdiction. If both parties, namely, creditor and debtor, agreed for transfer of any case from one Tribunal of a jurisdiction to a different jurisdiction and there could be no quarrel, as it is for anybody to come before a Court of law questioning Section 17-A(1); but however, when the consortium banks have different claims, but with reference to same debtor and with reference to the same property, when already one application is ripe for arguments and the sale of the property in question had already been effected as early as 2002, learned counsel appearing for the petitioners submits that the attitude of the debtor herein is nothing but dilatory tactics to postpone the further hearing. Although this point made by the petitioners carry some weightage, yet, on the strength of provisions of Section 17-A, we do not find any justification to accept the contention of second and third respondents that the Chairperson of an Appellate Tribunal shall have jurisdiction to transfer application from one Tribunal within his jurisdiction to another Tribunal inside his jurisdiction. In the absence of any such specific power reserved, we do not find any justification to accept the plea of the second and third respondents to uphold the order of the Chairperson of the Appellate Tribunal.

10. As far as the reliance placed on the orders of the Apex Court passed in Transfer Petition (Civil) No. 652 of 2006 filed by the second and third respondent's appeal is concerned, contrary to the assertion of second and third respondents, there is nothing in the order of the Apex Court touching on the scope of Section 17-A of the Act. All that the Apex Court had

done is to record the submission made by second and third respondents to withdraw the petition before the Apex Court with liberty to file a petition before the Chairperson u/s 17A(2) of the Act. In the circumstances, we reject the plea of the second and third respondents.

11. Learned counsel appearing for second and third respondents pointed out that given the fact that the property in question is common to all consortium banks, it is better that the transfer of petition, which is ripe for hearing, be allowed to continue. Learned counsel appearing for the petitioners, however, pointed out that the petitioners have been resisting the hearing before the DRT. Mumbai on account of (sic) pending Writ Petition before this Court and had never agreed to go ahead with the application with the DRAT. Mumbai. However, taking note of Section 17-A(2) of the Act that the jurisdiction of the Chairperson of an Appellate Tribunal have jurisdiction over the Tribunal is limited to transfer of any case from one Tribunal to any other Tribunal, we have no hesitation in allowing the Writ Petition, thereby set aside the order of the Chairperson and restoring the Original Application to the files of DRT-II. Chennai for further hearing. Accordingly, the order of the Chairperson is set aside and the Original Application is restored to the files of DRT-II. Chennai. The Writ Petition stands allowed. No costs. Consequently, M.P. Nos. 2 and 3 of 2012 are closed.