

(2017) 07 BOM CK 0231
In the Bombay High Court
Case No : 12780 of 2015

IDBI Bank Ltd

APPELLANT

Vs

Aditya Logistics (I) Pvt. Ltd., & Ors.

RESPONDENT

Date of Decision : 01-07-2017

Acts Referred:

[Constitution of India](#), [Article 226](#), [Article 142](#) - Power of High Courts to Issue certain writs - Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc

Citation : (2017) 07 BOM CK 0231

Hon'ble Judges : B.R. Gavai, Riyaz I. Chagla

Bench : DIVISION BENCH

Advocate : Rajani Iyer, Maneesha Patel, VRB Krishnamurthy

Final Decision : Allowed

Judgement

1. Rule is made returnable forthwith.
2. Heard by consent.
3. Our judicial conscience shocks at the manner in which the learned Debts Recovery Appellate Tribunal (hereinafter referred to as "DRAT" in short) has exercised the jurisdiction under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act" in short). The present litigation has a chequered history. This is a third round of litigation before this Court.
4. Respondent No. 1 has obtained cash credit facilities, bank guarantees as well as term loan aggregating to Rs. 1450 Lakhs from the Petitioner Bank. On Petitioner Bank sanctioning aforesaid facilities, the necessary hypothecation documents were entered into in respect of the property, which is the subject matter of the Petition. It appears that from time to time, the Board of Directors of Respondent No.1 had passed Resolution dated 25 May 2010 to extend the

charge of the Petitioner on the said property. It is the case of the Petitioner that on Respondent No. 1 defaulting to make the payment of the dues, the account of Respondent No. 1 came to be declared as Nonperforming Assets (for short "NPA"). On 5 November 2012 a notice under Section 13(2) of the SARFAESI Act came to be issued to the Respondent No. 1. It appears that thereafter, there were certain negotiations between the Petitioner and Respondents for one time settlement. However, it appears that the same has failed. It is the contention of the Petitioner that the Respondents gave peaceful possession of the said property on 21 May 2013. However, it is seriously disputed by the Respondents contending therein that the Petitioner forcibly took possession of the property. It appears that the Respondents have also filed a complaint before the learned District Magistrate on 12 October 2014 against the Bank which came to be closed on 19 January 2015.

5. It appears that the first Writ Petition came to be filed by the Respondents herein before this Court being Writ Petition No. 8631 of 2014. The Court vide order dated 29 September 2014 passed an adinterim order directing therein that the auction process shall be subject to the outcome of the said Petition. However, it appears that when the Court heard both the sides on 13 October 2014, the Court found that the Petitioner had an alternate remedy of approaching the learned Debts Recovery Tribunal (for short "D.R.T.") and therefore, disposed of the Petition relegating the Petitioner to the alternate remedy available to him in law. In pursuance of the alternate remedy, the Respondents moved an application before the D.R.T. on 17 October 2014 under the provisions of Section 17 of SARFAESI Act being S.A. No. 505 of 2014. Along with the main application, an application for adinterim relief was also filed. The same came to be rejected by learned D.R.T. Being aggrieved thereby, the Respondents preferred an Appeal before the learned D.R.A.T. Learned D.R.A.T. in the said Appeal directed an amount of Rs. 4.00 Crores to be deposited as a condition precedent for entertaining the said Appeal.

6. Being aggrieved by the order passed by learned D.R.A.T. of depositing the amount, the Petitioner approached this Court by way of Writ Petition No. 742 of 2015 [Writ Petition (L) No. 111 of 2015]. In the said Petition initially an adinterim order was granted by this Court. The said Petition came up before the Division Bench on 27 January 2015 on which date, the Court continued the adinterim relief granted earlier and directed certain Affidavits to be filed by the Respondent Bank. The Petition was finally heard and disposed of by this Court on 18 March 2015. The Court was of the view that since the main Application under Section 17 of SARFAESI Act was pending before the learned D.R.T., it would be appropriate that the learned D.R.T. decides the main application expeditiously on merits and in accordance with law. The Division Bench, therefore, vide order dated 18 March 2015 directed the learned D.R.T. to decide the application within a period of 12 weeks. Certain grievances of the Petitioner therein (the Respondents herein) were directed to be raised by the Petitioner therein before the learned D.R.T., which was directed to be considered by the learned D.R.T. In

pursuance to the directions issued by this Court, the learned D.R.T. by an elaborate order dated 18 June 2015 running into 62 pages, dismissed the application filed by the present Respondents. Being aggrieved thereby the Respondents preferred an Appeal under the provision of Section 18 of the SARFAESI Act before the learned D.R.A.T. along with which an application for complete waiver came to be filed by the Respondents. By the impugned order, the learned Tribunal has closed the said application and directed that the said application would be considered only at the stage of final hearing of the Appeal. Being aggrieved by the action of entertaining an Appeal without following the mandatory provisions of Section 18 of the SARFAESI Act, the Petitioner has approached this Court.

7. Smt. Iyer, the learned Senior Counsel on behalf of the Petitioner, submits that the provisions of Section 18 of the SARFAESI Act are mandatory in nature. She submits that the rule of deposit of 50 percent of the amount as demanded by the bank or determined under Section 17 by the D.R.T., whichever is lower and in exceptional cases, deposit of 25 percent is a precondition for entertaining an Appeal. She submits that the approach of the learned Appellate Tribunal in entertaining an Appeal without directing the Respondents to deposit a single penny defeats the statutory provisions as envisaged under Section 18 of the SARFAESI Act.

8. Shri. Krishnamurthy, who is Respondent No. 3 and the sole proprietor of Respondent No. 2 and Director of Respondent No. 1, has been granted permission by the Registrar of this Court to appear in person, after finding that he is capable of representing his case personally. Since he is the party appearing in person, we have heard him at length and given him hearing for almost twenty minutes.

9. It is the main contention of Shri. Krishnamurthy that the act of the bank is high handed. It is submitted by him that the bank has forcibly taken possession of the assets without there being an order from the District Magistrate. He submits that even the date on which the account of the Petitioner was declared as NPA is vague. He has taken us through the various documents to contend that the Bank has not acted in a fair and just manner. He submits that the Bank has acted in such a manner which affects the fundamental rights of a citizen and as such, the order passed by the learned Tribunal which grants the Respondents complete waiver from depositing 50 percent amount as precondition while entertaining the Appeal warrants no interference.

10. Section 18 of the SARFAESI Act reads thus :

" Appeal to Appellate Tribunal

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal alongwith such fee, as may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]

[Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent, of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twentyfive per cent, of debt referred to in the second proviso.]"

11. Under Subsection (1) of Section 18, right is available to a person aggrieved by an order made by learned D.R.T. under Section 17 of the SARFAESI Act to Appeal to the Appellate Tribunal within 30 days from the date of the receipt of the order. The second proviso to Subsection (1) mandates that no Appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal, 50 percent of the amount of debt due from him as claimed by the secured creditor or determined by the D.R.T. which ever is less. Third proviso bestows discretion upon the Appellate Tribunal to reduce an amount of deposit which shall not be less than 25 percent of the debt referred to second proviso for the reasons recorded in writing.

12. It could thus, be clearly seen that the legislative intent is clear. The statute mandates that normally no Appeal shall be entertained by the learned Appellate Tribunal unless a borrower has deposited 50 percent of the amount of debt due from him as claimed by the secured creditors or determined by the Recovery Tribunal, which ever is less. No doubt, that the third proviso bestows the discretion with the Tribunal to reduce the said amount to 25 percent, however, for the reasons to be recorded in writing. It could thus, be clearly seen that the statute provides that for entertaining an Appeal, deposit of 50 percent of amount, as claimed by the creditor or as determined by D.R.T. whichever is less as provided in second proviso is mandatory, which can be reduced to 25 percent by the learned Tribunal for the reasons to be recorded in writing.

13. In other words, in no case the Appeal could be entertained by the learned Tribunal unless 25 percent of amount is deposited and that too, when the Appellant makes out a special case and the learned Tribunal records the reason for reducing the amount from 50 percent to 25 percent.

14. The order passed by the learned Tribunal makes an interesting reading. The learned Tribunal in the impugned order refers to the order passed by the Division Bench of this Court in Writ Petition No. 742 of 2015 dated 18 March 2015. The learned Tribunal observes that it had passed an order on 31 October 2014 directing the Appellants to deposit a sum of Rs. 4.00 Crores within six weeks. Against the said order, the Appellant had preferred the Writ Petition before this Court and the Division Bench of this Court vide order dated 18 March 2015 had directed the D.R.T. to dispose of the application on merits. The learned Tribunal

makes further reference to the observations made by the Division Bench in the order dated 18 March 2015. The learned Tribunal further goes on observing, at paragraph 9 that its earlier order directing the Appellant to deposit Rs. 4.00 Crores was not confirmed by the High Court and the matter was remitted back to the learned D.R.T. with the directions. The learned Tribunal further observed that under such circumstances, it was of the view that the application needs to be closed.

15. With great respect to the learned Tribunal, there is no such direction in the order of this Court dated 18 March 2015. In any case, even this Court while exercising the jurisdiction under Article 226 of the Constitution of India, cannot direct any authority including a statutory tribunal to act contrary to the statutory provisions. With great respect, such a power can be exercised only by the Hon"ble Supreme Court and that too, while exercising its powers under Article 142 of the Constitution of India.

16. We have no hesitation in saying that the learned Tribunal has grossly and patently erred in passing the order contrary to the mandate of Section 18 of the SARFAESI Act. We further find that the interpretation as placed by learned Tribunal of the order of this Court dated 18 March 2015 in Writ Petition No. 742 of 2015 is also wholly erroneous. The Court vide the said order has directed that since the main application was pending before learned D.R.T., it was appropriate that the said application was decided on merits. After the order was passed by this Court, the matter has undergone scrutiny by the learned D.R.T. and the learned D.R.T. by an elaborate order has rejected the contentions raised by the Respondents. The Appeal before the learned D.R.A.T. arises after the fullfledged hearing was given to the parties by learned D.R.T.

17. In that view of the matter, while entertaining an Appeal under Section 18, the learned Tribunal by no stretch of imagination could have given a go by to the mandatory provisions under Section 18 of the SARFAESI Act.

18. In that view of the matter, we find that the order passed by the learned D.R.A.T. is not sustainable in law. The Writ Petition deserves to be allowed. Accordingly, we pass the following order : (i) The Writ Petition is allowed.

(ii) The impugned order dated 4 November 2015 is quashed and set aside.

(iii) The matter is remanded back to learned Debts Recovery Appellate Tribunal to consider afresh, the application filed by the Respondents for waiver in the light of the discussions, made by us hereinabove.

(iv) Needless to state that taking into consideration, the long pendency of the matter, the learned Debts Recovery Appellate Tribunal would decide the said application within a period of four weeks from today.