
(2015) 03 MAD CK 0363

In the Madras High Court

Case No : Criminal P. No. 3803 of 2014 and M.P. Nos. 1 and 2 of 2014 and 1 of 2015

Kotak Mahindra Bank Ltd.

APPELLANT

Vs

Kothari Industrial Corporation Ltd.

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Registration Act, 1908 — Section 28

Citation : (2015) 4 BC 78 : (2015) 3 CTC 428 : (2015) 2 LW 156

Hon'ble Judges : Satish K. Agnihotri, J;M. Venugopal, J

Bench : Division Bench

Advocate : R. Muthukumarasamy, SC, Assisted by E. Om Prakash for P.L. Narayanan, for the Appellant; A.L. Somayaji, SC for R. Thiagarajan and K.K. Mani, Advocates for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Questioning the legality and propriety of the interim order dated 22.09.2014 passed in O.A. No. 23 of 2005 by the Debts Recovery Tribunal-I, Chennai, (for short "the DRT"), the petitioner has come up with the instant civil revision petition. The challenge to the interim order is on the ground that the impugned interim order was passed without jurisdiction as the same amounts to sitting over the decision of this Court dated 25.2.2010 passed in C.R.P. No. 3331 of 2009. The order is ex-facie illegal as the orders dated 2.2.2006 passed in I.A. No. 586 of 2005 and 1.10.2009 passed in I.A. No. 559 of 2005 were recalled without their being an application by either party and also without considering the settled propositions to recall the orders. The impugned interim order has been passed in violation of principles of natural justice without affording an opportunity of hearing to the petitioner to the effect that the matter was being heard on the issue of recalling of the orders dated 2.2.2006 passed in I.A. No. 586 of 2005 and 1.10.2009 passed in I.A. No. 559 of 2005. The impugned order is in complete violation of the order dated 21.7.2006 passed by the Debt Recovery Appellate Tribunal (For short "DRAT"), Chennai in M.A. No.

138 of 2006 and the order dated 01.10.2009 passed by the DRT in I.A. No. 559 of 2005 confirmed by the order dated 25.2.2010 passed by this Court in CRP No. 3331 of 2009 and also the order dated 21.10.2013 passed by the Supreme Court in SLP(Civil) Nos. 3290-3292/2012.

2. The brief facts, in nutshell, are that the petitioner moved the DRT in I.A. No. 586 of 2005 in pending O.A. No. 23 of 2005, seeking to substitute it as the applicant on the ground that the original applicant, ICICI Bank Ltd., has entrusted the assignment of debt to the petitioner. The learned Tribunal, by order dated 2.2.2006, allowed the application, directing substitution of the petitioner in place of the Bank. There against, an appeal, being M.A. No. 138 of 2006 was filed by the respondent before the DRAT, which was disposed of, permitting the first respondent to raise all objections and defence by way of filing reply statement to the substitution ordered by the Tribunal. It was further directed that the DRT shall frame a specific issue as to whether the substitution of the petitioner, namely, M/s. Kotak Mahindra Bank Ltd., in the place of ICICI Bank Ltd. was valid.

3. The DRT, in the applications, being I.A. No. 135 of 2006 filed by the petitioner and I.A. No. 67 of 2005 filed by the first respondent, granted status quo in respect of the transfer of assets on 30.3.2007, till the disposal of the O.A. It was further directed that the parties would give full cooperation for disposal of the main O.A expeditiously, preferably, within a period of three months. An appeal was preferred against the said order dated 30.3.2007 in M.A. No. 83 of 2007. The DRAT, maintaining status quo, further directed the DRT to dispose of the main O.A. No. 23 of 2005 within a period of three months. There against, a review application was filed before the DRAT, which was disposed of on 5.6.2008. The present petitioner, questioning the order dated 12.11.2007 and also the order dated 5.6.2008 passed by the DRAT, filed a civil revision petition being CRP (PD)No. 1953 of 2008. A Division Bench of this court by order dated 15.7.2008, set aside the order dated 12.11.2007 and also the order dated 5.6.2008 passed by the DRAT and remitted back the matter for determination of the question relating to substitution and also the legality and propriety of transfer of mortgaged property in question after hearing the parties. Status quo was directed to be maintained by all parties.

4. The DRT, on remittance, reconsidered the entire issue and by order dated 1.10.2009 confirmed the substitution of the petitioner in place of original applicant, namely ICICI Bank Ltd. Being aggrieved, the first respondent preferred civil revision petition, being CRP(PD) No. 3331 of 2009 on the file of this Court on 15.10.2009. A Division Bench of this court disposed of the said civil revision petition by order dated 25.2.2010, holding that the substitution of the present petitioner by the impugned order dated 1.10.2009 passed in I.A. No. 559 of 2005 by the DRT cannot be interfered with and directed the DRT to dispose of the IA No. 135 of 2006 as expeditiously as possible on merits and to dispose of OA No. 23 of 2005 itself on merits within three months from the date of receipt

of copy of the order. The first respondent was further directed to deposit the fixed deposit receipts with the office of the DRT to be kept intact till the disposal of the main O.A.

5. In another collateral proceedings arising from grant of stay of transfer of assets in the pending O.A. No. 23 of 2005, the matter was taken to the High Court in C.R.P.(PD) Nos. 4393 to 4395 of 2011. A Division Bench of this Court, by order dated 23.12.2011, dismissed the Civil Revision Petitions. The said order dated 23.12.2011 was taken to the Supreme Court in SLP (C) Nos. 3290 -3292 of 2012. The Supreme Court, while issuing notice on 21.10.2013, passed the following order:

"3. The entire original record pertaining to the Debts Recovery Tribunal-I, Debts Recovery Appellate Tribunal and Madras High Court shall be returned to the concerned authorities/Court, so that the matters can be proceeded further.

4. The Debts Recovery Tribunal shall proceed with O.A. No. 23 of 2005 immediately upon getting the original record from this Court and shall determine the amount payable by the principal-borrower to the creditor-petitioner as soon as possible. The learned counsel for the parties have assured that their counterparts appearing before the concerned Tribunal shall cooperate for early disposal of the matter without praying for any adjournments.

5. The amount payable by me principal-borrower to the creditor-petitioner, as may be determined by the Tribunal, shall be intimated to this Court within three months from today, so that this Court can pass further orders.

6. No third party interest shall be created of whatsoever type in the property in question."

6. The basic contentions of Shri R. Muthukumarasamy, learned Senior Counsel assisted by Mr. E. Om Prakash for Mr. P.L. Narayanan, learned advocates, appearing for the petitioner are that the DRT was not competent to recall the order dated 02.02.2006 passed in I.A. No. 586 of 2005 substituting the petitioner in place of ICICI Bank on its own motion, which was confirmed subsequently, on remittance, by order dated 01.10.2009 passed by the DRT and further confirmed by the High Court on 25.02.2010 in C.R.P. No. 3331 of 2009. The DRT has over-stepped and exceeded its jurisdiction, which amounts to violation of principal of judicial propriety. It is further contended that the High Court, while considering the Civil Revision Petition, had considered the registration of the deed of assignment dated 31.03.2005, which was registered out of State of Tamil Nadu in the State of Gujarat and also the subsequent deed of assignment dated 07.01.2008 registered on 06.08.2008, within the State of Tamil Nadu, while holding that the substitution of the petitioner by order dated 01.10.2009, cannot be interfered with. It was next contended that the DRT has no power or authority to take the issue which has attained finality on its own motion under the provisions of the SARFAESI Act or any other provisions of law.

7. It is also urged that presuming the first deed of assignment dated 31.3.2005 was not a valid document on the basis of which, the first order dated 2.2.2006 was passed by the DRT, however, a division bench of this Court in C.R.P. No. 3331 of 2009 had considered the subsequent deed of assignment and found that the substitution order passed by the Tribunal was legal and valid. The issue is whether the DRT was competent to ignore the order and set aside the same in the subsequent proceedings, which was taken up without any application, on suo motu, by the DRT.

8. Lastly, it was urged that despite clear order of the Supreme Court as well as of this Court to consider and decide the main O.A. No. 23 of 2005 expeditiously, the Tribunal is taking recourse to the consideration of other issue, which was finally settled, without jurisdiction, to delay the proceedings, which amounts to breach of the orders of the Supreme Court as well as of this High Court.

9. Per contra, Shri A.L. Somayaji, learned Senior Counsel with Thiru R. Thiagarajan and Thiru K.K. Mani, learned advocates appearing for the first respondent, would submit that the Tribunal's earlier order, which was taken upto the High Court in C.R.P. No. 3331 of 2009 was based on the deed of assignment dated 31.03.2005, registered outside the State of Tamil Nadu, which was not permissible under the provisions of Section 28 of the Indian Registration Act, applicable to the State of Tamil Nadu by virtue of the Amendment Act 19 of 1997 and as such, the order was null and void. The DRT had rightly set aside the same and granted liberty to all parties to make a fresh application. It was further contended that the petitioner should not have any grievance that the Tribunal has recalled the order without there being an application for the same. The petitioner was fully heard before the impugned order was passed. Thus, principles of natural justice has been fully complied with. The DRT was justified and right in reconsidering the orders dated 02.02.2006 and 01.10.2009 in the pending O.A., which were based on an invalid document.

10. We have given anxious consideration to the rival submissions made by the learned counsel appearing for the parties and also perused the pleadings and documents appended thereto.

11. Indisputably, the original application in O.A. No. 23 of 2005 was filed by the ICICI Bank Ltd. for recovery of a sum of Rs. 8,18,80,538/- on 25.1.2005 against the respondents. The present petitioner filed an application for substitution in place of the original applicant, which was allowed on 2.2.2006. There against, an appeal was preferred before the DRAT, which was disposed of permitting the first respondent to raise objections and defence by way of filing reply statement to the substitution ordered by the Tribunal. The DRT was also directed to frame a specific issue as to whether substitution of the petitioner in place of ICICI Bank Ltd. was valid.

12. A Civil Revision Petition, being CRP(PD)No. 1953 of 2008, filed against the order dated 12.11.2007 passed in M.A. No. 83 of 2007 and the review order

dated 5.6.2008 passed by the DRAT in respect of the transfer of mortgaged property, was decided by order dated 15.7.2008, holding as under:

"As we find that both the DRT-I, Chennai and Appellate Tribunal, have failed to consider the aforesaid question, we set aside the appellate order dated 12th Nov., 2007 and the order passed in review dated 5th June, 2008, passed by the Appellate Tribunal and remit the matter for determination of the question relating to substitution and, thereafter, the legality and propriety of transfer of mortgaged property in question after hearing the parties. In the meantime, the status quo as ordered may be maintained by all the parties. The civil revision petition is disposed of. But there shall be no order as to costs."

13. In pursuance of the aforestated order, the DRT confirmed the substitution of Kotak Mahindra Bank Ltd. in place of the original applicant ICICI Bank Ltd., by order dated 01.10.2009. There against, as aforestated, Civil Revision Petition, being CRP(PD)No.3331 of 2009 was preferred by the first respondent herein. The division bench of this court disposed of the civil revision petition, holding as under:

"7. Having perused the various material papers viz., earlier Deed of Assignment dated 31.3.2005 and subsequent deed of assignment dated 7.1.2008/6.8.2008, earlier order of the Debts Recovery Tribunal dated 2.2.2006, order of the Appellate Tribunal dated 21.7.2006 in M.A. No. 138 of 2006, order of the Division Bench dated 15.7.2008 in C.R.P.1953 of 2008 and the subsequent order of the Division Bench dated 10.7.2009 in Contempt Petition No. 671 of 2009 as well as the present impugned order of the Debts Recovery Tribunal-I, Chennai, dated 1.10.2009, we are of the view that without interfering with the order of the Tribunal, the interest of parties can be sufficiently safeguarded. In fact, the prayer of the first respondent in I.A. No. 559 of 2005 as contained in paragraphs (a), (b) and (c) cannot be validly objected to by the petitioner inasmuch as there is a valid deed of assignment as on date, as disclosed in the assignment deed dated 7.1.2008, Registered on 6.8.2008. So far as the prayer as contained in paragraph (e) where the first respondent sought for insertion of paragraph 12-A to the existing paragraph No. 12, in all possibilities, the only objection which the petitioner can put forth may be with reference to the date that is 31.3.2005 which is mentioned in the said paragraph 12-A. Therefore, for the mere purpose of substitution what is required to be examined is as to whether there is valid deed of assignment in favour of the first respondent by the assignor, the second respondent. With reference to the assignment deed dated 7.1.2008 registered on 6.8.2008, it seeks enforceability of the said document or as its registration. The existence of the said documents not in dispute. The assignment as granted therein in favour of the first respondent holds good and on that basis there was every right in the first respondent to seek for substitution in the place of the second respondent. However, by the mere substitution itself it cannot be held that every other consequences that flow from the said assignment vis-?-vis, the petitioner stood proved and that the first respondent straight away is entitled for

an order to that effect as against the petitioner. In other words, the substitution would only entitle the first respondent to step into the shoes of original applicant and prosecute the O.A. before the Debts Recovery Tribunal-I, Chennai, on merits. Since the Debts Recovery Tribunal-I, Chennai, has more than once examined the claim of the first respondent to get substituted in the place of original applicant and has found that such substitution as claimed for should be granted and as we find no valid grounds to interfere with such a conclusion of the Debts Recovery Tribunal-I, Chennai, we are not inclined to interfere with the said order. However, we find that the grievance of the petitioner that earlier assignment deed dated 31.3.2005 did not create valid right in favour of the first respondent, that even going by the subsequent deed of assignment dated 7.1.2008, the petitioner has got very many valid objections to resist the claim made in the O.A., are all matters which may have to be thrashed out by the Debts Recovery Tribunal-I, Chennai, as and when original application is taken up for hearing and decide on merits. In such circumstances, the issue framed by the Debt Recovery Appellate Tribunal, Chennai, in its order dated 21.7.2006 having now been decided by the Debts Recovery Tribunal, Chennai, we only hold that the petitioner can put forth all its contentions as regards the right of the first respondent in its present capacity as applicant substituted in the place of second respondent to seek for the decree against the petitioner can be resisted by raising all contentions available including the contentions viz., that the assignment deed dated 31.3.2005 did not create any valid right in favour of the first respondent or the subsequent assignment deed dated 7.1.2008 registered on 6.8.2008 ipso facto would not enable the first respondent to straight away seek for a decree as against the petitioner. Therefore, highlighting such a right available with the petitioner in the main O.A. As and when it is taken up for adjudication, we hold that the present substitution of the first respondent by the order impugned in the Civil Revision Petition cannot be interfered with."

14. Thus, the issue with regard to the substitution of the petitioner became final. However, liberty was reserved in relation to the transfer effected by the first respondent in respect of one of the properties, which is Addreley Estates Ltd. and the right of the petitioner was also directed to be considered on merits at the time of hearing the main O.A.

15. As aforesaid, the Supreme Court, in a parallel proceedings, had also directed the DRT to determine the amount payable by the principal-borrower to the creditor-petitioner as early as possible, preferably within a period of three months, by order dated 21.10.2013. The Tribunal took up the issue of substitution of the petitioner in place of the ICICI Bank Ltd., on its own motion. On perusal of the impugned order, it appears that the Presiding Officer of the DRT, without any background, took up the issue and came to the conclusion that the monies paid by the defendants pursuant to the directions of Hon"ble High Court and Hon"ble Supreme Court to KMBL shall be held by the said KMBL, as custodia legis to the O.A.23/2005.

16. The DRT, by the impugned order dated 22.09.2014, recalled and withdrew the earlier order dated 02.02.2006, confirmed by order dated 01.10.2009, being unsustainable in law. The operative portion of the said impugned order reads thus:

"The interim order passed by this Tribunal on 02.02.2006 in Interlocutory Application IA 586/2005 ordering substitution of M/s. Kotak Mahindra Bank Ltd. In the place of ICICI Bank Ltd. And further order passed by this Tribunal in Interlocutory Application IA-559/2005 dated 01.10.2009 confirming the order dated 02.02.2006 passed in IA-586/2005 are not sustainable in law, which are liable to be recalled and withdrawn. Accordingly, orders dated 02.02.2006 and 01.10.2005 in IA-586/2005 and IA-559/2005 respectively, in OA-23/2005 are recalled and withdrawn. The Original Applicant, ICICI Bank Ltd. Is at liberty to prosecute the Original Application OA-23/2005, in accordance with law. Liberty is also granted to the parties to prefer a fresh application for substitution based on a valid document. The monies paid by defendants pursuant to the directions of Hon"ble High Court and Hon"ble Supreme Court to KMBL shall be held by the said KMBL as custodia legis to the OA-23/2005. Ordered accordingly."

17. A Division Bench of this Court had already taken up the contention of the other side with regard to the validity of the deed of assignment dated 31.3.2005 which was registered outside the State of Tamil Nadu and having considered the subsequent deed of assignment registered within the State of Tamil Nadu, had confirmed the order of substitution passed by the Tribunal earlier, vide order dated 25.2.2010.

18. It is true that both parties were heard on the issue. However, the question is as to whether the Tribunal was justified in taking up the issue without having jurisdiction to take up the matter suo motu and to set aside the orders and observations passed by the High Court in the earlier round of proceedings. There is no provision under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") or any other provisions of law, which empowers the DRT to take up the matter suo motu without there being any application by any party, particularly when the issue has attained finality by order of the High Court, dated 25.2.2010. The entire exercise done by the Presiding Officer of the Tribunal is against the principles of judicial discipline and propriety. It is well settled that in order to protect the consistency and certainty of the law laid down by the superior courts, the ideal condition for the subordinate courts would be to follow the decisions of the superior courts. If the Tribunals and subordinate courts are allowed to function without following the binding observations of the superior Courts, there will be judicial chaos.

19. In the case on hand, the question of substitution was finally settled by the division bench of this Court in C.R.P. No. 3331 of 2009. There was no occasion or application before the Tribunal to take up the issue again and pass an order contrary to the observations and orders passed earlier by the DRT and confirmed

by the Division Bench of this Court.

20. The Court of Appeal of Alberta, Canada, in a celebrated decision in *Chandler v. Alberta Association of Architects* [1989] 2 S.C.R. 848, it was observed as follows :

"As a general rule, once an administrative tribunal has reached a final decision in respect of the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip in drawing up the decision or there has been an error in expressing the manifest intention of the tribunal."

21. This principle is applicable with full force in the Indian legal system also. Standards of consistency, uniformity, certainty and finality must be protected and preserved for effective and efficient development of the legal system. There was no authority under the SARFAESI Act or any other law, that permits the DRT to take up the issue on its own motion, despite the order passed by the superior court, i.e., the division bench of this Court. Thus, the DRT had acted outside its jurisdiction and that should not be allowed to stand on any other consideration.

22. A Constitution Bench of the Supreme Court of India in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, AIR 1963 SC 151 : (1963) 33 CompCas 745 : (1963) 2 SCR 774 , held as under:

"22. x x x x x x x The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided. That point has been specifically decided in the three decisions referred to above."

23. The aforesaid proposition of law was referred to with approval subsequently in *Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another*, AIR 1965 SC 1623 : (1965) 2 SCR 884 , *T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others*, AIR 1973 SC 974 : (1973) 1 SCC 336 : (1973) 3 SCR 222 and *Mahesh Kumar Saharia Vs. State of Nagaland and Others*, AIR 1998 SC 1561 : (1998) 92 CompCas 96 : (1997) 8 JT 401 : (1997) 6 SCALE 367 : (1997) 8 SCC 176 : (1997) 4 SCR 458 Supp : (1997) 2 UJ 792 : (1998) AIRSCW 1083 : (1997) 9 Supreme 184 and the same holds good even today.

24. Yet in another case in *Kishore Samrite Vs. State of U.P. and Others*, (2013) 5 AD 594 : (2012) 10 JT 393 : (2012) 10 SCALE 330 : (2013) 2 SCC 398 , with regard to the observance of judicial discipline and propriety, the Supreme Court observed as under:

"29. Judicial discipline and propriety are the two significant facets of administration of justice. Every court is obliged to adhere to these principles to ensure hierarchical discipline on the one hand and proper dispensation of justice

on the other. Settled canons of law prescribe adherence to the rule of law with due regard to the prescribed procedures, xxxxxxxxxxxx"

25. In view of the foregoing, without going into the merit of the case, we are of the considered opinion that the impugned order deserves to be set aside. Accordingly, it is set aside. The DRT is directed to expedite the hearing of the main O.P. in the light of the observations made by this Court in the order dated 25.2.2010 passed in C.R.P. No. 3331 of 2009 and also the order of the Supreme Court, as aforesaid. The Civil Revision Petition is, accordingly, allowed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.