

(2017) 02 DEL CK 0149

In the Delhi High Court

Case No : W.P.(C) No. 11766 of 2016 and CM No. 46429 of 2016 (for stay)

Manju Devi

APPELLANT

Vs

M/s. R.B.L. Bank Ltd.

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 17

Citation : (2017) 2 ADDelhi 542

Hon'ble Judges : Ms. Indira Banerjee and Mr. Anil Kumar Chawla, JJ.

Bench : Division Bench

Advocate : Anurag Jain, Advocate, for the Petitioner; Mr. Ramesh Gopinathan,
Advocate, for the Respondent No. 1

Final Decision : Allowed

Judgement

Indira Banerjee, J.—In this writ petition, the petitioners have challenged an order dated 05.12.2016 passed by the Debts Recovery Appellate Tribunal, Delhi, in Misc. Appeal No.460/2016, against an order dated 16.11.2016, passed by the Debt Recovery Tribunal, Delhi, in an application filed by the petitioners under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the "Securitisation Act" being SA No.205/2016, whereby the order of status quo in respect of the property being the subject matter of the said application has been withdrawn.

2. By the order impugned, the Debt Recovery Appellate Tribunal has directed each of the appellants, being the writ petitioners, to deposit 50% of the amount demanded by the Respondent Bank from one Mr. Ajay Kumar Gupta, in his capacity as the sole proprietor of Asian Dairy Milk Food Company.

3. The said Ajay Kumar Gupta, being the proprietor of Asian Dairy Milk Food Company, had obtained loans from the Respondent Bank for his proprietary

Concern. By way of security for the loans advanced by the Respondent Bank, to his proprietary concern, of the said Ajay Kumar Gupta mortgaged to the Bank, his property at D-534, out of Khasra No.929/537, situated at Village Saboli in abadi of D-Block, Gali No.7, Ashok Nagar, Illaqa Shadara, Delhi-110093, hereinafter referred to as the said premises.

4. The petitioners claim to be the purchasers of shop rooms/rooms situated at the said premises. They claim that they purchased the shop rooms/rooms for valuable consideration, long before the mortgage in respect of the said premises was created.

5. The petitioners, or at least some of them, are in possession of documents to show that they have been in possession of demarcated shop rooms/rooms at the said premises for a long time and in any case, long before creation of the mortgage in respect of the said premises in favour of the Respondent Bank in 2012.

6. In support of their claim of having purchased shop rooms/rooms at the said premises, the petitioners have relied on agreements for sale executed by the owner Ajay Kumar Gupta in their favour, irrevocable General Powers of Attorney, possession letters, receipts, deeds of Will and affidavits.

7. Admittedly the shop rooms/rooms were not conveyed to the petitioners by execution of registered deeds of conveyance. There was, therefore, no valid transfer of ownership of the shop rooms/rooms to the petitioners.

8. The said premises being secured in favour of the bank, the Bank invoked the provisions of the Securitization Act and attempted to take possession of the said premises, whereupon the petitioners filed applications under Section 17 of the Securitization Act in the Debt Recovery Tribunal-III, Delhi.

9. Initially, status quo was directed to be maintained in respect of the said premises. The order of status quo was later vacated by the Debt Recovery Tribunal-III, vide the order dated 16.11.2016, against which the petitioners appealed before the Debt Recovery Appellate Tribunal.

10. On behalf of the Respondent Bank it is urged that the proceedings initiated by the petitioner in the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal are frivolous, devoid of merit and an attempt to delay the realization of the dues of the Respondent Bank by disposal of the secured assets.

11. The respondents have questioned the genuineness as also the validity of the documents relied upon by the petitioners. Judgments have also been cited in support of the argument that there could be no valid transfer of the shops rooms/rooms in favour of the petitioners. We need not, however, go into the merits of the appeal of the petitioners before the Debt Recovery Appellate Tribunal.

12. The short question involved in this writ petition is, whether the appellants before the Debt Recovery Appellate Tribunal, Delhi, who are neither borrowers,

nor guarantors and have not pledged or mortgaged any property to the Respondent Bank can be called upon to deposit a percentage of the loan amount claimed and/or adjudicated against the borrower as the condition precedent for entertaining their appeal under Section 18 of the Securitization Act.

13. In the context of the question of whether a third party, who is not a borrower within the meaning of Section 2 (f) of the Securitization Act, is required to make a pre-deposit as a pre-condition for having his appeal heard, it would be pertinent to refer to the following provisions of the Securitisation Act:-

"2(1)(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitization company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

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 creditors 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 sub-section (5), any party to the application may make any 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 and the rules made thereunder.] 17A. ???

18. Appeal to Appellate Tribunal (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal along with 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 twenty-five per cent of debt referred to in the second proviso.]

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery

of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder. "

14. A perusal of Section 18 reveals that an appeal may be filed by a borrower or by any other person, aggrieved by any action taken under Section 13(4) and/or order passed under Section 17 of the Securitization Act. The definition of "borrower" in Section 2(1) (f) of the Securitization Act includes a guarantor or a mortgager or a pledger, who has created security for the financial assistances granted by any bank or financial institution. The definition includes a person, who becomes borrower of a securitization company or reconstruction company, consequent upon acquisition by it of any rights or interest of any Bank or financial institution in relation to such financial assistance.

15. Section 18 makes it absolutely clear that an appeal may be filed by any person aggrieved, whether or not, he is a borrower within the meaning of Section 2 (1) (f). This is evident from the first proviso to Section 18 (1), which provides that different fees may be prescribed for appeals by the borrower or by the person other than the borrower.

16. The Second proviso reads that no appeal is to be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. The second proviso relates to the appeal of a borrower, for a third party, who has not obtained any finance from a Bank or a financial institution is under no obligation to pay.

17. The second proviso reads that no appeal is to be entertained, unless the borrower has deposited with Appellate Tribunal 50% of the debt due from him. If the proviso is to be read literally to mean that no appeal, be it of a borrower or a third person, is to be entertained unless the borrower has deposited 50% of the amount of debt due from him, appeals by third persons would in effect and substance, be rendered nugatory for a third person, who would never be able to get his appeal entertained.

18. Significantly, in this case each of the appellants have been directed to pay 50%, which means that the total deposit would far exceed the amount due and payable by Ajay Kumar Gupta.

19. The writ petition is allowed. The impugned order is set aside to the extent that each of the appellants have all been required to pay 50% of the amount due from Ajay Kumar Gupta.

20. It is made clear that we have not gone into the merits of the appeal. The appeal may be disposed of in accordance with law, without insisting on any deposit. The prayer for interim relief or an interim order may also be considered in accordance with law, and turned down, unless the conditions precedent for grant of interim relief/interim order are fulfilled, such as strong prima facie case, balance of convenience and the like.

21. Copy of the order be given dasti under the signature of the Court Master.