(2018) 02 KAR CK 0124

In the Karnataka High Court

Case No : 52851 of 2017 (GM-DRT)

METALLURGICAL SERVICES CO. APPELLANT

Vs

THE MANAGER INDIAN BANK & ORS RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 17, Section 13(2), Section 13(4) - Right to appeal - Enforcement

Citation : (2018) 02 KAR CK 0124

Hon'ble Judges : H.G.Ramesh, P.S.Dinesh Kumar

Bench : Division Bench

Advocate : P.S.RAGHUNATH, M.S.SUBRAMANIAM, Y.HARIPRASAD

Final Decision : Dismissed

Judgement

1. Petitioner, party-in-person has filed this writ petition challenging order dated 08.02.2017 passed by the Debts Recovery Appellate Tribunal,

Chennai (''DRAT'' for short), dismissing the appeal in RA (SA) No.36/2009.

2. Heard Sri M.S.Subramaniam, party-in-person along with Shri P.S.Raghunath, learned advocate for the petitioner; and Sri Y.Hariprasad,

learned Central Government Counsel for respondents No.1, 4 and 5.

3. The prayers sought for in this writ petition read as follows:

a) Issue a writ of Mandamus (as per Annexure-E) to quash the impugned order passed in RA (SA) 36/2009 by respondent 2 Dt 08/02/2017 and

release the entire deposit made by the petitioner in the interest of justice and equity;

b) Alternatively (sic) this Hon''ble court may direct DRAT Chennai to re hear all the appeals dismissed on 08.02.2017 on merit for the petitioner to

receive all his claims under RDDB act and under SA act(twice) in the interest of justice and equity.

c) To grant any such other relief as deemed fit by the Hon''ble High Court in the interest of justice and equity.

4. Before the DRAT, petitioner challenged order dated 09.05.2008 passed by the Debt Recovery Tribunal (''DRT'' for short) on his application

ASA No.281/2006 filed under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,

2002 (''SARFAESI Act'') affirming notices issued under Sections 13(2) and 13(4) of the SARFAESI Act. It was contended by the petitioner

before the DRAT that the said notices were bad in law because debt mentioned therein was incorrect.

5. It is the case of the first respondent-bank that the petitioner did not repay the loan; and it compelled the bank to file an application before the

DRT for recovery of Rs.37,00,000/-. Petitioner did not even file his written statement for about 4 1/2 years. He has made a counter claim against

the bank for a sum of Rs.60,00,000/-. In the circumstances, the authorized officer issued notices under Sections 13(2) and 13(4) of the

SARFAESI Act and the same were challenged before the DRT. DRT upheld the notices and directed the bank to proceed further on the basis of

proper valuation report. The said order of the DRT was assailed before the DRAT. The DRAT, on reconsideration of the matter, has dismissed

the appeal by recording as follows:

8. In this background the Authorised Officer demanded the due amount by issuing Notices under Sections 13(2) and 13(4) of the SARFAESI

Act. In my opinion, the 2nd Respondent Bank was left with no other option but to initiate proceedings under SARFAESI Act. The DRT has dealt

with the merits of the Notices in right perception. The DRT has shown a balanced and liberal approach in favour of the Appellant also, that is why,

the SARFAESI Application was partly allowed.

9. As discussed above, the Order of DRT deserves to be and is hereby affirmed. The Appeal, being devoid of substance, is hereby dismissed. No

order as to costs.

6. The petitioner argued that he has made certain deposits in the ''no lien''

account; the DRT as well as the DRAT have dismissed his application

without considering the fact that the bank had wrongly calculated the debt amount.

7. We have carefully considered the submissions of the learned Counsel for the parties and perused the record.

8. It is relevant to note that before the DRT, petitioner challenged notices issued under Sections 13(2) and 13(4) of the SARFAESI Act. DRAT

has recorded that petitioner did acknowledge the debt prior to filing of original application. Therefore, in our view, having acknowledged the debt,

the petitioner cannot be permitted to turn around and dispute the admitted debt. Both the DRT as well as the DRAT, have, in our considered view,

rightly rejected petitioner''s application. In the premise, we see no error in the order impugned in this writ petition.

9. Resultantly, this writ petition fails and is accordingly dismissed. No costs.

Petition dismissed.

