

(2019) 11 DEL CK 0215

In the Delhi High Court

Case No : Civil Writ Petition No. 414, 3254 Of 2019, Civil Miscellaneous
Application No. 1908, 14929 Of 2019

Neeraj Syal

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 18, 25(AA)
Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section
19(25), 30

Citation : (2019) 10 AD(Delhi) 304

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Sanjeev Bhandari, Prateek Kumar, S. L. Gupta, Aditya Vikram Gupta,
Muneesh Malhotra, Manpreet Kaur, Vanya Khanna, S. K. Tanwar, Naresh Kumar

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. These two petitions which raise similar questions concerning the scope and powers of the Debt Recovery Tribunal ("DRT") and the Debt Recovery Appellate Tribunal ("DRAT") are being disposed of by this common judgement.

Facts in W. P. (C) 414 of 2019

2. The facts in W.P.(C) No. 414/2019 are that proceedings under the Recovery of Debts and Bankruptcy Act, 1993 ("RDB Act") were initiated before the DRT by the State Bank of Mysore (now State Bank of India) (hereafter "Bank") against the legal representatives (LRs) of the original borrower late Mr. K. B. Syal by way of O.A. No. 22/2006. This was disposed of by an order dated 10th February, 2011 allowing the Bank's claim in the sum of Rs.30,88,494/- together with simple interest at 10% p.a. from the date of declaration of non-performing asset till full realisation. Consequent thereto, Recovery Certificate (RC) No. 166/2013

was issued. The said recovery proceedings are stated to be pending.

3. While the above RC was pending before the Recovery Officer, DRT-III, a settlement scheme was announced by the Bank. Pursuant to the settlement the Bank issued a letter dated 14th November, 2018 to the borrower firm i.e. M/s. Richies Fashion, the proprietor of which was Mrs. Rashmi Syal.

4. Before the DRT-III, the Petitioner herein Mr. Neeraj Syal, the LR of Mr. K.B. Syal, filed an application dated 24th December, 2018 seeking inter-alia that the settlement be taken on record and the Receiver be restrained from taking physical possession of the immovable property at HUDA Colony, Panipat, Haryana which was offered as security.

5. On 29th December, 2018 the DRT passed an order inter-alia and directed as under:

"Counsel for CH Bank submitted that he has got an e-mail from the CH Bank that a settlement is under process and requested that the court Receiver as appointed by this Forum be restrained from taking possession for the time being subject to final settlement.

2. Counsel for CDs submitted that the matter has been settled for a sum of RS.5.65 Lacs and out of which a sum of Rs.3.45 Lacs has already paid to the CH Bank and balance amount shall be paid by 31.03.2019 as per scheme. Counsels for CDs further requested to restrain the Court Receiver not to take physical possession on 31.12.2018 and they are ready to pay the 50% Fee of the Court Receiver.

3. It is observed that Hon"ble Presiding Officer has issued a RC for an amount of Rs.30,88,494/- on 10.02.2011 along with interest @10% imposed upon the amount of Rs.31.00 Lakhs from the date of filing of the OA i.e. 17.02.2006 and this Forum has given a mandate to recover the RC amount from the CDs along with interest thereon, which comes out about Rs.70.00 Lakhs as on date.

4. In the order dated 26.11.2018 of Hon"ble DRAT, Delhi in Appeal No.530/2018 arising out of appeal No.23/2018 (Delhi-3) the Hon"ble Chairperson has observed that taking over of physical possession of properties which are sought to be sold in execution proceedings by learned recovery officers attached to DRTs should be a step which must be taken before auction sales are advertised so that more and more buyer come forward to stake claim in the auction and when possession is with the certified debtors (CDs) people think that their success in the auction will be only a paper success).

5. To recover the outstanding dues, as per Second Schedule of Income Tax Act, demand notices were issued to CDs to deposit the amount however CFS did not paid the decreed amount. In order to recover the decreed amount, the mortgaged property has been put for auction for a reserve price of Rs.89 Lakhs which is scheduled for 23.02.2019. Further, as per submission made by the CH Bank, under Rule 25 (AA) of RDB Act a Court Receiver was appointed to take

vacant physical possession of the property which is stated to be taken on 31.12.2018.

6. This Forum is of the view that as the mortgaged property has already been put for auction for a sum of Rs.89.00 Lakhs and the Court Receiver is about to take physical possession of the property, such submissions/action of CDs for settlement for a paltry sum of Rs.5.65 Lakhs when the outstanding dues are more than Rs.70.00 Lakhs and an auction is scheduled with a reserve price of Rs.89.00 Lakhs, raises a genuine suspicion in the mind of this Forum about the intention not only for the CDs but also for CH Bank towards their view about recovery of their NPAs which is of public money.

7. This forum is of the considered view that as the mandate given by the Hon'ble Presiding Officer is not fulfilling by such action of CDs/CH Bank as a number of RCs are pending with DRTs and if the CH Bank is satisfied with less than 10% of their outstanding dues that the same ratio may be applied for other pending RC cases of CH Bank, as lesser amount than the RC would result in faster recovery and would save precious time of this Forum.

8. CDs have requested that the Court Receiver be directed not to take physical possession of their property till 10.01.2019 so that they may move appropriate application before the Hon'ble Presiding Officer.

9. Although no interference seems required at this juncture by this Forum towards taking the physical possession of the property however, in the interest of natural justice, the Court Receiver is directed not to take physical possession of the property till 10.01.2019 subject to condition that CDs shall pay 50% of the Fee of the Court Receiver along with Misc. Expense in advance before schedule date of taking over the physical possession of the property i.e. 31.12.2018.

10. Registry is directed to inform to Court Receiver accordingly.

11. CH Bank is directed to serve the Notice for Sale Proclamation and file the service report before this Forum failing which appropriate order shall be passed.

12. Copy of this order be sent to the MD of the CH Bank as well as CVO of the CH Bank."

6. Aggrieved by the Recovery Officer not taking on record the settlement, the Petitioner Mr. Neeraj Syal filed an appeal before the DRT. He also filed an application under Section 19 (25) of the RDB Act read with Rule 18 of the DRT (Procedure) Rules, 1993 urging the DRT to take the settlement on record arrived at between the parties and pass appropriate orders in R.C. No. 166/2013. On 10th January, 2019, DRT-III dismissed the application.

7. In an appeal filed by the Petitioner under Section 30 of the RDB Act, the DRT-III directed the Petitioner to deposit Rs.15.00 lakhs within four days as against the settlement amount of Rs.5.65 lakhs plus legal expenses. The Petitioner relied on the decision of the Division Bench of this Court dated 19th April, 2010 in W.P.

(C) No. 2588/2010 (Satish Chander Gupta v. SBI).

8. The Petitioner also cited the decision dated 16th January, 2018 in Harpreet Kaur v. M/s. Fullerton India Credit Company Limited (2018) 249 DLT 283 (DB).

9. A separate order was passed by the DRT in M.A. No. 6/2019 on 10th January, 2019 holding the appeal to be not maintainable and dismissing it. As far as the appeal was concerned, the Petitioner was asked to deposit Rs.15.00 lakhs within four days for entertaining the appeal.

10. At the first hearing of the present petition on 16th January, 2019 while directing notice to issue in the petition, this Court restrained the Recovery Officer from taking possession of the property in question.

Facts in W. P. (C) 3254 of 2019

11. As far as W.P. (C) No. 3254/2019 is concerned, the facts are that the Petitioner M/s. Volex Investment and Marketing Company (VIMC) had taken financial aid from the Respondent bank for recovery of which the Bank filed a suit in this Court which was then transferred to the DRT. A Recovery Certificate in a sum of Rs.27,50,419.87 was issued pursuant to the order of the DRT in R.C. No. 11/2001.

12. During the pendency of the recovery proceedings, the Respondent Bank formulated a One Time Settlement ("OTS") Scheme by way of a circular dated 9th August, 2018. Pursuant thereto, the Bank invited VIMC by a letter dated 13th September, 2018 to deposit Rs.16,02,958/- as full and final settlement amount. VIMC deposited the said sum on 20th September, 2018 through RTGS.

13. Thereafter, a joint application by VIMC and the Bank was submitted to the Recovery Officer for settlement and satisfaction of the Recovery Certificate. The Respondent Bank also filed an affidavit along with a "No Dues Certificate".

14. However, the Recovery Officer passed an order dated 17th December, 2018 stating that it could not entertain the application but granted an opportunity to the parties to move an appropriate application before the Presiding Officer of the DRT.

15. Thereafter, VIMC filed M.A. No. 20/2019 in R.C. No. 11/2001 under Section 19 (25) of the RDB Act before the DRT for directing the Revenue Officer to release the property from recovery proceedings. The Presiding Officer ("PO") of the DRT dismissed the application on 16th March, 2019 on the ground of maintainability. Despite the Petitioner having already settled the entire amount, the DRT required VIMC to deposit 50% of the debt amount.

16. Challenging the above orders of the DRT, the present petition was filed by VIMC. On 1st April 2019 this Court passed the following order:

"Issue notice. Mr. Bhandari accepts notice on behalf of the respondent bank. We direct the respondent to file an affidavit explaining as to how the respondent

decided to accept the amount of Rs. 18,85,832/- in settlement of the dues of the petitioner despite the fact that the recovery certificate had been issued in respect of Rs. 21,19,655/- approximately with pendent lite and future interest @ 18.5. % w.e.f 02.12.1987 along with cost of Rs. 29,235.55/-, which came to Rs. 1.87crores, particularly in view of the fact that the respondent bank had attached the property for recovery of the amount.

Let the affidavit be filed at the level of Chief General Manager within two weeks. Rejoinder be filed before the next date of hearing.

List on 14.11.2019.

In the meantime, the Recovery Officer shall not proceed in the matter. However, the property of the petitioner shall not be encumbered or disposed."

17. Thereafter, pursuant to the above order, the Chief Manager of the Bank filed an affidavit dated 13th November 2019 explaining how under the OTS although the amount determined to be payable by VIMC was Rs.18,85,833/- it got reduced to Rs.16,02,958/- on account of the 15% discount if the amount was paid within 30 days. VIMC did in fact pay the amount within 30 days and became eligible for the 15% incentive.

Analysis and reasons

18. This Court has heard the submissions of learned counsel for the parties. The failure to take on record the settlement arrived at between the parties by the DRT or the DRAT was the subject matter of Satish Chander Gupta (supra) where this Court inter alia observed as under:

"The DRAT is no one to decide as to at what value the bank should settle its dues with the borrower especially when the bank has Managers who have acted in pursuance to authorization in their favour and after due consideration of the proposal of the petitioners."

19. Later in Harpreet Kaur v. M/s Fullerton India Credit Company Limited (supra), again in the context of the failure of the DRT to take on record a settlement, it was again held:

"Even otherwise, as observed by a Division Bench of this Court in the said order dated 19.4.2010, extracted hereinabove, the parties to a proceedings are at liberty; at any stage thereof, to arrive at an amicable settlement in relation to the subject matter of the dispute, and it does not lie in the mouth of the judicial authority to obstruct or impede the amicable settlement on a ground which is not sustainable in law. The learned DRAT, as observed in the said order dated 19.4.2010, is not some kind of Ombudsman/Auditor of the Bank; to scrutinise the settlement arrived at between the bank and the borrower, as it is not within the scope and ambit of its jurisdiction or function. It is reiterated that the learned DRAT cannot arrogate to itself the power to determine the value at which the Bank should settle its dues with the borrower, especially when it does not any

involve public money."

20. Consequently, in both cases here it was erroneous on the part of the DRT not to accept the settlement. Before this Court, counsel for the two Petitioners as well as the Bank stated that they continued to stand by the settlement which they considered binding on themselves.

21. In the case of VIMC, since the entire amount had been paid, there is no question of now putting the clock back. Only the consequential orders of taking the settlement on record had to be passed by the DRT.

22. Indeed, the Court finds that earlier when the settlement between the parties therein was not taken on record, this Court in *Satish Chander Gupta* (supra) came down heavily on the DRT/DRAT, set the erroneous orders aside and issued a mandamus to take the settlement on record. This was the approach in the subsequent case in *Harpreet Kaur* (supra) as well. Indeed, there appears to be no reason why the settlement between the Petitioners and the Bank ought not to have been taken on record by the DRT.

23. In that view of the matter, the following directions are issued:

i) Writ Petition No. 414/2019 is allowed by setting aside the impugned order dated 10th January, 2019 passed by the DRT-III. The directions contained in paragraphs 6 and 11 of the impugned order dated 29th December, 2018 passed by the DRT-III in R.C. No. 166/2013 are hereby expunged. Interim orders, if any, passed by the DRT attaching the properties and bringing them to sale are hereby set aside.

ii) M.A. No. 6 of 2019 will now be listed before the DRT on 4th December, 2019 for taking on record the settlement arrived at between the parties. The settlement would now form part of the proceedings of the DRT and those proceedings will stand disposed of in terms thereof.

iii) As far as Writ Petition No. 3254/2019 is concerned, the impugned order dated 16th March, 2019 passed by the DRT-III in M.A.20 of 2019 in R.C. No.11/2001 is hereby set aside. The said M.A.20 of 2019 in R.C. No.11/ 2001 will now be listed before the DRT-III on 4th December, 2019 when the fact of the settlement arrived at between the parties will be taken note of and the said settlement be taken on record.

iv) the property at Khata No. 293 Min., Kh. No. 29/4 (0-7), 29/5 Min. (3-04), 29/7 Min (0-12), 30/1 (4-16), 30/2-2 (3-4) admeasuring 12 bighas in Village Smalkha, Delhi shall stand released from the recovery proceedings.

24. Both petitions are allowed in the above terms. The pending applications are disposed of.

25. Before parting with the matters, it is important to note that despite repeated orders of this Court on identical issue of refusal by the DRT/DRAT to take on record the settlement between the parties, the DRT appears to be passing orders

in the teeth of the said binding orders of this Court. It is important for the Presiding Officer of the DRTs to be fully apprised of the judgments of this Court as well as the Supreme Court passed from time to time on the topic. This could be done by preparing compilations of judgments that directly impact the functioning of the DRT/DRAT. A copy of this judgment be placed before the Chairperson of the DRAT for necessary action in this regard.

C.M. APPL. 12612/2019 (delay) in W.P.(C) 414/2019

26. For the reason stated in the application, the delay in filing the affidavit is condoned and the application is disposed of.