
(2014) 09 DEL CK 0210

In the Delhi High Court

Case No : W.P. (C) 4413/2014 and CM No. 9019/2014 and W.P. (C) 5581/2014

Paramount Plastic Industries

APPELLANT

Vs

Corporation Bank

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 24
Constitution of India, 1950 — Article 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 17A, 17A(1), 17A(2), 19
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 13(8), 14, 17

Citation : (2014) 145 DRJ 438

Hon'ble Judges : Sanjiv Khanna, J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Pratiti Rungta, Sumit Pargal and Vineet Tayal, Advocate for the Appellant; Rajive Mehra, Sr. Adv., Suresh Dutt Dobhal and Karan Dev, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitions impugn the order dated 6th June, 2014 of the Debts Recovery Appellate Tribunal (DRAT) , Delhi of transferring S.A. No. 87/2013 filed by the petitioner in W.P.(C) No. 4413/2014 before the Debts Recovery Tribunal (DRT) , Jaipur and S.A. No. 174/2013 filed by the petitioner in W.P.(C) No. 5581/2014 before the DRT Chandigarh to DRT-II, Delhi, on an application of the respondent no. 10 in both petitions (M/s. Harish Chandra (India) Ltd. (HCIL)) and in exercise of powers u/s 17A of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act) .

2. W.P.(C) No. 4413/2014 came up first before this Court on 22nd July, 2014 when, on the contention of the counsel for the petitioner that the Full Bench of this Court in Amish Jain and Another Vs. ICICI Bank Ltd., has held that there is no provision in the DRT Act for transfer of proceedings from one DRT to another,

notice thereof was issued for 26th August, 2014 and final determination/ adjudication by the DRT-II, Delhi stayed.

3. W.P.(C) No. 5581/2014 came up first for consideration on 29th August, 2014. However, since the senior counsel for the contesting respondent appeared, we, with the consent of the counsels, heard both the petitions finally and reserved judgment.

4. The facts not in dispute are as under:-

(i) The consortium of respondents no. 1 to 7 Banks, sometime in January/ February, 2013, issued notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in relation to the debt owed by the respondent no. 10 HCIL and others and in July, 2013 took symbolic possession of various secured assets including the secured assets at Jaipur and Chandigarh. Aggrieved therefrom, the respondent no. 10 HCIL instituted a Securitisation Application u/s 17 of the SARFAESI Act being SA No. 80 of 2013 before the DRT-I, Delhi;

(ii) Some other persons claiming interest in the same secured assets also filed other SAs u/s 17 of the SARFAESI Act before DRT Jaipur, DRT Chandigarh and also before the DRT-I and DRT- III, Delhi; (iii) The respondent no. s 1 to 6 Banks filed an Original Application u/s 19 of the DRT Act, being OA No. 8 of 2014, before the DRT-II, Delhi for recovery of the said debt owed by the respondent no. 10 HCIL and others;

(iv) The respondent no. 10 HCIL filed an application u/s 17A of the DRT Act before the DRAT, Delhi for transfer of OA No. 8 of 2014 filed by the respondent no. s 1 to 6 Banks before the DRT-II, Delhi to the DRT-I, Delhi where the SA filed by it was pending;

(v) The petitioner in W.P.(C) No. 4413/2014 had also filed a Securitisation Application being SA No. 87 of 2013 u/s 17 of the SARFAESI Act before the DRT Jaipur with respect to one of the secured assets aforesaid situated at Jaipur, claiming a right/interest therein;

(vi) Similarly, the petitioner in W.P.(C) No. 5581/2014 had filed a Securitisation Application being SA No. 174 of 2013 before the DRT Chandigarh with respect to one of the secured assets aforesaid situated at Chandigarh contending that though it had created security of its asset to guarantee the repayment of the debt by the respondent no. 10 HCIL but the said guarantee was conditional and its asset/property was not liable to be taken over by the respondent Banks;

(vii) During the hearing of the Transfer Application filed by the respondent no. 10 HCIL before the DRAT, it was also contended that all SAs also, pending before different DRTs should be tried by one and the same DRT, so as to avoid the possibility of conflicting orders;

(viii) The counsels for both the petitioners objected, contending that since the

assets/properties with respect to which they had filed the SAs were located in Jaipur and Chandigarh respectively and where they were/are also situated, it will be difficult for them to contest the litigation at Delhi.

5. The DRAT did not find any merit in the objections of the petitioners to transfer of the SAs aforesaid filed by them in DRT Jaipur and DRT Chandigarh, to DRT Delhi. It was reasoned that the petitioners were also parties to the OA No. 8/2014 pending at DRT-II, Delhi and if they had no difficulty in contesting the said OA at Delhi, their resistance to transfer of SAs from Jaipur and Chandigarh respectively to Delhi was without justification and dilatory.

6. The DRAT vide the impugned order dated 6th June, 2014 held that it is appropriate that all the proceedings concerning the case are tried by one and the same Tribunal and the same would be in the interest of justice and would also avoid passing of any contradictory or conflicting orders. It was further held that one Tribunal would also be able to appreciate the entire controversy in correct perspective. Accordingly, the SAs filed by the petitioners (pending before DRT, Jaipur and DRT, Chandigarh respectively) along with the other SAs pending before DRT-I and III, Delhi and before DRT, Chandigarh and DRT, Jaipur were transferred to DRT-II, Delhi where the OA No. 8 of 2014 was/is pending.

7. The challenge by the petitioners to the said order of the DRAT is only on the ground that as per the dicta of the Full Bench of this Court in *Amish Jain (supra)*, the appeal/application u/s 17 of the SARFAESI Act is maintainable only before the DRT within whose jurisdiction the asset/property with respect to which the petition is filed is located and thus the DRAT in exercise of powers u/s 17A of the DRT Act has no power to transfer the applications u/s 17 of the SARFAESI Act from the DRT within whose jurisdiction the properties with respect to which the applications are filed are situated, to another DRT. Much reliance is placed on the observation in para 18 of the judgment in *Amish Jain* to the effect that "there is no provision in the DRT Act for transfer of proceedings from one DRT to another".

8. The Full Bench in *Amish Jain (supra)* was constituted, upon a doubt having arisen as to the correctness of the judgment of the Division Bench of this Court in *Smt. Indira Devi and Another Vs. Debt Recovery Appellate Tribunal and Others*, , in so far as holding that an appeal/application u/s 17 of the SARFAESI Act can be filed not only in the DRT having jurisdiction where the mortgaged property is situated but also in the DRT having jurisdiction where the Branch of the Bank/Financial Institution which has disbursed the loan is situated as well as in all DRTs which would have jurisdiction in terms of Section 19(1) of the DRT Act read with Rule 6 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (DRT Rules) . The Full Bench held:-

(a) that the reason which prevailed with the Division Bench in *Indira Devi (supra)* , to hold that an appeal/application u/s 17 of the SARFAESI Act can be filed in any of the DRTs where the Bank u/s 19(1) of the DRT Act could initiate proceedings, was predicated on the DRT Act making a departure from Section 16

of the Civil Procedure Code, 1908 in enabling the Bank to initiate proceedings not necessarily within the jurisdiction of the DRT where the mortgaged property is situated but in any of the DRTs; the Division Bench was guided by the consideration of giving the same opportunity of choosing jurisdiction to the borrower, as available to the Bank;

(b) however the Division Bench in Indira Devi fell in error in assuming the debt/ money recovery proceedings to be initiated by the Bank under the DRT Act as equivalent to legal proceedings subject whereof is a mortgaged property, within the meaning of Section 16 of the Civil Procedure Code; the proceedings referred to in Section 19(1) of the DRT Act are merely proceedings for recovery of debt and not for enforcement of mortgage;

(c) that for enforcement of mortgage SARFAESI Act was enacted;

(d) that the question of territorial jurisdiction for the remedy of appeal/ application u/s 17 of the SARFAESI Act thus has to be construed not in the light of the DRT Act making a departure from the principle enshrined in Section 16 of the Civil Procedure Code;

(e) that Section 17 of the SARFAESI Act provides for filing of the appeal/ application thereunder not to any DRT but only to the DRT having jurisdiction in the matter, but does not specify the jurisdiction;

(f) however since the cause of action for an application u/s 17 of the SARFAESI Act is the taking over of the possession/ management of the secured asset and which cause of action can be said to have accrued only within the jurisdiction of the DRT where the secured asset is situated and the possession thereof is taken over, it is the said DRT only which can be said to have jurisdiction in the matter;

(g) that exercise of jurisdiction u/s 17 of the SARFAESI Act by DRTs of a place other than where the secured asset is situated is likely to lead to complexities and difficulties and which are best avoided;

(h) that the remedy u/s 17 is available not only to the borrower or mortgagor, but also to any other person aggrieved from the measures u/s 13(4) of the SARFAESI Act; if it were to be held that more than one DRT will have jurisdiction, it may also lead to remedy u/s 17 against same action u/s 13(4) being invoked by different persons before different DRTs; "there is no provision in the DRT Act for transfer of proceedings from one DRT to another";

(i) that Section 17(7) of the SARFAESI Act, requiring disposal of appeals/ applications u/s 17, "as far as may be" in accordance with the provisions of the DRT Act and the Rules framed thereunder is to be read as providing for disposal of appeals/ applications u/s 17 in accordance with the provisions of DRT Act and the Rules made thereunder save as otherwise provided in the SARFAESI Act;

(j) that the principles of Section 16 of the CPC are reflected in Sections 14 and 17A of the SARFAESI Act; and,

(k) that Section 16 of the CPC recognizes a well established principle that actions against res or property should be brought in the forum where such res is situated and a Court within whose territorial jurisdiction the property is not situated has no power to deal with and decide the rights or interests in such property or to give an effective judgment with respect thereto.

It was thus held that an appeal/application u/s 17 of the SARFAESI Act can be filed only before the DRT within whose jurisdiction the property/secured asset against which action is taken is situated and in no other DRT.

9. We may at the outset state that the observation aforesaid in *Amish Jain* (supra) to the effect that there is no provision in the DRT Act for transfer of proceedings from one DRT to another, though of a larger Bench, is clearly erroneous. Attention of the Full Bench (of which one of us i.e. Rajiv Sahai Endlaw, J. was a member) was not drawn to Section 17A(2) of the DRT Act which, while defining the powers of the Chairperson of the DRAT provides that the Chairperson of the DRAT having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties and hearing them, transfer any case from one Tribunal for disposal to any other Tribunal. *Amish Jain* (supra) was not concerned with the aspect of transfer of appeals/applications u/s 17 of the SARFAESI Act. The observation aforesaid in *Amish Jain* came to be made while holding that the view taken in *Indira Devi*, may lead to the remedy u/s 17(1) of the SARFAESI Act against the same action being invoked by different persons before different DRTs. The said observation cannot bind this Bench. The Full Bench of this Court in *Lachman Dass Bhatia Hingwala (P.) Ltd. Vs. Assistant Commissioner of Income Tax*, , on a conspectus of a host of case law, inter alia held, (i) that a decision often takes its colour from the question involved in the case in which it is rendered; (ii) every judgment must be read as applicable to facts provided, since the generality of the expressions which may be found there is not intended to be exposition of the whole law; (iii) it would therefore be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein; (iv) a mere casual expression carries no weight at all and every passing expression of a Judge cannot be treated as an ex cathedra statement having the weight of authority; (v) to interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define; and, (vi) it is not everything said by a Judge while giving judgment that constitutes a precedent. Recently, the Supreme Court in *Deepak Bhandari Vs. Himachal Pradesh State Industrial Development Corporation Limited*, has reiterated the same position.

10. The next question for consideration is, whether in exercise of powers u/s 17A of the DRT Act, the Chairperson of the DRAT can transfer appeals / applications u/s 17 of the SARFAESI Act from one DRT to another and particularly from a DRT having territorial jurisdiction to entertain the same to a DRT having no territorial

jurisdiction.

11. As far as the question of transfer from DRT having territorial jurisdiction to a DRT having no territorial jurisdiction is concerned, Section 17A of the DRT Act, while conferring power on the Chairperson of the DRAT for such transfer, does not impose any condition of the transfer being permissible only to such DRT which would also have territorial jurisdiction or transfer being not permissible to a DRT which does not have territorial jurisdiction. We have thus wondered whether there is any such restriction under the general law of transfer of proceedings from one Court to another. Section 24 of the Code of Civil Procedure, 1908 (CPC) confers power on the High Court as well as District Judge, of transfer of suits, appeals or other proceedings from one Court to another. The same also does not contain any such restriction though Sub-Section (5) thereof clarifies that such power of transfer can also be exercised with respect to a suit or proceeding instituted and pending in a Court which has no jurisdiction to entertain the same. We find the High Courts of Allahabad (in *Kishore Lal Vs. Balkishan*,), Madras (in *P. Madhavan Unni Vs. M. Jayapandia Nadar*,), Rajasthan (in *Maliram Nemichand Jain Vs. Rajasthan Financial Corporation and Another*,), Orissa (in *Mulraj Doshi Vs. Gangadhar Singhanian*, and in *Anima Das Vs. State of Orissa and Another*,), Kerala (in *Thomas Vs. Sunnichan*,), Punjab and Haryana (in *Deepika Vs. Vinod Bhalla*,) and Karnataka (in *Smt. M.V. Rekha Vs. Sri Sathya alias Suraj*,), all to have held that in exercise of powers of transfer, proceedings can be transferred to a Court which does not even enjoy territorial jurisdiction. It was reasoned that else the very purpose and object of conferring the power to transfer will be nullified and it was held that the words in Section 24 of the CPC "competent to try" (and which we may notice, are missing in Section 17A of the DRT Act) do not refer to territorial jurisdiction. We respectfully concur with the said view. Reference in this regard may also be made to *Usha Vs. Palisetty Mohan Rao*, where the opposition to transfer on the ground of the Court to which transfer was being sought having no jurisdiction under the Hindu Marriage Act, 1956 was negated by holding that the powers of transfer are altogether different from the provisions of the Hindu Marriage Act and that if such an opposition were to be accepted then no transfer of any case can be made in as much as the matter would have been filed in a Court having jurisdiction to deal with it and that such an interpretation would stultify the process of law and render nugatory the provisions relating to transfer.

We therefore hold that merely because the Full Bench in *Amish Jain* (supra) has held that the DRT within whose territorial jurisdiction the secured asset with respect to which action u/s 13(4) of the SARFAESI Act has been initiated would have exclusive territorial jurisdiction to entertain appeal/application u/s 17 of that Act, cannot come in the way of transfer if otherwise permissible of the said appeal/application to another DRT.

12. That takes us to a more fundamental question, whether in exercise of powers u/s 17A of the DRT Act, the Chairperson of the DRAT can transfer an appeal/

application u/s 17 of the SARFAESI Act from one DRT to another. The counsels for the petitioners have vehemently argued that the power of transfer under the DRT Act cannot be invoked qua a proceeding under the SARFAESI Act. Upon our drawing attention of the counsels to Section 17(7) of the SARFAESI Act, providing that the DRT will dispose of the application in accordance with the provisions of the DRT Act and the Rules made thereunder, the counsels contended that the same is only with respect to the procedure and rules for disposal of the appeals/applications and will not extend to incorporate in the SARFAESI Act, Section 17A of the DRT Act.

13. Though undoubtedly the SARFAESI Act does not contain any provision for transfer of appeals/applications u/s 17 thereof from one DRT to another but it cannot be lost sight of that the SARFAESI Act not only constitutes the DRT constituted under the DRT Act as a forum for deciding the appeals /applications u/s 17 thereof but by Section 18 thereof also designates the DRAT, also constituted under the DRT Act, as an Appellate Tribunal for hearing appeals against the orders of DRT on appeals/applications u/s 17 of the Act. Section 18(2) again provides that the DRATs shall dispose of the appeals against orders of the DRTs u/s 17 of the SARFAESI Act in accordance with the provisions of DRT Act and the Rules made thereunder. The question which arises for consideration is whether in such legislative mandate, even in the absence of anything specific in the SARFAESI Act, the DRAT can be said to have the power of transfer of appeals/applications u/s 17 thereof.

14. In this regard we may at the outset notice that the Supreme Court in *Transcore Vs. Union of India (UOI) and Another*, , in the context of the question whether withdrawal of OA in terms of Section 19(1) of the DRT Act is a condition precedent for taking recourse to the SARFAESI Act, held that the remedies of enforcement of security interest under the SARFAESI Act and the DRT Act are complementary to each other and there is no inherent or implied inconsistency between these two remedies under the two different Acts. Recently, in *Mathew Varghese Vs. M. Amritha Kumar and Others*, the same view was reiterated in the context of the interpretation of Section 13(8) of the SARFAESI Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. It was held that on a reading, together of Sections 35 and 37 of the SARFAESI Act it will have to be held that in the event of any of the provisions of the DRT Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts namely the SARFAESI Act and the DRT Act would be complementary to each other. It was further held "the effect of Section 37 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, in respect of the proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of other Acts mentioned in Section 37, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force". It was accordingly held that the provisions of Section 29 of

the DRT Act would also apply to actions taken under the SARFAESI Act even though there is nothing in the SARFAESI Act applying the provisions of Section 29 of the DRT Act to actions thereunder, the only caution being that no conflict with reference to any of the provisions of the SARFAESI Act, takes place. The ratio of the said judgment, in our opinion applies to the present situation also.

15. We may further notice that vide Section 17A(1) of the DRT Act, the Chairperson of the DRAT exercises general power of superintendence and control over the DRTs under his jurisdiction and it is in this power of superintendence that Section 17A(2) empowers the Chairperson of the DRAT to transfer any case from one Tribunal for disposal to any other Tribunal. We find it hard to digest that though the SARFAESI Act also constitutes DRT as the forum for adjudication of appeals/applications u/s 17 thereof and the DRAT as the forum to hear appeals u/s 18 thereof against the orders of DRT on appeals/applications u/s 17 of the SARFAESI Act but the Chairperson of the DRAT would not have power of superintendence over the DRTs whilst the DRTs exercise powers of adjudication of appeals/applications u/s 17 of the SARFAESI Act. The same would tantamount to denuding the Appellate Authority under the SARFAESI Act from an essential power and which we do not find to be conducive to the scheme of hierarchy of fora for adjudication provided under the SARFAESI Act. Once, SARFAESI Act constitutes DRAT as the Appellate Authority of DRTs exercising adjudicatory powers under the SARFAESI Act, to hold that DRAT does not have the power of superintendence over DRT would be nugatory of the appellate powers of DRATs. Such power of transfer in our view in the scheme of the Act has to be held inherent and implicit in the DRAT, particularly when guidelines for exercise thereof are prescribed in the DRT Act. We, in taking the view that such power of transfer, is an inherent power, are supported at least by two Division Benches of the High Court of Punjab and Haryana in *Kishan Chand and Co. Vs. S.K. Jain*, and *Devi Dass Gopal Krishan Vs. The State of Punjab*, . We may further notice that the Supreme Court in *Ranbir Yadav Vs. State of Bihar*, has held that the power of the High Court of superintendence under Article 227 of the Constitution of India includes the power to pass orders for administrative exigencies and expediency including the power of transfer. It was held that so long as the power can be and is exercised purely for administrative exigencies without impinging and prejudicially affecting the rights and interests of the parties to any judicial proceeding, there is no reason to hold that administrative powers must yield to judicial powers. It thus follows that if it were to be held that DRAT has no such power to transfer proceedings under the SARFAESI Act from one DRT to another, the said power will have to be necessarily exercised by the High Court in exercise of powers under Article 227 of the Constitution of India. We see no reason to burden the High Courts in this regard when the power within the ambit of the statute can be exercised by the DRATs.

16. We may also at this stage notice Section 5A of the SARFAESI Act, which remained to be noticed in *Amish Jain (supra)* also, and which is as under:-

"5A. Transfer of pending applications to any one of Debts Recovery Tribunals in certain cases"(1) If any financial asset, of a borrower acquired by a securitisation company or reconstruction company, comprise of secured debts of more than one bank or financial institution for recovery of which such banks or financial institutions has filed applications before two or more Debts Recovery Tribunals, the securitisation company or reconstruction company may file an application to the Appellate Tribunal having jurisdiction over any of such Tribunals in which such applications are pending for transfer of all pending applications to any one of the Debts Recovery Tribunals as it deems fit.

(2) On receipt of such application for transfer of all pending applications under sub-section (1) , the Appellate Tribunal may, after giving the parties to the application an opportunity of being heard, pass an order for transfer of the pending applications to any one of the Debts Recovery Tribunals.

(3) Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) , any order passed by the Appellate Tribunal under sub- section (2) shall be binding on all the Debts Recovery Tribunals referred to in sub-section (1) as if such order had been passed by the Appellate Tribunal having jurisdiction on each such Debts Recovery Tribunal.

(4) Any recovery certificate, issued, by the Debts Recovery Tribunal to which all the pending applications are transferred under sub-section (2) , shall be executed in accordance with the provisions contained in sub-section (23) of section 19 and other provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) shall, accordingly, apply to such execution."

In our view, Section 5A also is reflective of the DRAT, while exercising power as an appellate forum u/s 18 of the SARFAESI Act, having the power to transfer the appeals/applications u/s 17 of the SARFAESI Act from one DRT to another. We have considered and ruled out the possibility of the same being indicative of the power of transfer of the DRAT being limited to the proceedings as mentioned in Section 5A only and not to appeals/applications u/s 17 of the Act. The need, in our view, to expressly enact Section 5A, inspite of the DRAT even while exercising powers as an appellate forum u/s 18 of the SARFAESI Act having power to transfer derived from Section 17A of the DRT Act arose, because in exercise of powers u/s 17A, the proceedings could be transferred only from one DRT within the jurisdiction of the DRAT to another DRT also within the jurisdiction of the DRAT. Section 5A enables the DRAT having jurisdiction over any of the two or more Tribunals where the applications mentioned therein are pending, to transfer all pending, applications to one DRT only.

17. We therefore hold that the DRAT in the present case had the jurisdiction to transfer the proceedings pending before DRT, Jaipur and DRT, Chandigarh to DRT-II, Delhi.

18. Though the counsels for the petitioners have not challenged or controverted the reasons for which the DRAT in the present cases has exercised the power of transfer but we may notice that the reasons given by the DRAT are in consonance with the spirit of the judgment of the Full Bench in Amish Jain (supra) as well the spirit of Section 5A of the SARFAESI Act. The Supreme Court in Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Others, and Pannalal Binjraj Vs. Union of India (UOI), has held that there should be no hesitation to transfer the case even if it has caused some inconvenience to one of the parties to the lis.

19. No other argument has been urged.

20. No merit is found in the petitions which are dismissed.