(2011) 08 BOM CK 0208

In the Bombay High Court

Case No : Civil Rev. Application No. 318 of 2011

Rakesh Hatia and Another — APPELLANT

Vs

Citifinance Consumer Pvt. Ltd. — RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Companies Act, 1956 — Section 4A
Debts Recovery Tribunal Act, 1993 — Section 17, 17(1), 18, 2
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 18
Reserve Bank of India Act, 1934 — Section 45I
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 3(4)

Citation : (2012) 1 MhLj 750

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : A M. Joshi, for the Appellant; P S. Dani instructed by Nikhil Rodriques, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karnik, J.—The petitioners borrowed money from the respondent which they did not repay. In accordance with the loan agreement, the respondent invoked the arbitration and appointed an arbitrator. The Arbitral Tribunal passed an award. That award was put for execution before the District Court at Pune by the respondent. The respondent objected to the execution petition contending that the award was without jurisdiction inasmuch the arbitrator had no jurisdiction to entertain and adjudicate upon the dispute in view of the provisions of section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Debt Recovery Act"). The District Judge by his order dated 25 March 2011 overruled the objection. That order is impugned in the present revision application. Section 18 of the Debt Recovery Act says that on and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters specified in section

17 of the Debt Recovery Act. Sub-section (1) of section 17 of the Debt Recovery Act says that the Debt Recovery Tribunal (Tribunal) shall on and from the appointed day exercise the jurisdiction and have powers and authority to entertain and decide the applications from banks and financial institutions, for recovery of debts due to such banks and financial institutions. The jurisdiction to decide applications for recovery of debts due to banks and financial institutions is vested exclusively with the Debt Recovery Tribunal and a Arbitral Tribunal cannot entertain and decide a claim for recovery by a bank or a financial institution.

2. Counsel for the applicant submits that the respondent is a financial institution within the meaning as defined under clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (for short "the RBI Act") and therefore only the Debt Recovery Tribunal constituted u/s 17 of the Debt Recovery Act had the jurisdiction to try the dispute regarding the recovery of the debt or money due from the petitioners to the respondent. The submission cannot be accepted for the reasons indicated below.

3. The word "financial institution" has been defined u/s 2(h) of the Debt Recovery Act. It is a settled principle of law that when a word or an expression has been defined in an Act then the word or expression used in any provision of the Act shall have the same meaning as given to it under the definition unless the context requires otherwise. A definition of the very word or expression given in any other Act would not govern the meaning of the word or expression used in the Act. Consequently, one has to look to the definition of an expression "financial institution" given in section 2(h) of the Debt Recovery Act and not the definition given in section 45-I of the RBI Act for the purpose of ascertaining its meaning for the purpose of section 17 of the Debt Recovery Act. Section 2(h) of the Debt Recovery Act defines the expression "financial institution" as :

(h) "financial institution" means -

(i) a public financial institution within the meaning of section 4-A of the Companies Act, 1956 (1 of 1956);

(ia) the securitisation company or reconstruction company which has obtained a certificate of registration under sub-section (4) of section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002;

(ii) such other institution as the Central Government may, having regard to its business activity and the area of its operation in India, by notification, specify.

4. Admittedly, the respondent does not fall under sub-clause (i) or (ia) of section 2(h). So far as sub-clause (ii) of section 2(h) of the Debt Recovery Act is concerned, only the institution which has been notified by the Central Government having regard to its business activity and area of its operation in India, would be regarded as the financial institution within the meaning of section 2(h) of the Debt Recovery Act. It is not the case of the petitioners that

the respondent is declared as a financial institution under sub-clause (ii) of section 2(h) of the Debt Recovery Act. As such, the respondent cannot be regarded a financial institution for the purpose of section 17 of the Debt Recovery Act. Consequently, it cannot be said that the Debt Recovery Tribunal had jurisdiction to decide a claim for recovery of the loan made by the respondent against the petitioner. The jurisdiction of the Arbitral Tribunal to entertain and try the dispute was not excluded by section 18 of the Debt Recovery Act because the respondent is not a financial institution within the meaning of section 2(h) of the Debt Recovery Act.

5. Relying upon a decision of the Supreme court in Harshad Chiman Lal Modi Vs. DLF Universal and Another, and in particular observations made in paragraph 32 thereof, counsel for the petitioners submitted that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court or proceeding. The principle is well settled that a decree or order passed by a court or tribunal having no jurisdiction is non-est and nullity and its invalidity can be set up whenever it is sought to be enforced against a person. In my view, the principle has no application to the facts of the case because, as I have held, the Arbitral Tribunal had the jurisdiction to pass the award in the present case.

6. There is no merit in the revision application which is hereby rejected. Counsel for the revision applicant prays for a stay of operation of this order as he wants to have a recourse against it before an appellate forum. The impugned order is stayed for a period of four weeks subject to the condition that the money which has already been deposited by the petitioner in the District Court shall remain in the District Court during the period of stay of operation of this order.

