

(2014) 09 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 1736 of 2010

Shanti Jaiswal

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Companies Act, 1956 — Section 442, 537
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 19(22), 19(22)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : AIR 2015 Jhar 13 : (2014) 4 AJR 429 : (2015) 2 BC 149 : (2014) 4 JLJR 172

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Rahul Gupta and Niyati Sah, Advocate for the Appellant; Rajesh Kumar, Manindra Kr. Sinha, Amit Kumar, Indrajit Sinha and Anil Choudhary, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 10.12.2009 in Appeal No. 15 of 2008 passed by the Debts Recovery Appellate Tribunal, Kolkata, the petitioners, the auction purchasers have approached this Court.

2. The creditor-Bank initially filed Mortgage Suit No. 21 of 1994 against M/s. Auto Engineering through its sole proprietor Shri Jagdish Prasad Sahu and others in the Court of Sub-Judge, Ranchi. Subsequently, the suit was transferred to Debt Recovery Tribunal, Patna and re-registered as PT. No. 138 of 1998. The creditor and other respondents did not appear before the Debt Recovery Tribunal, Patna and an ex-parte order was passed in RT. No. 138 of 1998. A certificate was drawn under Section 19 (22) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for Rs. 13,13,573.27/- along with interest @ 18.75% and cost thereon. The certificate issued by the Presiding Officer, Debt Recovery Tribunal, Patna in PT No. 138 of 1998 was received by the Recovery

Officer on 12.03.2002. After the notification for Debt Recovery Tribunal, Ranchi was issued, the matter was transferred to Debt Recovery Tribunal, Ranchi and it was renumbered as R.P. No. 140 of 2002. In the proceeding of R.P. No. 140 of 2002 also, the Certificate Debtor did not appear and therefore, the immovable property of Certificate Debtor was attached under Rule 48 of Second Schedule to the Income Tax Act, 1961 read with Section 25(a) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Vide order dated 02.02.2005 sale of the attached property through public auction was ordered and vide order dated 15.03.2005 the certificate holder-Bank was directed to submit the valuation report. On 09.05.2005 one Smt. Bina Singh (Respondent No. 5) appeared and filed her objection stating that she was owner in possession of the attached property which she acquired from legal heirs/successors of Smt. Santosh Saboo. She produced a copy of Agreement of Sale dated 14.08.2002 and Power of Attorney dated 14.08.2002 executed by Jagdish Prasad Saboo. Vide order dated 27.01.2006, the intervenor's prayer was rejected and thereafter the respondent-Bank as well as Certificate Debtor appeared on 21.03.2006 and both filed separate applications for deferring the auction sale on the ground that the proposal for compromise was pending before the respondent-Bank. The Recovery Officer, Debt Recovery Tribunal, Ranchi rejected the application filed by the certificate debtor observing that the creditor-Bank could not have compromised the matter when the decretal dues along with the interest was more than rupees 40 lakhs and the property was valued by the independent valuer at Rs. 27,25,000/-. It was further observed by the Recovery Officer that when the bidders were willing to pay Rs. 27,27,000/- or more it would be highly improper on the part of the Recovery Officer to permit compromise at a meagre sum of Rs. 9,95,767/-. On 27.04.2006 the auction sale took place in which the petitioners were declared successful bidder and vide order dated 21.08.2006 the auction sale in favour of the petitioners was confirmed by the Recovery Officer, Debt Recovery Tribunal, Ranchi. The petitioner took possession of the property on 26.08.2006 and after renovating the property, leased out the same to one M/s. Heritage Televentures Ltd. & B.P. Poddar Group and its Associates. In the meantime, the Judgment Debtor filed an application being M.A. No. 17 of 2006 before the Presiding Officer, Debt Recovery Tribunal, Ranchi which was dismissed holding that the Reserve Bank of India guidelines were not applicable because certificate was already issued. The Judgment Debtor had also moved an application being M.A. No. 28 of 2006 for setting aside ex-parte judgment dated 04.02.2002 passed in P.T. No. 138 of 1998 however, it was dismissed by the Debt Recovery Tribunal, Ranchi vide order dated 01.08.2006. The respondent Nos. 2 and 3 challenged orders passed in M.A. No. 28 of 2006 and M.A. No. 17 of 2006 both dated 01.08.2006. The learned Debt Recovery Tribunal, Kolkata vide order dated 10.12.2009 allowed the appeal filed against order dated 01.08.2006 passed in M.A. No. 17 of 2006 however, challenge to order dated 01.08.2006 in M.A. No. 28 of 2006 was not pressed by the respondents Nos. 2 & 3. Consequently, the auction sale of the property in question held on 27.04.2006 was also set-aside.

3. A counter-affidavit on behalf of respondent Nos. 2 and 3 has been filed stating that the respondent-State Bank of India vide its letter dated 16.11.2005 made an offer of "one time settlement" for Rs. 9,95,767.93 and the said offer was accepted by the Certificate Debtor without any modification or variation vide letter dated 16.03.2006 along with payment of rupees 4.5 lakhs. Thereafter, with the permission of the Presiding Officer, Debt Recovery Tribunal, Ranchi the balance amount was paid and the compromise was completed but consequently, the learned Presiding Officer, Debt Recovery Tribunal, Ranchi refused to accept the "one time settlement". It is stated that during the year, 1995-96 the Certificate Debtors had shifted to Raipur, Chhattisgarh for business purpose and therefore, no notice issued by Debt Recovery Tribunal, Patna or Debt Recovery Tribunal, Ranchi was ever served and the notice published in the newspaper at Ranchi also could not come to their notice. The agreement to sale entered into with Smt. Bina Singh was not executed with malafide intention. There is no bar against "one time settlement" in cases where certificate cases are pending. The creditor-Bank has not declared Certificate Debtor as wilful defaulter. The "one time settlement" was entered into much prior to the auction sale and the auction purchaser had full knowledge of the settlement and thus, the auction purchaser has taken a calculated risk.

4. The respondent No. 4 has filed an affidavit adopting the counter-affidavit filed by respondent Nos. 2 and 3 and the respondent No. 5 has filed a separate counter-affidavit.

5. Heard the learned counsel appearing for the parties and perused the documents on record.

6. The learned counsel appearing for the petitioners has submitted that after the auction sale was confirmed in favour of the petitioners, the learned Appellate Tribunal is not justified in setting aside the auction sale. There is no allegation of fraud, misrepresentation or collusion on the part of auction purchaser nor any irregularity in conducting the auction sale has been alleged before the learned Appellate Tribunal. The property has been sold at a price higher than the valuation of the property in question. It is further submitted that the bank is the trustee of the public money and it is bound to protect paramount interest of the bank. The Recovery Officer and Debt Recovery Tribunal, Ranchi have rightly refused to accord sanction to the "one time settlement" for Rs. 9,95,767.93. The property was valued at Rs. 27,25,000/- and total outstanding dues along with interest had gone upto rupees 40 lakhs and therefore, no exception can be taken to the decision of the Recovery Officer and Debt Recovery Tribunal, Ranchi refusing to accept the "one time settlement".

7. Relying on a decisions in "X-Calibre Knives (P) Ltd. v. State Bank of India", reported in (2005) 10 SCC 265 and "Sheeba Engineering Industries v. the State Bank of India" (in W.P. No. 15812 of 2006 and W.P.M.P No. 15571 of 2006), the learned counsel appearing for the petitioners has submitted that the guidelines issued by the Reserve Bank of India for "one time settlement" are not applicable

to cases where decree/order has been passed by the Debt Recovery Tribunal. The learned counsel appearing for the petitioners has also relied on the decision in Indian Bank Vs. Blue Jaggers Estates Ltd. and Others, . The learned counsel appearing for the petitioners has raised serious objection to the attempt by the respondent Nos. 2 and 3 (Certificate Debtor) in casting aspersions on the Recovery Officer and the Debt Recovery Tribunal, Ranchi and submitted that infact the developments in the case indicate a possible collusion between the borrower and the creditor.

8. The learned counsel appearing for the respondents defended the impugned order dated 10.12.2009 passed by the Appellate Tribunal and submitted that Recovery Officer and Debt Recovery Tribunal, Ranchi both exceeded their jurisdiction in refusing to accept the "one time settlement" arrived at between the borrower and the creditor. The borrower acted in pursuance of letter dated 16.11.2005 of the creditor-Bank and promptly deposited rupees 4.5 lakhs. With the permission of Debt Recovery Tribunal, Ranchi the balance amount was also deposited for completing the "one time settlement" however, the learned Presiding Officer, Debt Recovery Tribunal, Ranchi after permitting the borrower to deposit the balance amount, illegally refused to accept the "one time settlement". It is further submitted that the auction purchasers had knowingly taken a risk and in the event the auction sale is set aside, the auction purchasers have no right in law.

9. The learned counsel appearing for the creditor-Bank supported the stand taken by the private respondents and submitted that since the bank had entered into "one time settlement" it could not have resiled from the settlement arrived at with the borrower.

10. I have carefully considered the submission of the learned counsel appearing for the parties and perused the documents on record.

11. Before adverting to the various contentions raised on behalf of the petitioners, the provision under Chapter-V of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 may be usefully noticed. Section 25 provides modes of recovery of debts. It states that the Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of Section 19, proceed to recover an amount of debt specified in the certificate. Section 26 provides that before the Recovery Officer the correctness of the amount specified in the certificate cannot be challenged and no objection to the certificate on any ground shall be entertained by the Recovery Officer. Even the power to withdraw and correct any clerical or arithmetic mistake in the certificate does not lie with the Recovery Officer and the Presiding Officer alone can do the same. Section 28 authorises the Recovery Officer to recover the amount of debt from any other person, if any amount is due or may become due from such person to the defendant/borrower.

12. From the provisions contained in Chapter-V, I do not gather any power in the

Recovery Officer except, the power to recover the amount of debt specified in the certificate. Section 26 specifically bars any objection to the certificate being entertained by the Recovery Officer. The power of the Recovery Officer under the Act does not empower the Recovery Officer to accept any out of the court settlement or "one time settlement" even if it is entered into in terms of R.B.I. Guidelines. In my opinion the R.B.I. Guidelines may be binding on the banks/ financial institutions however, those guidelines are not binding on the Recovery Officer/Debt Recovery Tribunal though, directions can be issued by the Tribunal for enforcing the R.B.I. Guidelines.

13. In Allahabad Bank Vs. Canara Bank and Another, , the appellant-Bank had obtained a money decree against the debtor-company from the Debt Recovery Tribunal under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and thereafter filed a recovery case before the Recovery Officer. However, on a winding-up petition filed by a third party, the learned Company Judge passed an order under Section 442 and section 537 of the Companies Act staying sale of the debtor-company"s assets. The Hon"ble Supreme Court held that the provisions of Section 17 and 18 of the RBD Act are exclusive so far the question of adjudication of the liability of the defendant to the appellant-Bank is concerned. Even in regard to "execution" the jurisdiction of the Recovery Officer is exclusive. The Hon"ble Supreme Court has observed as under :

23. "..... Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained " in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the banks/financial institutions should go to the civil court or the Company Court or some other authority outside the Act for the actual realisation of the amount. The certificate granted under Section 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdictions at different stages are contemplated. Further, Section 34 of the Act gives overriding effect to the provisions of the RDB Act.

.....
.....

The provisions of Section 34(1) clearly state that the RDB Act overrides other laws to the extent of "inconsistency". In our opinion, the prescription of an exclusive Tribunal both for adjudication and execution is a procedure clearly inconsistent with realisation of these debts in any other manner."

14. The learned counsel appearing for the petitioners has pointed out that in "X-Calibre Knives (P) Ltd. v. State Bank of India", reported in (2005) 10 SCC 265, the Hon"ble Supreme Court has declined to interfere in a matter in which the Tribunal had already passed the decree/order for recovery of the amount due.

15. In *Indian Bank Vs. Blue Jaggers Estates Ltd. and Others*, , while rejecting the contention that the creditor-Bank would be bound by the terms of "one time settlement" and it cannot recover the entire amount specified in the notices issued under Section 13(2) of SARFAESI Act, 2002, the Hon"ble Supreme Court has observed as under :

25. "The Court cannot lose sight of the fact that the bank is a trustee of public funds. It cannot compromise the public interest for benefiting private individuals. Those who take loan and avail financial facilities from the bank are duty-bound to repay the amount strictly in accordance with the terms of the contract. Any lapse, in such matters has to be viewed seriously and the bank is not only entitled but duty-bound to recover the amount by adopting all legally permissible methods. Parliament enacted the Act because it was found that legal mechanism available till then was wholly insufficient for recovery of the outstanding dues of banks and financial institutions. Reference in this connection deserves to be made to the judgments of this Court in *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress*, *Central Bank of India v. State of Kerala* and *United Bank of India v. Satyawati Tondon*."

16. The learned counsel appearing for the petitioners has contended that a confirmed sale in which no allegation of fraud or collusion has been levelled, could not have been interfered with by. the Debts Recovery Appellate Tribunal. I find that the auction in question was conducted in public place and no allegation of any irregularity committed in conducting the auction sale, has been levelled by the private respondents. The property in the question was assessed by the official valuer and the auction price was more than the valuation of the property. There is no allegation of fraud or collusion levelled against the auction purchaser. This is not a case in which the property has been sold at a throw-away price. The auction sale has fetched about three times more the amount allegedly settled between the borrower and the creditor-Bank. It is well settled that even a subsequent higher offer cannot constitute a valid ground for refusing the confirmation of the sale. After the confirmation of the sale, the auction purchaser acquires a valuable right in the property purchased in auction sale and the auction purchaser cannot be deprived of his right to property except, in accordance with procedure established in law. The learned Debt Recovery Appellate Tribunal has completely ignored this aspect of the matter and quashed the auction sale. The order passed by the learned Appellate Tribunal cannot be approved in law.

17. The learned Debt Recovery Appellate Tribunal referring to Section 27(1) of the DRT Act observed that even after a certificate has been forwarded to the Recovery Officer for the recovery of the certificated amount, the Presiding Officer may grant time to the Certificate Debtor for payment of the certificated amount and thereupon he may stay the proceeding before the Recovery Officer until the expiry of the time was granted and therefore, the Presiding Officer, Debt Recovery Tribunal was not correct in refusing to record any settlement of the

disputes between the parties outside the Court, after issuance of the certificate in the claim case, only on the ground of the prejudice to the public interest.

18. The learned Appellate Tribunal held that, the Debt Recovery Act does not stipulate that in the process of adjudication and recovery of debts, the Tribunal must not allow any settlement of debt at an amount less than the amount recoverable under the law. The learned Appellate Tribunal held as under :

"The Debts Recovery Tribunal is a creature of statute and under Sub-section (25) of Section 19 it may make such orders and give such directions as may be necessary or expedient to give effect to his order or to prevent abuse of its process or to secure the ends of justice. Securing justice between the parties must necessarily be within the confines of the case as made out by the respective parties. The Tribunal so set up under the DRT Act has no public duty to discharge except for expeditious adjudication for recovery of debts due to banks and financial institutions in the manner as prescribed therein. In the process of such adjudication for the purpose of recovery of debts due to banks and financial institutions, the Tribunal must travel within the confines of the claims and counter claims made by the respective parties. If the parties to the adjudication arrive at a settlement in respect of their claims and counter claims as were presented before the said Tribunal, it has no authority and, or jurisdiction to refuse to accept such settlement only on the ground that either the claim or the counter claim was different from the settlement as arrived at between the parties. Under the aforesaid statute the Tribunal has not been authorized to act as an watchdog for recovery of the exact amount as claimed by the creditor from the debtor. On the other hand the Tribunal under the aforesaid Act has been endowed with the statutory duty to adjudicate the dispute if any subsisting between the parties expeditiously. If the dispute between the parties does not longer subsist then the Tribunal loses its jurisdiction to sit on the same and cannot compel the parties to litigate on their erstwhile dispute "

19. Referring to the decision of Hon''ble Supreme Court in Sardar Associates and Others Vs. Punjab and Sind Bank and Others, and Central Bank of India Vs. Ravindra and Others, , the learned Appellate Tribunal held that the settlement arrived at between the creditor and the debtor in terms of the scheme of the Reserve Bank of India must necessarily held to be in public interest.

20. I find that Section 27(1) of the DRT Act provides an opportunity to the borrower to pay the certificated amount. It does not give power to the Presiding Officer, Debt Recovery Tribunal to accept any amount less than the certificated amount and therefore, the Presiding Officer, Debt Recovery Tribunal has rightly refused to accept the alleged settlement between the parties for an amount of Rs. 9,95,767.93. It is a matter of record that by the time the settlement was finalised, the total dues had mounted to about rupees 40 lakhs. The property was valued at Rs. 27,25,000/- and two bids for Rs. 27,27,000/- were received in response to the public auction notice. The Tribunal constituted under the DRT Act cannot exercise its jurisdiction beyond the powers conferred by the DRT Act. As

noticed above, the DRT Act does not confer power upon the Debt Recovery Tribunal or the Recovery Officer to accept an amount lesser than the certificated amount. The learned counsel for the respondents contended that the settlement between the parties took place before the auction sale was finalised and much before the sale was confirmed in favour of the petitioners and therefore, no fault can be found with the order setting-aside the auction sale. This contention merits no acceptance. The Recovery Officer received the certificate on 12.03.2002 and the recovery Officer directed auction of the property vide order dated 02.02.2005 whereas, the alleged offer of the Bank was accepted by the borrower on 16.03.2006. The ex-parte order dated 04.02.2002 in P.T. Case No. 138/1998 became final as the respondent-borrower did not press M.A. No. 28 of 2006 challenging the ex-parte order before the Debts Recovery Appellate Tribunal. Thus, it was not open to the Debt Recovery Appellate Tribunal to interfere in the matter in such a manner that has resulted in setting-aside the order dated 04.02.2002. The approach of the learned Debts Recovery Appellate Tribunal was clearly erroneous.

21. Upon analyzing the provisions under Section 27(1) and 31 of the DRT Act and the judgment of the Hon"ble Supreme Court in "Sardar Associates v. Punjab & Sind Bank" and "Central Bank of India v. Ravindra", I am of the opinion that the learned Debts Recovery Appellate Tribunal misconstrued the power and jurisdiction of the Debt Recovery Tribunal and the Recovery Officer. The Reserve Bank of India guidelines for "one time settlement" has been held to be non-discretionary and non-discriminatory. It has been held by the Hon"ble Supreme Court that no exception can be made in favour of/or against a borrower by the creditor-Bank departing from the guidelines issued by the Reserve Bank of India. The learned counsel appearing for the petitioners has rightly contended that after the certificate has been issued or an order for recovery of dues of the creditor-Bank has been passed by the Debt Recovery Tribunal, the Debt Recovery Tribunal or Recovery Officer cannot go behind the decree/certificate/order and the Recovery Officer is bound to execute it. Moreover, it is nobody's case that the settlement between the borrower and the creditor was in terms of the "one time settlement" scheme of the R.B.I.

22. I find that the impugned order dated 10.12.2009 passed by the Debt Recovery Appellate Tribunal, Kolkata suffers from serious infirmities and therefore, it is liable to be set-aside. Accordingly, it is set-aside and the writ petition is allowed.