

(2010) 08 DEL CK 0109

In the Delhi High Court

Case No : Writ Petition (C) No. 8221 of 2009

Smt. Indira Devi and Another

APPELLANT

Vs

Debt Recovery Appellate Tribunal and Others

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 20
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 6
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 17(1), 19, 19(1), 34
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(3A), 13(3A)(2), 13(4)

Citation : (2010) 3 BC 710 : (2010) 171 DLT 439 : (2010) 5 ILR Delhi 766 : (2011) 162 PLR 1

Hon'ble Judges : Valmiki J Mehta, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : R.P. Vats and Prasanta Verma, for the Appellant; Pranav Kishore Jha, for Lajwinder Singh and P.K. Dhamija, for Respondent Nos. 3 to 16, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The issue which arises for determination in the present petition is whether an appeal can or cannot be filed u/s 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter referred to as the "Securitisation Act") by a borrower/mortgagor where the mortgaged property is situated. Putting it differently, the issue is whether an appeal u/s 17 of Securitisation Act can only be filed where the branch of the bank is situated which has given the loan or it can be filed both in the Debt Recovery Tribunal (DRT) which has jurisdiction where the branch of the Bank is situated which has given the loan or that the appeal u/s 17 can also be filed within the jurisdiction of the DRT where the mortgaged property is situated.

Under the provisions of the Code of Civil Procedure, 1908 (CPC), any legal

proceeding where the subject matter of the suit is a mortgage property, is filed within the court within whose territorial jurisdiction the mortgaged property is situated. In fact, Section 16 of the CPC mandates in view of the Non-obstante Clause thereof that the territorial jurisdiction will only lie with the court where the mortgaged property is situated and the court where the defendant resides or carries on business or any other part of cause of action arises will not have territorial jurisdiction to try the legal proceedings.

2. When the Recoveries of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "DRT Act") was passed, the Legislature made a specific departure from the provision of Section 16 of the CPC. In terms of Section 19(1) of the DRT Act, it was not required that the bank should file the proceedings for recovery only within the DRT which had territorial jurisdiction over the mortgaged property and the bank could file the proceedings for recovery either where the defendant resides or carries on business or where whole or part of cause of action arise including where the branch is located. Meaning thereby, the bank can institute recovery proceedings where its branch is situated which advanced the credit facilities to the borrower although the mortgaged property was situated elsewhere, since the place where the loan is advanced is the place where it can be said that the part of the cause of action undoubtedly arises. The relevant provision of DRT Act being Section 19(1) and the Rule 6 of the Debt Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as the "DRT Rules") being relevant, the some are reproduced as under:

Section 19. Application to the Tribunal. (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises;

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Rule 6. Place of filing application.

The application shall be filed by the applicant with the Registrar within whose jurisdiction

(a) the applicant is functioning as a bank or financial institution, as the case may be, for the time being; or

(b) the defendant, or each of the defendants where there are more than one, at

the time of making application, actually or voluntarily resides, or carries on business, or personally works for gain, or

(c) any of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain, or

(d) the cause of action, wholly or in part, arises.

A reading of the aforesaid provisions shows that this provision is similar to Section 20 of the CPC. Thus the banks in view of Section 19(1) of the DRT Act have been filing cases for recovery of money where the branch of the bank which advanced the loan is situated although it has an option also to file the recovery proceedings in the DRT within whose jurisdiction the mortgaged property is situated.

3. As per Section 17 of the Securitization Act, an appeal has to be filed in the Debt Recovery Tribunal having jurisdiction. This provision of Section 17(1) of the Securitization Act reads as under:

Section 17 Right to appeal (1) Any person (including borrower), aggrieved by any of the measures referred to in Sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, (may make an application along with such fee, as may be prescribed) to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken.

4. The issue is that which is this Debt Recovery Tribunal which has jurisdiction where an appeal u/s 17 has to be filed under the Securitization Act. It is obvious that this DRT which has jurisdiction is the Debt Recovery Tribunal which has jurisdiction to hear the proceedings which are initiated by the bank for recovery of its dues. The DRT which has jurisdiction can be one of the different DRTs in terms of Section 19(1) of the DRT Act i.e. it can be in the DRT where the defendant resides or where the defendant carries on business or where whole or part of cause of action arises in terms of the said Section 19(1). Rule 6 of the DRT Rules, is also a near identical reproduction of Section 19(1). It is, therefore, clear that any aggrieved person who files an appeal u/s 17 of the Securitization Act can file it in any one of the DRTs where the bank could have filed its original recovery proceedings u/s 19(1) of the DRT Act. Since the bank could have filed its recovery proceedings even at the place where the mortgage property is situated, clearly, an aggrieved person u/s 17(1) of the Securitization Act can also file an appeal where the mortgage property is situated. There is no reason to depart from a literal interpretation of the applicable provisions otherwise the same will create a position that whereas the bank has an option in terms of Section 19(1) of the DRT Act to file its recovery proceedings in different DRTs where either the defendant resides or carries on business or where the mortgage property is situated or where the whole or part of cause of action arises including the DRT where branch where the loan is disbursed is located, an aggrieved

person u/s 17 is obliged to file his appeal only where the branch is situated which has disbursed the loan. This obviously cannot be.

5. Another reason for holding that the DRT which has territorial jurisdiction over the place where the immovable mortgage property is situated would have jurisdiction to decide the appeal filed u/s 17(1) of the Securitization Act becomes clear from a reading of the Section 14(1) of the Securitization Act which reads as under:

Section 14 Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--

- (a) take possession of such asset and documents relating thereto; and
- (b) forward such assets and documents to the secured creditor.

This provision will have to be read along with Section 13(4)(a) of the Securitization Act and which reads as under:

Section 13(4)(a) In case the borrower fails to discharge his liability in full within the period specified in Sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:

- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset.

A conjoint reading of Section 13(4)(a) and 14(1) show that action is taken by the Chief Metropolitan Magistrate for and on behalf of the financial institution where the secured asset is situated. The secured asset is the mortgage property. u/s 14(1) of the Securitization Act, the concerned Chief Metropolitan Magistrate will be the Chief Metropolitan Magistrate either where the documents are located of which possession is sought by the financial institution through Chief Metropolitan Magistrate or the immovable property is situated of which possession is sought through an application filed u/s 14 before the Chief Metropolitan Magistrate. If the bank can take action through a Chief Metropolitan Magistrate within whose jurisdiction the immovable property is situated, it does not stand to reason why a borrower who challenges such action u/s 13(4)(a) cannot file an appeal u/s 17 of the DRT Act where the immovable property is situated.

6. Our conclusions therefore are as under:

(i) u/s 17(1) of the Securitization Act, an appeal is filed in the DRT which has jurisdiction.

(ii) The DRT which has jurisdiction as referred to u/s 17(1) is the DRT where proceedings can be initiated by the financial institution u/s 19(1) of the DRT Act read with Rule 6 of the DRT Rules.

(iii) There are different DRTs where the financial institution can initiate its recovery proceedings u/s 19(1) of the DRT Act read with Rule 6 of the DRT Rules. The said DRTs, inter alia, are where the defendant resides or carries on business or where the cause of action arises wholly or in part.

(iv) Therefore, the financial institution can file its recovery proceedings either from the place where the loan is disbursed or where whole or part of cause of action otherwise arises or where the mortgaged property is situated.

(v) Since the financial institution has an option to file its recovery proceedings at any of the DRTs which has jurisdiction u/s 19(1) of the DRT Act read with Rule 6 of the DRT Rules, similar option is also available to a borrower/mortgagor who files an appeal u/s 17(1) of the Securitization Act.

(vi) It is not possible to restrict the right of a borrower/mortgagor to file an appeal only within the jurisdiction of the DRT where the branch of the financial institution is situated which has given the loan because there is no such restriction upon the financial institution when it seeks to file recovery proceedings u/s 19(1) of the DRT Act and which proceedings filed by the financial institution can be instituted in more than one DRTs including the DRT where the loan is disbursed or the mortgaged property is situated.

7. Learned senior counsel for the petitioners has sought to place reliance upon the decision of a learned Single Judge of the Calcutta High Court in the case of *Elements Coke Pvt. Ltd. v. UCO Bank* 2010 (1) CLR 361. It has been held by the learned Single Judge of the Calcutta High Court in the aforesaid judgment that only that DRT has jurisdiction to decide the appeal u/s 17(1) of the Securitization Act where the mortgaged property is situated. The learned Single Judge has held that there are two parts of Section 13. The first part ends when an order is passed by the financial institution u/s 13(3A) and the second part starts thereafter when the proceedings u/s 13(4) are initiated. Learned Single Judge, then, has likened the proceedings u/s 13(4) of the Securitization Act to execution proceedings and which have to be filed where the immovable property is situated.

Though we agree with the conclusion of the learned Single Judge that the DRT which has territorial jurisdiction where the immovable property is situated is the DRT which has jurisdiction where an appeal u/s 17(1) can be filed, however, we feel that that it is not the exclusive DRT where an application u/s 17(1) can be filed. As already stated in our conclusions hereinabove, the appeal u/s 17(1) can be filed in any one of the DRTs in terms of Section 19(1) of the DRT Act read with Rule 6 of the DRT Rules. We also feel that the conclusion of the learned Single

Judge that there are two separate parts of Section 13 of the Securitization Act and that the proceedings on and after Section 13(4) of the Securitization Act are execution proceedings may not be correct because in execution proceedings there is no power to alter the decree whereas the proceedings u/s 17(1) are, in fact, original proceedings where the aggrieved person has a right to challenge the amount which is claimed by the financial institutions. This aspect is no longer *res integra* and we need only refer to the decision of the Supreme Court in the case of *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.,* . Paras 18 and 54 of this judgment are relevant and the same read as under:

18. It is submitted that the mechanism provided for recovery of the debt u/s 13 indicated above does not provide for any adjudicatory forum to resolve any dispute which may arise in relation to the liability of the borrower to be treated as a defaulter or to see as to whether there has been any violation or lapse on the part of the creditor or in regard to the correctness of the amount sought to be recovered and the interest levied thereupon. On the other hand, Section 34 bars the jurisdiction of the civil court to entertain any suit in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. It also provides that no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act or under the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Section 35 gives an overriding effect to the provisions of the Act over the provisions contained under any other law. The submission, therefore, is that before any action is taken u/s 13, there is no forum or adjudicatory mechanism to resolve any dispute which may arise in respect of the alleged dues or NPA.

54. Insofar as the argument advanced on behalf of the petitioners that by virtue of the provisions contained under Sub-section (4) of Section 13 the borrowers lose their right of redemption of the mortgage, in reply it is submitted that rather such a right is preserved under Sub-section (8) of Section 13 of the Act. Where a borrower tenders to the creditor the amount due with costs and expenses incurred, no further steps for sale of the property are to take place. In this connection, a reference has also been made by the learned Attorney General to the decision in *Narandas Karsondas v. S.A. Kamtam* which provides that a mortgagor can exercise his right of redemption any time until the final sale of the property by execution of a conveyance. Shri Sibal, however, submits that it is the amount due according to the secured creditor which shall have to be deposited to redeem the property. Maybe so, some difference regarding the amount due may be there but it cannot be said that right of redemption of property is completely lost. In cases where no such dispute is there, the right can be exercised and in other cases the question of difference in amount may be kept open and got decided before sale of property.

A reading of the aforesaid paragraphs clearly shows that the amount which is claimed by the financial institution on passing of an order u/s 13(3A) of the

Securitization Act whereby the amount is claimed against the borrower/ mortgagor/guarantor etc, the said crystallisation is not final and it can always be challenged in an appeal u/s 17(1) of the Securitization Act which proceedings are in fact, though titled as "appeal proceedings", original jurisdiction proceedings.

8. We, therefore, agree with the final conclusion of the learned Single Judge of the Calcutta High Court in the case of Elements Coke (supra) but we feel that the entire conclusions and the ratio of that judgment may not be correct and it is not only the DRT where the immovable property is situated would have exclusive jurisdiction to try the appeal u/s 17(1) of the Securitization Act but all other DRTs in terms of Section 19(1) of the DRT Act read with Rule 6 of the DRT Rules.

9. The counsel who appeared on behalf of the financial institution/bank have sought to urge that by virtue of Rule 6 of the DRT Rules, the bank can only file its recovery proceedings where the branch of the bank is situated and at no other place, and therefore proceedings u/s 17(1) can also be filed where the branch of the financial institution is situated which has disbursed the loan. We have already reproduced Rule 6 of the DRT Rules above. The said Rule is identical to Section 19(1) of the DRT Act and therefore it is not possible to agree with the contention of the counsel for the bank inasmuch as the argument of the counsel is predicated as if Rule 6 only contains sub-Rule (a) of the said Rule 6 and as if it does not contain the other Sub-rules (b) to (d).

It was also sought to be contended by the counsel for the bank that Section 13(3A) of the Securitization Act supports the proposition that it is only the DRT where the branch of the financial institution which has disbursed the loan would have territorial jurisdiction for an appeal u/s 17(1). Section 13(3A) of the Securitization Act reads as under:

Section 13. Enforcement of security interest.

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(3A) If, on receipt of the notice under Sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

We do not find anything in Section 13(3A) of the Securitization Act to support the contention of the counsel for the bank that the proceedings u/s 17(1) can only be filed where the branch of the financial institution is located which has disbursed the loan. In fact, as already held by us above, there are no two separate parts of Section 13 as held by the learned Single Judge in the case of Elements Coke (supra) because Section 17(1) proceedings are original proceedings where even the amount which has being claimed by the financial institution by passing an order u/s 13(3A) of the Securitization Act is subject to

challenge and the amount which is claimed/demanded in the notice issued u/s 13(3A) read with Section 13(2) is not final.

10. The last argument of the counsel for the bank in support of the proposition that only that DRT has jurisdiction where the branch of the financial institution is located which has given the loan is on the basis of a decision of the learned Single Judge of this Court in the case reported as *State Bank of India v. Samneel Engineering Company and Ors.* I (1997) BC 655. We have read the said judgment and we do not understand how at all it applies to the question at hand. The said judgment is, in fact, of the year 1997 i.e., before the Securitization Act came into force in the year 2002.

11. Accordingly, we answer the proposition and the issue as raised and hold that an appeal u/s 17(1) need not be filed only in DRT having jurisdiction where the branch of the financial institution is located which has disbursed the loan and the territorial jurisdiction for appeals to be filed u/s 17(1) of the Securitization Act is of all DRTs which would have jurisdiction in terms of Section 19(1) of the DRT Act read with Rule 6 of the DRT Rules. An aggrieved person, therefore, can file an appeal u/s 17(1) of the Securitization Act even where the mortgaged property is situated and he is not bound only to file the appeal u/s 17(1) in the DRT which has jurisdiction over the branch where the credit facilities are disbursed.

12. In view of the above, we allow the writ petition and set aside the order dated 17.10.08 passed by the Debt Recovery Appellate Tribunal and uphold the order dated 23.11.07 of DRT-III, New Delhi and hold that the DRT-III has the territorial jurisdiction to entertain the S.A. 122/07 filed by the petitioner.