

(2013) 07 DEL CK 0215

In the Delhi High Court

Case No : Writ Petition (C) 2170 of 2013

V.K. Singhal and Others

APPELLANT

Vs

Dena Bank and Another

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 22, 31

Citation : (2013) 8 AD 672 : (2013) 202 DLT 635

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : Hashmat Nabi, for the Appellant; Ramesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—Issue Rule. Mr. Ramesh Kumar, Advocate accepts notice and states that the petition can be heard finally.

2. The writ petition impugns an order dated 18.02.2013 of the Debt Recovery Appellate Tribunal (DRAT), Delhi in Appeal No. 185/2011 which was against order dated 21.2.2011 of the Debt Recovery Tribunal (DRT) in Appeal No. 3/2011. That appeal was directed against the order of Recovery Officer in TRC No. 42/2009. The Recovery Officer directed return of certain applications with liberty to file them before the Debt Recovery Tribunal Allahabad which was held to possess jurisdiction.

3. The respondent Dena Bank has advanced term loan of Rs. 47.20 lacs to the petitioner. The appellants who are the guarantors of the main borrower M/s. Hygienic Foods Ltd., secured this amount and immovable property in the form of agricultural land of khasra no. 25 and 26 measuring 6 Bighas 11 Biswas, situated in Village Sandila, Tehsil Bilhaur, District Kanpur Dehat were mortgaged to the bank by deposit of title deeds. The bank filed a mortgage suit (suit No. 198/92) before the Civil Court, Kanpur Dehat under the provisions of Order- XXXIV CPC

for foreclosure of the mortgage and sale of property claiming an amount of Rs. 73,85,526.65 with interest. The said suit was decreed with interest on 25.09.1995. The bank preferred an application on 17.03.1998 before the Court for passing a final decree since the preliminary decree remained unsatisfied. During the pendency of these civil proceedings, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the RDDBFI Act) came into force. It was urged by the petitioner that with the coming into force of the said enactment, especially Section 18 and 31, all proceedings before the Civil Court cease to exist and had to be treated as transferred to the concerned Tribunal, i.e., Debt Recovery Tribunal (DRT). In these circumstances, the decree directed to be drawn by the DRT, argued the petitioner, were nullity and could not be enforced under any provision of law. The petitioner, therefore, urged that the consequential recovery certificates and the further transfer to Allahabad directed by the impugned order is unsustainable.

4. Learned counsel for the petitioner urges that the issue of nullity has been wrongly decided and that the DRT did not appreciate the correct provisions of law. He particularly relied upon Section 31 and also emphasized on Section 18 but stressed that the bar of jurisdiction undercut the Civil Court's ongoing proceedings initiated concededly prior to the coming into force the Act. The DRT in its impugned order was particularly impressed by the fact that till 1998 no Tribunal-i.e. DRT had been notified in terms of the provisions of the "Act". He also urged that in any event the Tribunal had been constituted in Delhi on 5.7.1994 and it was open to the Bank to seek appropriate orders for transfer of the pending proceedings. Learned counsel urged that the DRAT's view that the Recovery Officer did not possess jurisdiction to decide and make orders as to the nullity or otherwise of the decree or recovery certificate, are also not sustainable. He also relied upon the decision of the Division Bench of the Bombay High Court reported as Bank of India Vs. Shree Satya Corporation and Others, . It was also urged that having regard to the recent Full Bench decision of this Court, i.e., Amish Jain and Another Vs. ICICI Bank Ltd., , the view of the DRAT that the Allahabad Tribunal had jurisdiction is incorrect.

5. Counsel for the respondent/bank urged that the impugned order is unexceptionable. He relied upon the discussion by the Appellate Tribunal, especially paragraphs-8 & 9 and submitted that concededly there was no Tribunal which possesses jurisdiction over Kanpur Dehat where the property was located-which property was mortgaged to the Bank at the relevant time. The Tribunal was notified only in April, 1998. Consequently, it could not be said that jurisdiction of the Civil Court was barred and that its decrees were in nullity. Counsel independently submitted that argument with regard to the Recovery Officer possessing jurisdiction to decide or pronounce upon the nullity of the decree or of the order of the DRT was otherwise unfounded in law.

6. This Court has considered the submissions.

7. The Full Bench decision in Amish Jain's matter (supra) has in a sense done

away with the distinction between the mere money suit and a claim based on security of the like covered by Order- XXXIV CPC. It has proceeded to interpret Section 19 of the Act in a broad and comprehensive manner and held that proceedings are composite in nature and that the relief sought by financial institution of those subject to the provisions of the enactment which primarily aim at recovery of money claims and that even if such claims are founded or based upon mortgage claims or claim based on other underline securities, the relief to that extent would be ancillary. This Court is of the opinion that having regard to that position, the Tribunal's order facially discloses an error. Consequently, its directions to return the applications for being proceeded with by the Recovery Officer at Allahabad cannot be sustained.

8. As regards the question of jurisdiction of Recovery Officer to decide or pronounce upon the legality or otherwise of decree, this Court is of the opinion that the petitioner's argument cannot be accepted. There could be no dispute about the proposition that a nullity of a decree can be set up at any stage-even at collateral or execution proceedings (refer to Kiran Singh and Others Vs. Chaman Paswan and Others,), yet this Court is conscious of the fact that the DRT and the Recovery Officer are creatures of Statute and are clothed with limited powers. The jurisdiction which existed with Civil Courts was taken away and vested in the Tribunals. This is reinforced by Section 22- quite apart from Section 17 which states that such Tribunals would have all the powers of the Civil Courts. The power of the Recovery Officer, on the other hand, are extremely constrained and limited. The decision, relied upon by the petitioner, of the Bombay High Court, in the opinion of this Court, does not assist him, and on the contrary the observations are categorical inasmuch as they hold that the Recovery Officer does not possess power to declare a decree or order as nullity on any ground. The relevant portions of the Bombay High Court's judgment in Bank of India's matter supra are as follows:-

17. It is pointed out by Ms. Kamdin that Sub-section (2) of Section 31A provides that on receipt of an application under Sub-section (1), the Tribunal "may" issue a certificate to a Recovery Officer. She contends that while the decree by a Civil Court is not open to challenge in the execution proceedings Sub-section (2) of Section 31A, which is the parallel execution proceeding before the machinery under the D.R.T. Act, makes the decree vulnerable during the execution proceedings as the D.R.T. has been granted a discretion of issuing or not issuing a certificate of recovery to the Recovery Officer. We notice that even under the D.R.T. Act, once a certificate has been issued by the Tribunal, the certificate is not open to challenge before the Recovery Officer. Secondly, we are unable to accept the contention that a decree in no circumstances can be challenged during the execution proceedings, even though the scope for such challenge is extremely limited like on the ground of nullity of the decree or fraud. We see no reason why the D.R.T. should be denied this discretion, albeit narrow, to examine the decree. We are of the view that when an application is made for issue of recovery certificate under Sub-section (1) of Section 31A, the D.R.T.'s discretion

under Sub-section (2) of the said section is extremely narrow and the D.R.T. can only examine the validity of the decree on the very limited grounds on which an executing Court can scrutinise the decree. Barring the said limited and narrow jurisdiction, the D.R.T. is required to issue a certificate of recovery to the Recovery Officer. Once such a certificate of recovery is issued to the Recovery Officer, Sub-section (3) provides that the Recovery Officer shall proceed to recover the amount as if it was a certificate in respect of a debt recoverable under the D.R.T. Act. In other words, if an application is made u/s 19, it is adjudicated by the Tribunal and a certificate issued to the Recovery Officer if the debt is proved as due and payable. If the debt is already adjudicated by a decree of the Civil Court, then an application is to be made u/s 31A and the D.R.T. shall issue a certificate of recovery upon such a decree as if it was the claim adjudicated by it u/s 19. The validity of the decree can be challenged at this stage only on the limited grounds of nullity or fraud. In this view of the matter which we take, there is no scope for the argument that the D.R.T. would be sitting in appeal over the decree granted by this Court when an application for a recovery certificate is made u/s 31A.

9. In view of the above discussion, we are of the opinion that ends of justice would be best subserved if the impugned order of the DRAT is set aside and the matter is remitted to it for consideration afresh limited to the question of the validity or legality of the order of the Civil Court and whether a recovery certificate could be validly drawn on its basis. In considering and deciding the said issue, the DRAT would consider the relevant provisions of the Act including Section 18 and 31. It is open to the parties to make such further submissions in this regard as are available to them in law. While pronouncing its order, DRAT shall also be guided by the Full Bench decision of this Court in *Amish Jain's* matter (*supra*) as to the appropriate authority to decide the issue.

10. The petition has to succeed; the impugned order is set aside to the above extent. The parties shall appear before the DRAT on 25th July, 2013 for further proceedings towards deciding the matter remitted to it. DRAT is requested to hear the parties and decide the issue at its earliest convenience and in any case within three months. The Writ Petition is allowed in the above terms.