

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2987 OF 2015

- 1 Prakash S/o Ramanna Patil
(Kondalwar)
Age: 47 years, occu: Agriculture & business
Partner of Shri Venkatramana
Ginning & Pressing Factory,
a partnership firm
R/o Behind Dy. S.P. Office
Bhokar, Tq. Bhokar
Dist. Nanded
- 2 Mr. Sunil Satyanarayan Bajaj
age: 41 years, occu: business
Partner of Shri Venkatramana
Ginning & Pressing Factory,
a partnership firm
R/o New Mondha, Bhokar
Tq. Bhokar, Dist. Nanded

Petitioners

Versus

- 1 The Peoples Cooperative Bank Limited
Hingoli, having its registered &
Head Office at Hingoli & one of
its branch office at Nanded
through Its authorized Officer
Mr. V.M. Agrawal
- 2 M/s Rameschandra Omprakash
Ramkamal Talkies Road,
Shrikant Market, Akola
a registered partnership firm through its partners
Rameshchandra s/o Shivratan
Chandak, age: 57 years,
occu: Business
r/o Shrikant Market, Akola

Respondents

Mr.V.D. Salunke advocate for the petitioners
Mr.Rajendra S. Deshmukh advocate for respondent No.1
Mr. A.S. Patil advocate for respondent No.2.

CORAM : **R.M. BORDE &
A. I. S. CHEEMA, JJ.**

Dated : 8th DECEMBER, 2015.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule.

3 With the consent of the parties, petition is taken up for final disposal at admission stage.

4 The petitioner is aggrieved by the order passed by the Debt Recovery Tribunal rejecting the Application, presented by him under section 17 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002, on the ground that, the same has been tendered beyond the prescribed period of limitation. The order passed by the Debt Recovery Tribunal has been confirmed by the Debt Recovery Appellate Tribunal on 16.2.2015 on consideration of an appeal presented by the petitioner bearing No.281/2009.

5 The petitioner contends that, the Debt Recovery Tribunal as well as the Appellate Tribunal have misconstrued the prayer made by the petitioner in the Application presented under section 17 and have passed impugned orders. The petitioner contends that, a

notice of sale was issued in respect of the property belonging to the petitioner on 29.2.2008 by the respondent bank. He tendered an objection on 13.2.2008. Possession of the property was taken by the respondent before issuance of sale notice on 6.7.2007. The sale of the property is conducted on 25.8.2008 and the petitioner is objecting to the sale conducted on behalf of respondent bank by presenting an application to the Debts Recovery Tribunal (DRT). The Tribunal has misconstrued the application to be application as raising challenge to the sale notice and not the action of sale. Since the DRT has considered the date of accrual of cause of action as 29.2.2008, treating the application presented by the petitioner and registered on 5.9.2008 to be beyond prescribed period of limitation. It is also observed by the Debts Recovery Tribunal as well as Debts Recovery Appellate Tribunal that, the challenge to the sale notice has been turned down by the High Court and as such, it was not permissible for the petitioner to re-agitate the same grievance, in the application registered on 5.9.2008.

6 On careful consideration of the application tendered by the petitioner to the Debts Recovery Tribunal, it transpires that, the petitioner is not raising challenge to the notice of sale, but is challenging the sale itself, which is conducted on 25.8.2008. The

application tendered by the petitioner is well within limitation as provided under section 17 of the Act. There is no dual opinion as regards the facts stated as above.

7 In this view of the matter, the petition deserves to be allowed and same is accordingly allowed.

8 The orders passed by the Debts Recovery Tribunal rejecting the application tendered by the petitioner under section 17 holding the same as beyond the prescribed period of limitation on 7.9.2009, as well as the order passed by the Debts Recovery Appellate Tribunal dated 16.2.2015 in appeal No.281/2009 with MA No.865/2009 are quashed and set aside. The Debts Recovery Tribunal is directed to consider the application tendered by the petitioner under section 17 of the Act raising challenge to the sale dated 25.8.2008 conducted on behalf of the respondents on its own merit in accordance with provisions of law.

9 Rule is accordingly made absolute.

10 There shall be no order as to costs.

(A. I. S. CHEEMA, J.)

(R. M. BORDE, J.)