IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.623 OF 2015
WITH
CIVIL APPLICATION NO.770 OF 2015

Yerwada Gadiwadar Co-Op. Housing
Society Limited ... Appellant
vs.
SBI Home Finance Limited and Others ... Respondents

Mr. Vishwajeet Sawant a/w. Ms. Kshama Loya Modani i/b. ALMT Legal, for the Appellant.
Mr. Chetan Kapadia a/w. Mr. Faisal Sayyed i/b. Manilal Kher Ambalal & Co., for Respondent No. 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **16th NOVEMBER, 2015**

P.C.:

. In this Appeal the order dated 4th February, 2015 passed by the 3rd Joint Civil Judge, S. D., Pune below Exhibit "107" in Special Civil Suit No. 1342 of 1999 is challenged.

2. The Appellant is the original Defendant No. 6 and the Respondents are the original Plaintiffs. The Respondent No. 1 is SBI Home Finance Limited Company from whom the Defendant No. 1 Mantri Housing & Construction Company Limited has borrowed the

loan. The present Appellant is the society and the owner of the land who has entered into a development contract with Defendant No. 1. The said land was mortgaged by Defendant No. 1 with SBI Home Finance Limited Company i.e. the Plaintiffs for obtaining loan. The developmental rights vested with Defendant No. 1 were mortgaged in respect of the flats which are going to be constructed after obtaining loan. The loan was disbursed. However, it was not re-paid and therefore the SBI Home Finance Limited Company filed a suit for money recovery and enforcement of the deed of mortgage against Defendant No. 1. The suit was filed in the Civil Court, Pune. The present Appellant who is the owner of the land got himself impleaded as a party-Defendant and the present Respondent No. 2 i.e. Kotak Mahindra Bank Limited (in short "*Kotak Mahindra*") was also impleaded as Plaintiff No. 2 in the Suit.

3. During the pendency of the suit, the application was moved by Defendant No. 1 on the point of maintainability of the suit in the Civil Court as it is a recovery suit filed by a finance company. However, the said application was rejected by the Civil Court on 21st October, 2010 holding that Plaintiff No. 1 a "Home Finance Limited

Company" is not a "Banking Company". Later the SBI Home Finance Limited Company assigned the rights to the State Bank of India(SBI) and thereafter the SBI by executing a deed of assignment on 23rd March, 2006 assigned the rights of recovery against the Defendants to Kotak Mahindra. This is how Kotak Mahindra came into the picture and got impleaded as Plaintiff No. 2 in the Suit. Thereafter, Kotak Mahindra made an application for transfer of the suit before the Debt Recovery Tribunal (DRT) under the "Recovery under the Debts Due to Banks and Financial Institutions Act, 1993" (hereinafter "*RDDBI Act*").

4. The learned counsel for the Appellant has submitted that the order passed by the learned Civil Judge is erroneous as the plaint is returned only to Plaintiff No. 2 though Plaintiff No. 1 is prosecuting the suit. He further submitted that the learned Civil Judge is wrong in interpreting Section 31 of the RDDBI Act. He submitted that the DRT in Pune was established on 17th December, 2001 and the Suit was instituted by Plaintiff No. 1 on 26th November, 1999. He submitted that therefore as per Section 31 of the RDDBI Act, those cases can be transferred only either they are pending before the Court at the time of establishment of the Tribunal or a cause of action if arisen after

such establishment of the Tribunal. The learned counsel further submitted that none of these circumstances are present and/or applicable in the present suit. He submitted that the suit was filed prior to the establishment of DRT. He submitted that the later portion of Section 31 of the RDDBI Act contemplates that the cause of action should take place after the establishment of the Tribunal. However in the present case as suit was filed in the year 1999 and the Plaintiff No. 1 has already initiated the lis in the year 1991, the cause of action did not arise after the establishment of DRT. Therefore, the trial Court cannot take any action under Section 31 of the RDDBI Act. He further submitted that the present Appellant is the owner of the land and Defendant No. 3 Mantri Housing and Construction Company is not the owner, as only the developmental rights were given to the Defendant No. 3. He submitted that it is necessary for the Court to decide the title of the land. The present Appellant were neither a party to the deed of mortgage nor they obtained any loan from the banking company. He submitted that DRT has no jurisdiction to look into the issue of title of the land so it can not give any finding in respect of the title of the land. Therefore, the Civil Court is a appropriate forum to adjudicate all the issues.

5. The learned counsel for Respondent No. 2 Kotak Mahindra opposed the Appeal. He submitted that the SBI Home Finance Limited Company was not a banking company and therefore the suit was filed before the Civil Court. He submitted that the application filed by the Defendants challenging the jurisdiction of the Civil Court was also rejected earlier only on the ground that the Plaintiff No. 1 was not a banking company. He submitted that Respondent No. 2/Plaintiff No. 2 is an assignee by virtue of deed of assignment executed on 23rd March, 2006 by SBI. He submitted that under Section 2(g) of the RDDBI Act, a '*Debt*' is defined. The loan obtained by Defendant No. 1 is *"recoverable debt"* under the Act. So also the due amount is more than Rs. 10 lacs and as per sub Section 4 of the Section 1 of the said Act, the suit for recovery of the amount more than Rs. 10 lacs lies before the DRT. He further argued that there is a bar on the jurisdiction of the Civil Court under Sections 17 and 18 of the Act. The DRT has power and jurisdiction of the recovery of debts due to banks and financial institutions. In support of his submission, he relied on the judgment of the High Court of Delhi in the case of "***Kotak Mahindra Bank Limited vs. Stiefel Und Schuh India***

Limited and Others"[1]. He supported the order passed by the learned judge of the Civil Court. He submits that the DRT is the proper forum to try and decide the application of the recovery of the debt. He submitted that the Plaintiff No. 1 being a non banking company, the suit was rightly filed earlier before the Civil Court for the recovery of the loan amount.

6. The Debt Recovery Tribunal was constituted in Pune on 17th December, 2001 however, the suit which was filed in the year 1999 remained before the Civil Court, Pune because Plaintiff No. 1 was not a banking Company. However, in between the Plaintiff SBI Home Finance Limited Company assigned the rights in favour of the State Bank of India(SBI) which subsequently assigned the rights in favour of the present Respondent No. 2. Thereafter the present Respondent No. 2 made an application before the Civil Court that it be impleaded as a party-Plaintiff No. 2 in the said Suit. The said application was allowed on 21st January, 2010 by the learned Judge. My attention is drawn to the said order below Exhibit "90". In the said order the Civil Judge has mentioned that previous assigner SBI is not a party so the objection was raised by the Defendant for pleading the

1. 2009 (108) DRJ 330, HIGH COURT OF DELHI.

present Plaintiff as a party. The learned Civil Judge turned down the said objection and held that due to deed of assignment, the Respondent No. 2 is entitled to recover all the debts of the Respondent No. 1 from its borrower. Thus, as Respondent No. 2 has stepped into the shoes of the original Plaintiff-Respondent No. 1, it will not cause any prejudice to the present Appellant. The learned Civil Judge allowed Respondent No. 2 to prosecute the suit and recover the loan against its debts. The said order is not challenged and thus it attained finality. Therefore the Plaintiff No. 2 being a banking company was prosecuting the case of recovery of debt, has rightly moved the application for transfer under Section 31 of the RDDBI Act before the Civil Judge.

7. The learned Judge of the trial Court has mentioned in para 12 and referred the order dated 2nd December, 2014 in Writ Petition No. 9784 of 2014 passed by the Division Bench of this Court wherein it is observed that it would be appropriate if the Plaintiff No. 2 Kotak Mahindra moves an application before the trial Court for such relief and transfer of the suit and that is to be decided expeditiously before 15th February, 2015. The assignee/Plaintiff No. 2 who stepped

in the shoes of SBI Home Finance Limited Company has every right to recover the debt. Though, in between State Bank of India who was also assignee who further assigned the rights to the present Respondent No. 2, every assignee need not be a party in the chain of assignment. Section 31 states about the transfer of the suit or other proceedings to DRT if they are pending before the Court.

8. As mentioned earlier, the suit was filed in the year 1999 and the DRT was constituted in the year 2001 at Pune. Thus, in fact the suit was pending when DRT was constituted and thus first portion of Section 31 is applicable to the present set of facts. The later part of Section 31 can not be construed as interpreted by the learned counsel for the Appellant. The cause of action depends on the subject of the dispute. So also on the parties to the dispute. Many times a special forum to try and decide a category of four matters is created on the basis of status of the parties to the dispute; D.R.T. is one of them. Therefore, when the character of the parties changed, the cause of action that is recovery of debt arose for transfer to D.R.T. It is to be noted that the cause of action in fact arose in 1999 or prior to that when the suit was filed. Thus, by virtue of addition of Respondent No.

2 as a party-Plaintiff, the character of the Plaintiff changed from non-banking to banking company, therefore RDDBI Act is attracted to this recovery process. By virtue of Section 17 and bar under Section 18 of the RDDBI Act, the lis which was prosecuted by Plaintiff No. 1 is to be transferred to DRT. Section 18 of the Act states that the jurisdiction of the Civil Court if a suit filed by any financial institution or by banking company for the recovery of debt then the DRT is a appropriate forum and jurisdiction of the Civil Court is bound. The present suit as it was pending before the Court since 1999, it cannot be taken before the DRT because the Plaintiff was not a banking company.

9. Thus, the submissions of the learned counsel for the Appellant cannot be accepted. I do not find any reason to interfere with the order passed by the learned judge of the Civil Court. Hence, the Appeal from Order stands dismissed.

10. In view of the above, the Civil Application No. 770 of 2015 stands disposed of.

11. The learned counsel for the Appellant has submitted that

the order of this Court be stayed as the Appellant wants to challenge the order before the Hon'ble Supreme Court. The learned counsel for the Respondents oppose the submission. However, in all fairness the order is stayed for six weeks.

(MRS.MRIDULA BHATKAR, J.)