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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6491 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 1063 OF 2016
AND
WRIT PETITION NO.6490 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 2499 OF 2016

Mr. Babanrao Radoji Kadbhane & Ors. .. Petitioners.
Versus
Asset. Reconstruction Company (India) Ltd.
& Ors. .. Respondents.

Mr. Vishwajeet Sawant i/b.Nikhil Chavan, for Petitioners.
Mr. Rohit Gupta with Vinod Kothari with Phiroze Merchant, for Respondent No.1.
Mr. Devidas Parab i/b. M. D. Nagle, for Respondent No.2.
Mr. Vikram Pai, for Respondent Nos.4 to 7.

CORAM: M.S.SANKLECHA, &
S.C.GUPTE, JJ.
DATE : 6th APRIL, 2017.

P.C:-

These petitions challenge the order dated 22 January 2015 passed by the Debts Recovery Appellate Tribunal (DRAT). The impugned order allowed the substitution of Respondent No.1 (Asset Reconstruction Company) in place and stead of Bank of Maharashtra in proceedings before the Debts Recovery Tribunal (DRT) as also in the Recovery Certificates dated 11 March, 2003 and 31st August, 2004 in the two Petitions issued in favour of Bank of Maharashtra.

2 It is an undisputed position that Bank of Maharashtra had filed two independent proceedings for recovery of its debts before the

DRT. Both were decided in favour of the Bank of Maharashtra. Thereafter, two Recovery Certificates were also issued by the DRT.

3 The grievance of the Petitioners in the two Petitions before us is that Respondent No.1 claimed substitution in the Recovery Certificates dated 11th March, 2003 and 31st August, 2004 in place and stead of Bank of Maharashtra on the basis of an assignment deed dated 29 March 2007. According to the Petitioners, the assignment deed, in terms, did not include the assignment of Recovery Certificates. Consequently, Respondent No.1 could not have been substituted in place and stead of Bank of Maharashtra. Therefore, the Recovery Certificates in favour of Bank of Maharashtra cannot enure to the benefit for Respondent No.1. The next grievance of the Petitioner is that the Recovery Certificates were issued on 11th March, 2003 and 31st August, 2004 and the application for substitution was made by Respondent No.1 as late as in 2011. Therefore, it is contended that this application for substitution not having been made within a reasonable time, should have been rejected.

4 So far as the first objection of the Petitioners to the impugned order is concerned, we note that the *"SARFAESI"* Act defines the *"financial asset"* in Section 2(1) thereof to mean a debt or receivable. The definition of *"debt"* in Section 2(ha) of the SARFAESI Act incorporates the meaning assigned to a debt in Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act). The *"debt"* is defined in Section 2(g) of the RDDB Act to mean any liability which is claimed as due from any person by a Bank or Financial Institution during the course

of any business activity, whether secured or unsecured, or assigned or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application. Therefore, in view of the above, the definition of "debt" would include within it, the Recovery Certificate issued in 2003 and 2004 in favour of Bank of Maharashtra. Further, the deed of assignment which is being relied upon by the Petitioner itself provides for assignment of all debts in favour of Respondent No.1 including all rights to recover the same. Thus, the Recovery Certificate would be included within the deed of assignment.

5 Mr. Sawant, learned Counsel for the Petitioners also placed reliance upon the decision of the Apex Court in ***Jugalkishore Saraf v/s. M/s. Raw Cotton Co. Ltd., AIR 1955 SC 376*** dealing with the issue of assignment of a debt pending the suit. The aforesaid decision was rendered in the context of the Transfer of Property Act and the Code of Civil Procedure. The provisions of the SARFAESI Act were not for consideration by the Court in the above case. Moreover, in the present facts, the special legislation viz: SARFAESI Act would govern this dispute. Sub-section (3) of Section 5 of the SARFAESI Act provides that *"unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are substituting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or*

financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securiutisation company or reconstruction company, as the case may be, had been a party thereof or as if they had been issued in favour of securitisation company or reconstruction company, as the case may be". Therefore, by operation of law, Respondent No.1 is entitled to step into the shoes of Bank of Maharashtra. Thus, we find no merit in the first objection on behalf of the Petitioner to the impugned order.

6 So far as the second objection with regard to delay, namely, the application for substitution should have been filed within reasonable time, is concerned, we find no merit. This Court in ***Delta Distilleries Ltd. V/s. Shaw Wallace and Co. Ltd., 2008(1) Mh.L.J. 899*** had occasion to deal with a similar submission in the context of the scheme of amalgamation and the court observed that in case of amalgamation, it is not a case of abatement; in fact, it amounts to devolution of interest upon the transferee upon whom the interest is devolved and he is entitled to being impleaded as a party to continue the proceedings. Though the aforesaid decision dealt with the issue on amalgamation, the same would apply with equal force to a case of assignment as in this case. Further, Mr. Gupta, learned Counsel for Respondent No.1 invited our attention to Section 5(4) and (5) of the SARFAESI Act, which also support the view that there is no time limit provided for substitution by a securitisation/ reconstruction company in respect of a debt which has been taken over. This is so as the proceedings do not abate.

7 In the above view, there is no merit in both the Petitions. Accordingly, both the Petitions are dismissed. Civil Application No.2499 of 2016 in Writ Petition No.6490 of 2015 and Civil Application No.1063 of 2016 in Writ Petition No.6491 of 2015 are also dismissed, as not pressed.

(S.C.GUPTE,J.) **(M.S.SANKLECHA,J.)**