

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 22529 of 2015 (O&M)

Date of decision: 4.10.2017

M/s Gupta & Company and others

.. Petitioners

vs

Punjab & Sind Bank and another

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill**

Present: Mr. Rohit Suri, Advocate, for the petitioners.

Mr. S. C. Arora, Advocate, for respondent no. 1.

Rajesh Bindal, J.

1. The petitioners have approached this Court impugning order dated 4.8.2015 (Annexure P-6) passed by the Debts Recovery Tribunal-II, Chandigarh (for short, 'the Tribunal'), whereby it has declined to exercise jurisdiction with reference to the property situated at Chandigarh, as the Tribunal was exercising jurisdiction over the properties falling within the State of Punjab.

2. While giving the background of the case with reference to loan raised by the petitioners, the securities furnished and the classification of the loan as NPA by the bank, learned counsel for the petitioners submitted that a demand notice dated 8.3.2013 (Annexure P-1) was issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), by Punjab & Sind Bank, Sector 47, Chandigarh Branch. The notice clearly mentioned the properties situated in the State of Punjab and house situated at Chandigarh. Immediately thereafter, the bank issued possession notice under Section 13(4) of the SARFAESI Act on 22.6.2013 (Annexure P-2).

3. Challenging the action of the bank, the petitioners approached the Tribunal, by filing S.A. No. 334 of 2013. Vide order dated 15.1.2014, keeping in view the fact that the physical possession of basement and ground floor of residential property located at Chandigarh had been taken, the bank was permitted to put the property on sale without dispossessing the petitioners from the first floor of the property. However, vide order dated 4.8.2015, the Tribunal refused to exercise jurisdiction with reference to the property situated in Chandigarh as it was opined that the Tribunal has territorial jurisdiction only for the properties situated in the State of Punjab. The aforesaid order has been impugned in the present writ petition.

4. The arguments raised by learned counsel for the petitioners is that the loan was raised from the bank located at Chandigarh. To secure the same, properties situated in the State of Punjab and Union Territory, Chandigarh, were submitted as collateral securities. There is one single notice issued by the bank seeking to take action under the SARFAESI Act mentioning details of all the properties situated in the State of Punjab and at Chandigarh. To challenge the same, the petitioners filed SA No. 334 of 2013 before the Tribunal having jurisdiction with reference to properties located in the State of Punjab. SA was entertained. Various orders were passed even pertaining to the property situated at Chandigarh, but all of a

sudden vide impugned order, the Tribunal directed that claim made in the SA with reference to the property situated at Chandigarh is not maintainable before the Bench as it has jurisdiction only for the properties situated in the State of Punjab. The order passed by the Bench will result in anomalous situation and multiplicity of litigation. It may result in passing of different/contradictory orders by two different Benches pertaining to same issue, only for the reason that the securities furnished may be located in different jurisdictions. Reference was made to Full Bench judgment of Delhi High Court in Amish Jain and another vs ICICI Bank Limited – 4 (2012) BC 552 (FB) Delhi, wherein it has been opined that the application under Section 17 of the SARFAESI Act can be filed before the Tribunal within whose jurisdiction the property/ secured asset is located, though issue regarding jurisdiction with reference to the fact where secured assets are located within the jurisdiction of two different Tribunals was not under consideration. Reference was also made to a judgment of Madurai Bench of Madras High Court in Civil Revision (MD) No. 694 of 2014 (PD) M/s Asian Health and Nutri Foods Limited and others vs The Debts Recovery Tribunal and another, decided on 24.6.2014, wherein it has been opined that any loanee is entitled to file application under Section 17 of the SARFAESI Act before any of the Tribunal within whose jurisdiction cause of action arose. Provisions of Rule 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the DRT Act') and Rule 6 of the Debts Recovery Tribunal (Procedure) Rules, 1993 (for short, 'the DRT Rules'), were also referred to. Though arguments on merit were also sought to be raised, however, those are being not noticed in detail for

the reason that this Court is not inclined to consider the issue on merit as the application filed by the petitioners is still pending before the Tribunal.

5. On the other hand, learned counsel for the respondent-bank submitted that the petitioners being at default and the loan account having been declared as NPA, the bank was within its right to take action in accordance with law. The application filed by the petitioners is totally misconceived. The petitioners had given undertaking to vacate first floor of the house, however, the needful was not done. They are not entitled to any relief from the Court.

6. Heard learned counsel for the parties and perused the paper book.

7. At the very outset, it is made clear that this Court in the present petition is only examining the issue with regard to jurisdiction to be exercised by the Tribunal with reference to application filed under Section 17 of the SARFAESI Act and not on merits.

8. The undisputed facts on record are that the petitioners had raised loan from Punjab & Sind Bank, Sector 47, Chandigarh Branch, which was declared NPA. Notice under Section 13(2) of the SARFAESI Act was issued on 8.3.2013 mentioning the details of the properties allegedly mortgaged by the petitioners which included the properties located in the State of Punjab and at Chandigarh. It was followed by notice for possession under Section 13(4) of the SARFAESI Act, mentioning the same details. The aforesaid notice was challenged by petitioner no. 1 before the Tribunal, by filing SA No. 334 of 2013, which was entertained on 15.1.2014. The Tribunal permitted the bank to proceed with the auction of the property

situated at Chandigarh while restraining it from taking possession of first floor thereof till the next date of hearing. It was noticed in the order that the possession of basement and ground floor has been taken. The factors considered were that it was winter season and the loanee did not have any other place to shift. His family was residing there. The matter remained pending in view of the fact that petitioner no. 2 had filed CWP No. 2703 of 2015 in this Court challenging order passed by the Information Commissioner declining certain information by the bank. It was with reference to some transactions in the bank account. Vide impugned order dated 4.8.2015 passed in IA No. 731 of 2015, the Tribunal opined that it has no territorial jurisdiction over the property situated at Chandigarh, hence, cannot entertain any application with reference thereto as the Tribunal has jurisdiction only for the properties situated in the State of Punjab. The proceedings in SA No. 334 of 2013 with reference to the properties situated in the State of Punjab were directed to be continued, whereas for the property situated at Chandigarh, it was dismissed as not maintainable with liberty to the petitioners to approach the appropriate Tribunal.

9. Section 17 of the SARFAESI Act provides that any person including borrower, who is aggrieved of any action taken in terms of Section 13(4) of the SARFAESI Act by the secured creditor or his authorised officer may file application to the Debts Recovery Tribunal having jurisdiction. The Debts Recovery Tribunal has been defined in Section 2(i) of the SARFAESI Act to mean the Tribunal established under Section 3(1) of the DRT Act.

10. Section 3 of the DRT Act provides that the Central Government

shall by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal under the DRT Act. The Central Government by notification can specify the area within which the Tribunal may exercise its jurisdiction.

11. Initially jurisdiction with reference to the States of Punjab, Haryana, Rajasthan, Himachal Pradesh and Union Territory, Chandigarh, was conferred on the Tribunal at Jaipur, vide notification dated 30.8.1994. Subsequent thereto separate Tribunal for the States of Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh, was established at Chandigarh, vide notification dated 24.3.2000. Vide notification dated 4.7.2006 with the constitution of Second Tribunal at Chandigarh, the jurisdiction of States of Haryana, Himachal Pradesh and Union Territory, Chandigarh, was conferred on Debts Recovery Tribunal-I, whereas the jurisdiction for State of Punjab, was conferred on Debts Recovery Tribunal-II. After constitution of IIIrd Tribunal vide notification dated 13.2.2017, the areas were assigned to different Tribunals. DRT-I was assigned some districts of State of Punjab and the area of Himachal Pradesh. DRT-II was assigned State of Haryana and Union Territory, Chandigarh, whereas DRT-III was assigned, districts of State of Punjab other than those assigned to DRT-I.

12. In the case in hand, after possession notice was issued to the petitioners under Section 13(4) of the SARFAESI Act, the petitioners filed SA No. 334 of 2013 before the Tribunal having jurisdiction over the State of Punjab. In the possession notice, 3 properties are located in the State of

Punjab, whereas 1 property is located at Chandigarh. The application was entertained. It remained pending and various orders were passed. However, finally vide impugned order dated 4.8.2015, the Tribunal declined to consider the claim pertaining to the property situated at Chandigarh holding lack of territorial jurisdiction.

13. The Madurai Bench of Madras High Court in M/s Asian Health and Nutri Foods Limited's case (supra), considered somewhat similar proposition where in the possession notice the properties mentioned were located not only in different districts in the State of Tamil Nadu, but also in the States of Andhra Pradesh and Karnataka. The loan therein had been raised from State Bank of Mysore, Salem Branch. Application filed by the petitioners therein before the Debts Recovery Tribunal, Madurai Bench under Section 17 of the SARFAESI Act was returned on the ground that the petitioners should approach respective Tribunals within whose jurisdiction each one of the properties was situated. The petitioners therein had filed one application challenging the possession notice which mentioned details of all the properties situated in different States. Aforesaid order was impugned before the Madurai Bench of Madras High Court. While examining and analyzing Section 19 of the DRT Act and Rule 6 of the DRT Rules providing for jurisdiction, it was opined that the action of the Tribunal in returning the application back was illegal and the same was required to be dealt with by the Tribunal at Madurai. Reference was also made to provisions of Code of Civil Procedure, especially Section 17 thereof laying down general principles based on equity and fairness of procedure and also observing that a party to the litigation should not be

driven to different courts for the same very cause of action merely because the jurisdiction pertaining to different properties for which the relief has been sought are located in different jurisdictions though the cause of action is same. Relevant paras from the above judgment are reproduced hereunder:-

“25. Keeping the above fundamental principles in mind, if we have a careful look at the decision of the Full Bench of the Delhi High Court in Amish Jain, it could be seen that the Full Bench of the Delhi High Court was of the view that the question of territorial jurisdiction for the remedy of appeal provided in Section 17(1) of the SARFAESI Act cannot be determined in the light of the DRT Act making a departure from the principles enshrined in Section 16 of the Code. In other words the Full Bench of the Delhi High Court made the principles underlying Section 16 of the Code, applicable to an appeal under Section 17 of the SARFAESI Act. The Full Bench was of the opinion that the DRT Act 1993 alone made a departure from Section 16 of the Code, in view of the fact that an application under the 1993 Act is only for the recovery of a debt and need not necessarily be for the enforcement of a right over an immovable property. The Full Bench of the Delhi High Court also held that an appeal under Section 17 of the SARFAESI Act cannot be equated to an application under Section 19 of the DRT Act 1993. In para 26 of its judgment, the Full Bench held as follows:-

"26. It would thus be seen that the principles of Section 16 of the CPC are reflected in the Sections 14 and 17A of the SARFAESI Act. Assistance to the Secured Creditor has not been provided of any Court but only of the Court within whose jurisdiction secured asset is situated. This is not

without reason. It is only the CMM/DM within whose jurisdiction such secured asset is situated who can render such assistance. "

26. As rightly observed by the Full Bench of the Delhi High Court, the SARFAESI Act 2002 does not speak about territorial jurisdiction. It only speaks about (i) the Tribunal having jurisdiction in the matter of Section 17 (1) and (ii) disposal of the application in accordance with the provisions of the 1993 Act and the Rules issued therein. Therefore, only two alternatives are available to us for resolving this issue. The first is to simply go by the prescription regarding territorial jurisdiction in clauses (a), (b) and (c) of Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) and the prescription contained in clauses (a), (b) and (c) of Rule 6 of the Debts Recovery Tribunal (Procedure) Rules, 1993. If this is not acceptable, (as per the opinion of the Full Bench of the Delhi High Court), then the only other alternative is to look for guidance from the principles that underline the concept of territorial jurisdiction under Section 16 of the Code of Civil Procedure.

27. In so far as the case on hand is concerned, we need not go as far as the Full Bench of the Delhi High Court has gone. If we can fall back upon clauses (a), (b) and (c) of Section 19(1) of the DRT Act 1993 and clauses (a), (b) and (c) of Rule 6 of DRT (Procedure) Rules, 1993, then the petitioners herein are entitled to file an application under Section 17(1) of the SARFAESI Act, on the file of any one of the Debts Recovery Tribunals within whose jurisdiction a part of the cause of arose.

28. Even if Section 19(1) of the 1993 Act and Rule 6 of the DRT (Procedure) Rules, 1993 are presumed to be inapplicable, we have to go by the general principles that originated from the common law and culminated in

Sections 16 to 20 of the Code of Civil Procedure. In such an event, Section 17 would go to the rescue of the petitioner. The object behind Section 17 of the Code of Civil Procedure is to ensure that the very same parties to a lis, are not driven to various Courts for the very same cause of action, merely because the reliefs sought are in respect of different properties situate in different jurisdictions. Therefore, what underlines Section 17 of the Code are general principles based on equity and fairness of procedure. There is no reason as to why the fundamental principles that underline Section 17 of the Code cannot be applied to a proceeding under Section 17 of the SARFAESI Act. The fundamental principles on the basis of which an edifice is built in Section 17 of the Code, do not become untouchables merely because they are incorporated in the Code of Civil Procedure and merely because the DRT Act 1993 states that the provisions of the Code of Civil Procedure are not applicable to the proceedings before the Debts Recovery Tribunal.

29. As a matter of fact, the Supreme Court has repeatedly held that even principles of procedure such as res judicata recognized by the Code of Civil Procedure for application to proceedings before the Civil Courts, can be imported in appropriate cases arising under Article 226 of the Constitution. Therefore by the same analogy, the Debts Recovery Tribunal ought to apply in the proceedings arising under Section 17 of the SARFAESI Act, the principles underlying Section 17 of the Code of Civil Procedure.

30. In view of the above, the Revision Petition is allowed, the endorsement made by the Debts Recovery Tribunal on the application filed by the petitioner is set aside. The petitioner is directed to represent the papers before the Debts Recovery Tribunal, within 10 days from

the date of receipt of copy of this order. If all other requirements are satisfied, the Tribunal shall number the application and take it up for hearing. We make it clear that we have considered only one issue namely as to whether the Tribunal in question has territorial jurisdiction to entertain the appeal of the petitioner herein or not. We have not considered any other issues. There will be no order as to costs.”

14. The aforesaid judgment in M/s Asian Health and Nutri Foods Limited's case (supra), was followed by Single Bench of this Court in M/s HRA Paper Mills Private Limited and others vs Authorized Officer, State Bank of India and others (2017-3) 187 PLR 631. In that case also the properties mortgaged were located in the States of Punjab and Himachal Pradesh.

15. For the reasons mentioned above, the impugned order dated 4.8.2015 passed by the Tribunal is set aside and the matter is remitted back to the Tribunal to deal with the same on merits. To be taken up on the date already fixed in the pending SA No. 334 of 2013.

16. The writ petition stands disposed of accordingly.

(Rajesh Bindal)
 Judge

4.10.2017
 vs

(Gurvinder Singh Gill)
 Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No