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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(CRL) 2756/2015, Crl. M.A. 17535/2015 and 11912/2016

LT.COL. R S BEDI

..... Petitioner

Through: Mr. Kushal Gupta and Ms. Gayatri Singh Janwal, Advs.

Versus

ICICI BANK & ORS.

..... Respondent

Through: Mr. Sanjiv Kalra and Mr. Bheem Sain Jain, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 02.11.2017

Crl. M.A. 11912/2016

This application seeks substitution of the applicant M/s. Edelweiss Asset Reconstruction Company Limited in lieu of M/s. ICICI Bank Limited, since the debts stand assigned to the applicant from the latter Bank by way of an Assignment Agreement dated 30.06.2016. The Assignment was for Rs.100/- crore. The applicable stamp duty for assignment, being Rs.31,160/-, has been paid by the applicant/assignee on the said Assignment Agreement.

The learned counsel for the non-applicant states that the property in dispute in this case, is situated in Delhi, whereas the applicant's properties are in other states; the application is opposed on the ground that the registration of the assignment deed in the state of Maharastra will not extend it to be a valid registered document apropos property situated in Delhi. He relies upon a judgment of the Madras High Court in ***M/s. Veena Textiles Limited vs. The Authorised Officer*** W.P. NO. 8761 of 2014 decided on 01.08.2014, in which a document registered in Calcutta assigning rights in properties situated in the State of Tamil Nadu was sought to be relied upon, under Section 28 of the Registration Act, 1908. However, the said section as applicable to the State of Tamil Nadu required it to be registered in the State of Tamil Nadu apropos any property situate in that State. Therefore, the Court held that since it was not registered in terms of Section 28 of the Act, as applicable to the State of Tamil Nadu, it could not be relied upon. This Court is unable to see how the said judgment is of any assistance to the non-applicant, because apropos the National Capital Territory of Delhi no right or interest in the property which were mortgaged to the lending bank have been transferred to the assignee company but only the right to recover the loan from the borrower has been assigned. A borrower would not have any challenge to the said assignment because the assignment is of a debt to be recovered an asset in the hands of the bank, and such assignment does not affect the rights of the borrower. In this context, the learned counsel for the applicant referred to the judgment in ***Rita Machines (India) Ltd. V. Debt. Recovery Appellate Tribunal*** *2013 SCC OnLine P&H 20732* which in turn had placed reliance on the dicta of the Supreme Court in ***ICICI Bank Ltd. v. Official Liquidator of APS Industries Ltd.*** (2010) 10 SCC 1 for the proposition that by assignment of right to recover a debts owed to it "a bank is only transferring its rights under a contract and its own asset, namely, the debt as also the mortgagee's rights in the mortgaged properties without in any manner affecting the rights of the borrower(s)/mortgagor(s) in the contract or in the assets."

In view of the above, the Court finds no impediment in allowing the application. Accordingly, it is allowed. An amended memo of parties has been filed and is taken on record.

W.P.(CRL) 2756/2015

The learned counsel for the respondent submits that the writ petition is not maintainable since there is specific statutory mechanism for recovery of such debts under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI), section 17 of which reads as under:

> *"17. Right to appeal.—*
>
> *(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:*
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> *Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]*
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> *[Explanation- For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.]*
>
> *(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for*

enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the secured assets to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in-sub-section (4) of section 13 taken by the secured assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the secured assets to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section l3 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of

> *making of such application made under sub-section (1).*
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> *(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.*
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> *(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."*

The learned counsel for the petitioner however, refutes the said argument, contending that the present case, which was filed prior to the amendment (Section 17) would be governed by the dicta of the Supreme Court in ***Harshad Govardhan Sondagar v. International Assets Reconstruction Company Limited and Ors.*** (2014) 6 SCC 1 which held that by virtue of Section 17 of the SARFAESI Act the Debt Recovery Tribunal secured the assets only to the borrower and not to a third party.

It is to be noted however, that the limited relief carved out in the said judgment is only for the lessee and not to the owner of the company. In the present case, the petitioner seeks protection as a joint owner of the property and not as its lessee. Hence, the aforesaid judgement would not be applicable to him. Admittedly, the tenant has expired. The lending bank now seeks to recover the property in terms of the order of the learned Chief

Metropolitan Magistrate, so as to recover its dues. At this stage, the petitioner prays for 'joint owner' remedy available to him under Section 17 of the SARFAESI Act since statutory remedy has been made available to him, before the forum concerned.

In view of the aforesaid , the Court finds no reason to entertain the petition. It is dismissed for want of jurisdiction.

The petitioner may approach the appropriate forum for redressal of its grievance(s) as may be. For the next two weeks, the respondent shall take no coercive action against the petitioner.

NAJMI WAZIRI, J

NOVEMBER 02, 2017/acm