IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15034 of 2017

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1. Sri Niteesh Kumar Singh, S/o Late Om Prakash Singh.
2. Smt. Kiran Singh, W/o Late Om Prakash Singh

Both resident of Mohalla- Bahuar Chaura, Tilha Dharamshala, West Gate, P.S.- Civil Lines, District- Gaya.

.... Petitioners

Versus

1. The Union of India through Secretary, Banking Division, Ministry of Finance, Government of India, New Delhi.
2. The Presiding Officer, Debt Recovery Tribunal, Patna.
3. UCO Bank, M.M.C.H. Branch, Gaya.
4. Authorised Officer, UCO Bank, Regional Office, 4th Floor in Block- A, Mauryalok Complex, New Dak Bunglow Road, P.S.- Kotwali, District- Patna, Patna- 800001
5. Sri Dilip Kumar S/o Not known resident of Village- Sherpura, Panchdevta, P.S.- Tekari, District- Gaya.

.... Respondents

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Appearance:

For the Petitioners	: Mr. Shivendra Kumar Roy, Advocate
For the UCO Bank	: Mr. Ranjeet Kumar Pandey,Advocate
For the UOI	: Mrs. Kanak Verma, CGC
For the Resp. No. 5	: Mr. Bijay Kumar Dubey, Mr. S. Mishra, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-06-2018

The present writ petition has been filed for the following reliefs –

(i) *For issuance of writ in the nature of certiorari quashing the order dated 01.09.2017 passed in Review Application No. 2 of 2017 whereby and wherein the learned Presiding Officer, DRT, Patna has dismissed the said Review Application of the petitioner by erroneously holding it to be not maintainable without judiciously appreciating the grounds as raised by the petitioner and also the law in*

this regard.

Or in alternative

(ii) For issuance of a writ in the nature of certiorari quashing the order dated 09.01.2017 passed in S.A. No. 209 of 2016 whereby and wherein the learned Presiding Officer, DRT, Patna has been pleased to dismiss the said SARFAESI Appeal of the petitioner on the ground of limitation and without even entering into the merits of the case by attributing concealment to the petitioner wherein actually there is no such concealment as would be apparent from the perusal of the records of the case and which was urged in the Review Petition.

Or in alternative

(iii) For issuance of writ in the nature of certiorari quashing the Demand Notice dated 28.11.2014, and the consequent possession notice dated 08.02.2015 and the auction notice and further also the auction of the property held on 27.05.2016 and the consequential sale Certificate issued on 12.07.2016 by the respondent Bank in favour of the respondent no. 6 as well as the entire SARFAESI action as being illegal, arbitrary and against the provisions of law.

(iv) For any other relief/reliefs as your Lordships may deem fit and proper in the facts and circumstances of the case.

2. The short facts of the case according to the petitioners, who are the son and wife of the borrower, Om Prakash Singh (now deceased), are that the latter had taken housing loan/mortgage loan of Rs. 4 to 5 lacs from various banks such as, Syndicate Bank, Gaya Branch, Canara Bank, Gaya Branch, State Bank of India, Main Branch, Gaya, State Bank

of India, Bazar Branch, Gaya as well as Allahabad Bank, Gaya by mortgaging the dwelling house in which the borrower as well as the petitioners had a share and in which they were residing. SARFAESI proceedings were initiated by the respondent-UCO Bank and finally the mortgaged property came to be auction sold on 27.05.2016. The petitioners filed S.A. No. 209 of 2016 before the Debts Recovery Tribunal (for short 'the DRT') on 30.11.2016, claiming that notices under Sections 13(2) and 13(4) of the SARFAESI Act has not been served. A limitation petition under Section 5 of the Limitation Act was also filed by the petitioners on the ground that the respondent-bank supplied details of the auction proceeding to the petitioners by e-mail dated 01.10.2016, thus claiming a delay of about 15 days in filing the SARFAESI Appeal and seeking condonation thereof. The DRT however dismissed the petitioners' S.A. No. 209 of 2016 along with the limitation petition, holding that there was suppression of material fact as they had not disclosed the fact that they had filed an affidavit dated 29.07.2016 in S.A. No. 82 of 2016 (which had been preferred by the Syndicate Bank). It was thus observed that the petitioners had deliberately avoided SARFAESI action and had filed SARFAESI Appeal after a delay of more than four months without showing sufficient cause for such delay. The petitioners then filed a review application in R.A. No. 02 of 2017 before the DRT, submitting that there was no suppression of material facts and sought for recall/review of the DRT order dated 09.01.2017 passed in S.A. No. 209 of 2016 and to restore the same to its original file. The DRT however, by its impugned order dated 01.09.2017 held that there was no provision for review of its judgment passed in the SARFAESI application and hence the review application was not maintainable, which was accordingly dismissed.

3. Learned counsel for the petitioner submits that the DRT has committed an error of law in failing to appreciate the true import of the legal provisions which duly empower it to exercise the power of review. It is submitted that Section 17(7) of the SARFAESI Act, 2002 (hereinafter referred to as 'the SARFAESI Act') adopts the provisions of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 (rechristened the Recovery of Debts and Bankruptcy Act, 1993, and hereinafter referred to as 'the RDB Act') and the Rules framed thereunder for disposal of the SARFAESI application. In this regard Section 22 of the RDB Act provides the powers and procedure of the DRT as well as the Debts Recovery Appellate Tribunal (hereinafter 'the DRAT'). The powers of the Civil Court as enumerated in Section 22(2)(a) to (h) which, *inter alia*, includes "(e) reviewing its decisions" have been afforded thereunder. The Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as 'the 1993 Rules") provides the procedure to be followed by the DRT, Rule 5-A whereof specifically deals with review of an order of the Tribunal on account of some mistake or error apparent on the face of the record. It is

therefore, submitted that these procedures applicable to the DRT under the RDB Act have been adopted for the purpose of SARFAESI Act which include the power of review by the DRT. Reliance is placed on an order dated 18.01.2017 passed by the Hon'ble Calcutta High Court in W.P. No. 27330(W) of 2016 (Bangla Bijuli Power Technologies Private Limited vs. The Authorized Officer, I.D.B.I. Bank Limited, Kolkata and Ors.) holding that the DRT would have the power to review its judgment.

4. Learned counsel for the respondent-UCO Bank vehemently opposes the writ petition, primarily on the ground of availability of an alternative remedy by way of appeal against the order of the DRT passed on 09.01.2017 in S.A. No. 209 of 2016 filed by the petitioner. It is submitted that the petitioners did not also take any steps for filing such appeal before the DRAT at the appropriate time, nor even after dismissal of their review application by order dated 01.09.2017 and have instead approached this Court with the present writ petition.

5. It is also pointed out that the petitioners have *ex-facie* suppressed the material fact that they had knowledge of the SARFAESI action and that they had filed appearance on 29.07.2016 itself in S.A. No. 82 of 2016 which had been preferred by the Syndicate Bank before the DRT for recovery of its own dues against mortgage of the same property. It is submitted that the DRT has therefore, rightly held that the petitioners had knowledge at least on

that date and they have wrongly stated that it only came to their knowledge subsequently on 01.10.2016 when they received an e-mail from the respondent-bank. In this backdrop, apart from recording a finding of suppression of material facts, the DRT has also found that no sufficient reason has been assigned for the delay of about four months in filing the SARFAESI application by the petitioners while rejecting the limitation petition.

6. It is further submitted that even though Section 17(7) of the SARFAESI Act adopts the procedure for disposal of an application by the DRT from the RDB Act and the Rules thereunder, this is only for the purpose of disposal of the impugned SARFAESI application. The power of review has not been vested in the DRT under the SARFAESI Act unlike such power of review having specifically been vested under the RDB Act in terms of Section 22(2)(e) thereof. Section 17(7) of the SARFAESI Act thus adopts the procedure under the RDB Act for limited purposes, which is evident from the use of the words "as far as may be" used in Section 17(7) of the SARFAESI Act. It is therefore, submitted that in absence of a specific power of review having been granted to the DRT under the SARFAESI Act, such power cannot be treated as having been adopted into the SARFAESI Act merely by dint of Section 22(2)(e) of the RDB Act.

7. Learned counsel for the respondents places reliance on a Division Bench judgment of the Hon'ble Madhya Pradesh High Court

dated 30.06.2016 passed in Writ Petition No. 12718 of 2013 (M/s Ramdev Ginning Factory vs. Chief Manager, Authorized Officer, ICICI Bank Ltd. & Others), wherein upon consideration of the relevant provisions of the two enactments, it has been held that the DRAT was not empowered to exercise the power of review.

8. Learned counsel for the auction purchaser appears and has been heard. It is submitted that the petitioners ought to have pursued the remedy by way of appeal against the impugned order of the DRT in S.A. No. 209 of 2016 and that the DRT has no power of review.

9. I have heard the parties at length and considered the materials on record.

10. In order to decide the rival submissions on the question whether or not the DRT has the power of review, it is appropriate to first reproduce the relevant statutory provisions on this regard.

Section 17(7) of the SARFAESI Act –

"Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the 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"

Sections 22(1) and (2) of Recovery of Debts and Bankruptcy Act, 1993

"22. Procedure and powers of the Tribunal and the Appellate Tribunal –

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908(5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and

the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 19080), while trying a suit, in respect of the following mattes, namely –

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) issuing commissions for the examination of witnesses or documents;
(e) reviewing its decisions;
(f) dismissing an application for default or deciding it ex parte;
(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
(h) any other matter which may be prescribed."

Rule 5-A(1) of the Debts Recovery Tribunal (Procedure) Rules, 1993

"5-A. Review-(1) Any party considering itself aggrieved by an order made by the Tribunal on account of some mistake or error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order."

11. A plain reading of Section 17(7) of SARFAESI Act makes it clear that the detailed procedure for disposal of the SARFAESI application has to be adopted from the RDB Act and the Rules framed thereunder. Admittedly, such procedure has been provided in Section 22 of the RDB Act and the 1993 Rules. Section 22(2)(e) provides the substantive power of review in the DRT, and Rule 5-A

lays out the procedure for filing a review application on account of a mistake or error apparent on the face of the record. Clause (e) of Section 22(2) of the RDB Act must be given equal play as the other clauses thereof, which as a whole constitute the extent of powers of the DRT. In other words, not only does Section 22(2)(e) specifically provide a substantive power of review, such power of review has been given effect to the DRT under the 1993 Rules. I am therefore unable to accept the submission on behalf of the respondent-bank that the words "as far as may be" used in Section 17(7) of the SARFAESI Act would exclude the operation of Section 22(2)(e) as well as Rule 5-A of the 1993 Rules for the purpose of SARFAESI Act.

12. I am also mindful that even though Section 22(2) of the RDB Act is applicable in respect of both the DRT as well as DRAT, the Division Bench of the Hon'ble Madhya Pradesh High Court in Ramdev Ginning Factory case (supra) has categorically held that the DRAT would not assume the power of review which was not available and provided under the SARFAESI Act, and that the DRAT having passed an order under Section 18 of the SARFAESI Act becomes *functus officio.* This decision does not come to the aid of the respondent-bank and is distinguishable from the facts of the instant case. The Hon'ble Madhya Pradesh High Court was dealing with a case relating to the DRAT whereas the instant case involves a question relating to the DRT. The rules for the DRT and the DRAT

are separate and distinct. While the DRT is guided by the 1993 Rules, the DRAT is guided by the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994 (for short 'the 1994 Rules'). Broadly, the procedure for disposing of an application by the DRT in the 1993 Rules and for the disposal of an appeal under the 1994 Rules are similar, however, there is one material departure, namely that the 1993 Rules have been amended to insert Rule 5-A w.e.f. 19.06.1997 with respect to the power of review granted to the DRT. There is no corresponding provision in the 1994 Rules and it is in this backdrop therefore, that the judgment of the Hon'ble Madhya Pradesh High Court has to be read and understood.

13. This aspect of the matter may also be viewed from another angle. Even if it be considered that Section 22(2)(e) of the RDB Act imbues a substantive power of review in both the DRT as well as the DRAT, the power can be exercised by the DRT according to the machinery prescribed in Rule 5-A of the 1993 Rules. In the absence of any procedure or machinery having been prescribed in the 1994 Rules for its implementation, however, such power cannot be exercised by the DRAT.

14. In the above circumstances, I am of the view that the DRT has erred in holding that the petitioner's review application was not maintainable on the footing that Section 17(7) of the SARFAESI Act does not extend to empower the DRT to consider

and dispose of a review application filed in a SARFAESI Application as there is no provision for review of its judgment. The impugned order dated 01.09.2017 passed in Review Application No. 2 of 2017 by the DRT, Patna is accordingly set aside and the matter remitted to it with a direction to consider the review application of the petitioners and dispose of the same in accordance with law after grant of opportunity of hearing to the parties.

15. It is made clear that in view of the matter of review having been remanded to the Tribunal, it is not necessary to go into the merits of the alternative prayers made in the writ petition.

16. The writ petition is disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.06.2018
Transmission Date	NA