IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9645 OF 2018

Pravin Jain
Proprietor of Vikram Computec .. Petitioner

V/s.

Board of Directors, Central Bank of India
Through Chairman Chander Mukhi and Ors. . Respondents

Mr.Mathew Nedumpara i/b Ms.Roini M. Amin for the Petitioner

Mr.O.A.Das for the Respondent

Mr.A.P. Vanarase for the Respondent nos.7 to 9

CORAM: K.K. TATED &
SANDEEP K. SHINDE, JJ.

DATED : AUGUST 29, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 By this petition under Article 226 of the Constitution of India, the Petitioner is seeking various reliefs including constitutional validity of some of the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. Those prayers are as under:

(a) *permit the Petitioner to cure the deficiency, if any, in the instant Writ Petition either by withdrawing this petition with liberty to file a fresh one or by amending the same;*

(b) *To declare that the Order dated 21.10.2017 passed by the DRT-1 Mumbai, is illegal and bad in law and if held legal, and good in law, the Petitioner be allowed to seek relief in the Civil Court;*

(c) *declare that the bar of jurisdiction of the Civil Court as contemplated under Sections 34, 35 and 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and under Sections 17 and 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is not absolute, but is limited to an inquiry as to the correctness or otherwise of the measures taken under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and where the entire proceedings are vitiated by fraud and violation of the principles of natural justice and statutory provisions and thus a nullity, the Civil Court has undoubted jurisdiction;*

(d) *To declare that the common law is the law of the land in terms of Article 372(1) of the Constitution of India and all disputes of the civil nature could only be adjudicated by civil courts except for the Tribunals which could be created in terms of Article 323 (B) of the Constitution and the Company Law Tribunal, DRT, DRAT, Authorised Officer under the SARFAESI Act, none of them come within the Seven categories of Tribunal enumerated in the Sub Article (2) of Article 323(D) and therefore are Ultra Vires the Constitution, incompetently instituted non est in law;*

(e) *To declare that access to justice, namely where a person, be it an animate one or an inanimate, artificial legal* *entity is an inalienable fundamental right, nay, very birthright and howsoever laudable could be a legislative objective, the said right cannot be taken away, that all legislations by which Tribunals or Forums are created in substitution of the Civil Court is liable to be construed as one invested of the jurisdiction to embark upon an enquiry for which alone it was created in substitution of the Civil Court and it cannot be so construed, nay, such Forums and Tribunals are indeed incapable of discharging the functions of the Civil Court in substitution whereof they are created, the Civil Court jurisdiction is not barred;*

(f) *Declare that the Tribunals and Forums created in substitution of the Tribunals and Forums created in substitution of the Civil Courts, namely the National Company Tribunal under the Act of 31 of 2016, The DRT under the Banking Laws of the Recovery of Debt due Acts, the Authorized Officer under Section 13(10) of the SARFAESI Act, so too the mechanism for insolvency resolution / liquidation contemplated under the Insolvency Code of 2016 or only constitute to be Tribunals/ Forums by recourse to which remedies entail in creditors and in particular secured creditors as against the Borrowers / Debtors, all, the said Acts / Forums created there under contemplate an enquiry which is wholly one sided, that under none of the aforesaid enactments a Borrower or debtor could institute a Suit/ Proceeding whereby he could seek the enforcement of remedies in the province of declaratory, equitable and common law;*

(g) *Without prejudice to relief Clause (e) above, nay, in supplemental in furtherance thereof declare that the Respondent Bank have non-enforceable right against the Petitioner, for, the remedies of compensation and damages and set off which the Petitioner has against the Respondent far exceed the claim of the Respondents;*

(h) *Declare that the Plaintiff, the purported borrower stands completely discharged of the obligation in terms of the Contract which the Petitioner had entered into with the Respondent Banking Institutions since the gross breach of contract, culpable and malicious actions at the hands of the Defendants and its officers and agents which has entailed in remedies in the realm of compensation and damages, set off and counterclaim to the principle debtor, hence completely discharges the Petitioner of its obligation in terms of the Section 134 of the Indian Contract Act;*

(i) *Declare that the Respondent Bank is guilty of gross breach of contract, culpable and malicious actions, nay, fraud and that the Petitioner is entitled to mandatory and prohibitory injunction to compel the Respondent Bank to perform their contracts, obligations so too restraining them from in any manner interfering with the peaceful conduct of the business, enjoyment of its assets and properties;*

(j) *Declare that the various Guidelines which the RBI has purportedly issued from time to time by recourse to which the accounts of the Petitioner has been classified as NPA as unconstitutional and void, without authority of law, arbitrary and illegal;*

(k) *To declare that Guidelines titled "Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances" the RBI Guidelines No. RBI/2013-14/62 DBOD.No.BP.BC.1/21.04.048/2013-14 dated July 1, 2013 issued by the Reserve Bank of India, and RBI Circular bearing No. RBI/2014-15/73DBR.No.CID.BC.57/20.16.003/ 2014-15 dated 01.07.2014, are void ab initio;*

(l) *To declare that the properties of the Petitioner, i.e. B/302, Amarnath CHS Ltd, Sudama Nagar, Near Jain Temple, Bhayander (West), Thane 401101 of which the*

Petitioner/it's proprietor together with his parents and the purported guarantors are the absolute owners entitled to ownership and possession; that their right, title and interest in respect of the said properties should not be disturbed in any manner whatsoever;

(m) *To declare that the proceeding under Section 13(2), 13(4) and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 as well as the ex parte Order/process dated 04/02/2018 and 30/03/2018 (EXHIBIT "F" & "G") passed by the Ld.DM,Thane in Proceedings No.S.A/07/2018 so too the Notice dated 5.10.17 in purported execution of the Order dated 30.03.2018, is a nullity;*

(n) *declare that the Respondent Bank is not entitled to any of the remedies which it seeks to enforce in terms of the notice under Sections 13(2) and Notice dated 21/10/2016 under section 13(4) of the SARFAESI Act, 2002 as also the order under Section 14 of the said Act, and to grant in favour of the Petitioner a negative declaration that no amount is due from the Petitioner to the Respondent Bank;*

(o) *declare that the Petitioner's account was not liable to be declared as NPA except by authority of a circular or guideline which has the force of law, namely, one which is framed/issued by the Reserve Bank of India in exercise of the powers conferred on it by an Act of Parliament;*

(p) *declare that declaration of the Petitioner as a willful defaulter, being one involving adverse civil consequences, nay, one which meant its literal civil death, could never have been done by the Reserve Bank of India except by exercise of a power expressly invested in it by an Act of Parliament or by virtue of a rule framed and laid before the Parliament, duly notified and published in the official gazette and is thus an instrument which has the force of law;*

(q) *declare that declaration of the Petitioner as a wilful defaulter is one involving adverse civil consequences and thus one involving a lis, which function could never be invested upon the executive Government/a statutory body like the Reserve Bank of India, but could only be invested in a Court or Tribunal duly constituted and by virtue of a procedure which requires observance of the principles of natural justice;*

(r) *grant an order of perpetual mandatory and/or prohibitory injunction in favour of the Petitioners and against the Respondents restraining and prohibiting the Respondents, its agents, servants and privies from classifying the account of the Petitioner Firm as NPA and proceeding in any manner or take recourse to any judicial proceedings either by way of institution of a suit as against the Petitioner firm or by taking recourse to the statutory powers vested in them under section 13 of the SARFAESI Act,2002, for to permit the Respondent Bank to do so would amount to multiplicity of proceedings, and further to restrain and prohibit the Respondent Bank from taking recourse to any precipitatory steps including assignment of the Petitioner's property to any Asset Reconstruction Firm;*

(s) *quash and set aside the notice purportedly under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Notice/proceeding dated 21/10/2016 (EXHIBIT "A") purportedly under Section 13(4) of the said Act for de jure possession of the purported secured assets /Petitioner's property and further the Order/process dated 05.10.2018 (EXHIBIT "F") passed by the Ld.DM,Thane in Proceedings No.S.A/07/2018, authorizing the forcible possession of the purported secured assets /Petitioner's property;*

(t) *grant an order of perpetual mandatory and/or prohibitory injunction in favour of the Petitioner and* *against the Respondents restraining the Respondents, its agents, servants and privies from in any manner interfering with the peaceful possession and enjoyment of the scheduled properties which the Respondent bank falsely claim to be secured assets at its hands and in particular proceeding any further pursuant to the provisions under the SARFAESI Act,2002 as nullity and non est in the eyes of law.*

(u) *grant a permanent mandatory injunction commanding and directing the Respondent Bank to extend to the Petitioner credit facilities in terms of the original contract which was mutually agreed upon and to release the funds which remain to be released in terms of the contract between the Petitioner and the respondent Bank further even to release the funds remains to be released in terms of the contract between the Petitioner the Respondent Bank and further even to restructure the credit facilities which the Respondent Bank was bound to give effect in terms of the sanction letter as also the guidelines and circulars of the RBI which are quasi–statutory and thus binding on it;*

(v) *to direct Respondent Bank to restore the operation of the accounts so that the Petitioner could continue to carry on its business as if the classification of the Petitioner/plaintiff's account as NPA which was effected behind its back, has never ever occurred;*

(w) *direct the Respondent Bank/Authorised Officer to state on affidavit the source of his authority to invoke Section 13 of the SARFAESI Act,2002 and to produce a copy of the Resolution, if any, passed by the Board of Directors of the Respondent Bank by which he was appointed as an Authorized Officer to exercise the function under Section 13(2) of the SARFAESI Act,2002 and the Security Interest (Enforcement) Rules, 2002;*

(x) *direct Respondent No.3 & 4 to state on affidavit the manner in which the demand notice under Sections 13(2), the possession notice under section 13(4) as also the notice of the SARFAESI Act,2002 was served, and if he swears to have served so, a falsehood, to command him to produce the proof of such service;*

(y) *direct Respondent Nos. 1 to 4 to state on affidavit the manner in which the Petitioner Firm's account was classified as NPA, stating in particular whether any opportunity of hearing was afforded to the Petitioner prior thereto and further to produce the entire minutes and proceedings by which the Account was classified as N.P.A;*

(z) *issue a direction to the Respondents/ bank to state on oath the manner in which the Petitioners' properties which the Respondent Bank falsely claim to be a secured asset at its hands was so rendered and further to produce, in particular, the title deeds if any, in possession of the Bank and the documents by which purported charge or mortgage was created in favour of the Bank;*

(aa) *issue a direction to the Respondents/ bank to produce Statement of accounts of the Petitioner/plaintiff before this Hon'ble Tribunal;*

(bb) *award to the Petitioner from the Respondent Bank compensation and damages of Rs. 1 Crores as on date for the breach of contract and tortuous acts at the hands of the Respondent Bank and more particularly Respondent Nos.1 to 4 and in case the plea of compensation as afore claimed is disputed by the Bank, to appoint an arbitrator to determine the same in accordance with law or more ideally for this Hon'ble Tribunal itself decide inspite of the time, logistical constraint, this Hon'ble Tribunal faces as of today;*

(cc) *grant such further and other reliefs in the nature and circumstances of the case may require.*

INTERIM RELIEF:

(a) *To grant an order of ad-interim mandatory and/or prohibitory injunction in favour of the Petitioner and against the Respondents restraining the Respondents, its agents, servants and privies from in any manner interfering with the peaceful possession and enjoyment of the properties of the Petitioner i.e. B/302, Amarnath CHS Ltd, Sudama Nagar, Near Jain Temple, Bhayander (West), Thane 401101, and in particular proceeding any further pursuant to the notices purportedly under Section 13(2) & 13(4) (EXHIBIT:"A") of the SARFAESI Act,2002, the Notice/proceeding dated 5.10.2016 so too from proceeding any further pursuant to the Notice dated 27.06.18 Ex-J issued by the Mandal Adhikari, Bayandar Police Stn., to take physical possession of the properties of the Petitioner on 28.08.18 purportedly under Section 14 of the said Act for taking the forcible possession of the scheduled properties;*

(b) *to grant an ad-interim prohibitory injunction in favour of the Petitioner and against the Respondents restraining and prohibiting the Respondents, its agents, servants and privies from proceeding further under the SARFAESI Act,2002 and further to restrain and prohibit the Respondent Banks from taking recourse to any precipitatory steps which will tilt or shake 'vinculum juris, pendente lite'; and, in particular, assignment of the purported 'security interest' as defined in section 2(zf) of the SARFAESI Act,2002, pending hearing and final disposal of the instant Writ Petition."*

3 Bare reading of these prayers shows that mainly the Petitioner is challenging the order dated 21.10.2017 passed by DRT-1 at Mumbai in I.A.No.657 of 2017 with Securitisation Application No.106 of 2017 and letter dated 27.06.2018 issued by Circle Officer, Bhayender for taking possession of flat No.B-302, 'B' Wing, 3rd floor, Amarnath C.H.S.L., Sudama Nagar, Near Jain Temple, Bhayander (West), District

Thane, for non-payment of outstanding loan amount more than Rs.80,00,000/- (Rupees Eighty Lakhs) only.

4 It is to be noted that in the present proceedings, Respondent bank filed their Affidavit-in-Reply dated 29.08.2018. In the said Affidavit-in-Reply, Respondent bank stated that earlier Petitioner filed several proceedings for same cause of action. Paragraph 2 to 6 of the said Affidavit-in-Reply reads thus:

> *"2. At the outset I say and submit that this Petition is not maintainable by law or in facts. I say and submit that earlier, the petitioner have filed a Writ Petition No.9543 of 2017, before this Hon'ble Court. The said Writ Petition has been dismissed by its Order dated 13.09.2017. This Hon'ble Court directed the Petitioner to move before the Hon'ble DRT. Hereto annexed and marked EXHIBIT "A" is the copy of the said Order dated 13.09.2017.*
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> *3. I say and submit that that the Co-owner of the property have also filed a Suit in Hon'ble City Civil Court challenging the SARFAESI Action. After hearing of the parties the Hon'ble City Civil Court have dismissed the suit. Hereto annexed and marked EXHIBIT "B" is the copy of the Order dated 07.04.2018.*
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> *4 I further say and submit that the borrower firm, through the Petitioner, being Proprietor of the Firm, also challenged the SARFAESI Action before the Hon'ble DRT. After hearing the parties, the Interim Application as well as Securitization Application has been dismissed by the Hon'ble DRT Mumbai, by its Order dated 21.10.2017. Hereto annexed and marked EXHIBIT "C" is the copy of the Order.*
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> *5. I further say that Petitioner / or the borrower firm has not filed any Appeal against the above Order. I further say and submit that without filing any Appeal before the Hon'ble*

DRAT, the Borrower / Petitioner have filed another Writ Petition No. (L) No.29792 of 2017.

6. At the outset I say that we have taken Physical Possession of the Property on 28.08.2018. Therefore this Petition is infructuous. I further state that after hearing the parties this Hon'ble Court by its Order dated 07.02.2018, granted two weeks time to file Appeal before Hon'ble DRAT; since at that time Hon'ble DRAT was on leave. Hereto annexed and marked EXHIBIT "D" is the copy of the said Order dated 07.02.2018. However, the Petitioner has not preferred any Appeal before Hon'ble DRAT. The matter finally appeared for final hearing on 06.04.2018. After hearing the parties, this Hon'ble Court by its Order dated 06.04.2018 have dismissed the Writ Petition No.1665 of 2018. Hereto annexed and marked EXHIBIT "E" is the copy of the said Order dated 06.04.2018."

5 Bare reading of the petition and the Affidavit-in-Reply filed by the Respondent Bank shows that Petitioner filed Writ Petition No.9543 of 2017, 1665 of 2018, Writ Petition (ST) No.29792 of 2017 and the present Writ Petition No.9645 of 2018 including Suit Stamp No.1982 of 2018 in Bombay City Civil Court, Mumbai for the same cause of action i.e. challenging the order dated 21.10.2017 passed by DRT, Mumbai. In earlier proceedings, this court by order dated 06.04.2018 in Writ Petition No.1668 of 2018 (Coram: A.S.Sayyed and Ravindra V.Ghuge, JJ) dismissed the Petitioner's Petition on the ground that alternate remedy of filing appeal before DRAT. Inspite of all these facts, Petitioner again filed the present petition for same cause of action.

6 It is to be noted that Respondent Bank in its Affidavit-in-Reply dated 29.08.2018 in paragraph 6 specifically stated that physical possession of the property was taken by them on 28.08.2018.

7 Considering all these facts and the Affidavit-in-Reply filed by the Respondent Bank, we have no option but to dismiss the present Writ Petition with cost of Rs.1,00,000/-.

8 Petitioner is directed to deposit cost of Rs.1,00,000/- in the Registry of this court within one month from today.

9 If cost is not deposited within stipulated time as stated hereinabove, Registry is directed to inform the Collector of Thane to recover the said cost as Land Revenue as per the provisions of Maharashtra Land Revenue Code and deposit in this court.

10 On deposit of cost amount, Registry is directed to pay the same in the office of the Maharashtra State Legal Services Authority.

11 Writ Petition stands disposed of accordingly.

(SANDEEP K. SHINDE, J.) **(K.K. TATED, J.)**