

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5115 OF 2018

Juzar M. Tinwala & Ors.

..Petitioners

V/s.

Punjab National Bank

..Respondent

Mr. Manish N. Jain I/b. S.M. Jain & Associates for the
Petitioners.

None for the Respondent.

CORAM : N.J. JAMADAR, J.

DATED : 16th July, 2019.

Oral Order :

1. Heard Mr. Jain, the learned Counsel for the Petitioners.
2. This Petition under Article 227 of the Constitution of India takes exception to an order passed by the learned 5th Joint Civil Judge, Senior Division, Thane, on 07.11.2017, declining the prayer of the petitioner-defendant to frame and decide preliminary issue regarding the jurisdiction of the Court to try and decide Special Civil Suit No. 298/2015, instituted by the Respondent Bank against the Petitioner for recovery of a sum of

Rs.7,56,443/- along with interest thereon.

2. The Respondent Bank had instituted the suit against the Petitioner for default in repayment of the loan availed from the Respondent - Bank. The Petitioner preferred an application under Section 9A of the Code of Civil Procedure, 1908 (in its application to the State of Maharashtra), praying that a preliminary issue regarding the jurisdiction of the Civil Court to try and determine the said claim of recovery of the debt, be framed and decided as there was a bar for entertaining such claim by the Civil Court under the provisions of the Recovery of Debts and Bankruptcy Act, 1993.

In the said application, certain contentions regarding the tenability of the suit, rooted in facts, were also raised. The learned Civil Judge has rightly observed that the rest of the contentions as regards the tenability of the suit was a matter for trial.

3. On the aspect of jurisdiction, the learned Civil Judge was persuaded to reject the application on the premise that the suit

has been instituted for recovery of a sum of Rs.7,56,443/-, which was below the threshold of the amount of claim amenable to the jurisdiction of the Debts Recovery Tribunal.

4. Being aggrieved, the Petitioners have invoked the jurisdiction of this Court.

5. The learned Counsel for the Petitioners urged that the impugned order suffered from a manifest error as the provisions contained in Section 18 of the Recovery of Debts, constitute a complete bar for entertaining the suit by the Civil Court. The learned Counsel for the Petitioners made a further grievance that the Respondent Bank could have resorted to the remedy provided under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and there is no justifiable explanation in the plaint as to why the recourse to the expeditious provisions contained in the SARFAESI Act has not been made.

6. The Petition does not deserve to be entertained.

It would be suffice to note that in view of the provisions contained in Section 1(4) of the Recovery of Debts and Bankruptcy Act, 1993, the provisions therein do not apply where the amount of debt due to any bank or financial institution is less than Rs.10 lakhs. Indisputably, in Special Civil Suit No. 298/2015, the suit claim is Rs. 7,56,443/-.

7. The learned Counsel for the Petitioners has placed reliance on the judgment in the case of *Dena Bank, through its Manager vs. Pravin Vittalrao Dorkhande & ors.*¹, *The Authorised Officer, State Bank of India Vs. M/s. Allwyn Alloys Pvt. Ltd. & Ors.*² and, *Authorized Officer, State Bank of Travancore & Another Vs. Mathew K.C.*³. The aforesaid pronouncements are of no relevance to the facts of the case at hand, even remotely. It is pertinent to note that in a judgment reported in *State Bank of India V/s. Mukesh Jain*⁴, wherein, the Supreme Court has pointed out the distinction between

1 (2018) 0 Supreme (Mah) 1157

2 (2018) 8 SCC 120

3 (2018) 3 SCC 85

4 (2017) 1 SCC 53

original and appellate jurisdiction of D.R.T. In the matter of the original jurisdiction, the lower threshold prescribed in Section 1(4) of the Act, 1993, becomes operative. However, when the appellate jurisdiction of D.R.T. is invoked under Section 17 of the SARFAESI Act, even when the value of the claim is less than the amount prescribed in Section 1(4) of the Act, 1993, the Civil Court's jurisdiction is expressly barred. The following observations of the Supreme Court are relevant and, thus, extracted below :

“21. [The DRT Act](#) mainly pertains to institution of proceedings by a bank for recovery of its debt when the debt is not less than Rs.10 lakh. If the debt is less than Rs.10 lakh, no suit can be filed by the creditor bank in the Tribunal under the provisions of the [DRT Act](#). So, when the jurisdiction of the Tribunal has been referred to in [Section 1\(4\)](#) of the DRT Act, which limits the jurisdiction of the Tribunal to Rs.10 lakh, prima facie, the intention of the legislature is to limit the original jurisdiction of the Tribunal. If any claim is to be made before the Tribunal, the amount must be more than Rs.10 lakh and if the amount is less than Rs.10 lakh, the creditor bank will have to file a suit in a Civil Court. So, one can safely interpret the provisions of [Section 1\(4\)](#) of the DRT Act to the effect that it deals with original jurisdiction of the Tribunal under the provisions of the [DRT Act](#).

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25. So as to know the appellate jurisdiction of the Tribunal, one has to look at the provisions of the Act as [Section 17](#) of the Act specifically provides a right to the aggrieved debtor to challenge the validity of an action initiated under [Section 13\(4\)](#) of the Act before the Tribunal. Moreover, the Act was enacted in 2002 and

the legislature is presumed to have knowledge about the provisions of [Section 1\(4\)](#) of the DRT Act. So harmonious reading of both the aforesaid Sections would not be contrary to any of the legal provisions.

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27. Thus, we hold that the Debt Recovery Tribunal constituted under the [DRT Act](#) has jurisdiction to entertain an appeal as per [Section 17](#) of the Act even if the amount involved is less than Rs.10 lakh. But, the said appellate jurisdiction need not be misunderstood with the original jurisdiction of the Tribunal.”

In view of the aforesaid legal position, no interference is warranted in the impugned order in exercise of the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India.

8. The Petition stands dismissed. No costs.

(N.J. JAMADAR, J.)