IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (L) NO. 2170 OF 2020

Hasmukh Estate Pvt.Ltd .. Petitioner
Versus
The Kalyan Janata Sahakari Bank
Limited and others .. Respondents

…

Mr. Birendra Saraf with Sachit Bhogale and Vivek Patil & Associates for the petitioner.
Mr. Dinesh Purandare with Mr.Nikhil Rajani I/b M/s.V. Deshpande & Co. for respondent Nos.1 and 2.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.

DATED : 12th FEBRUARY, 2020.

P.C:-

1 Learned counsel as above appears for the contesting Respondent Nos.1 to 4.

2 We have heard the writ petition finally at the stage of admission itself.

3 The Writ Petitioner had filed S.A. No.44/2018 under sub-section (1) of Section 17 of SARFAESI Act, 2002 in which

demand notice dated 24th October 2018 and an auction sale of the mortgaged assets conducted on 13th February 2019 was set aside.

4 The Application was allowed by the Debt Recovery Tribunal on 7th August 2019 holding that the procedure required to be followed as contemplated by the various sub sections of Section 13 of the SARFAESI Act was not followed. The auction sale was set aside and so was the decision under Section 13(4) of SARFAESI Act, 2002.

5 The order impugned before us in the Writ Petition is dated 9th January 2020 passed by the learned DRAT in Appeal No.70 of 2019. The Appeal was filed by the consortium of Banks impleaded as Respondent Nos.1 to 4 in the Writ Petition.

6 The learned DRAT has opined that an issue of limitation arose in the Second Appeal filed by the Writ Petitioner and since the order passed by the DRT had not noted and not dealt with the issue of limitation, the appellate order has terminated its destination by requiring the DRT to decide the objection relating to limitation raised by the Consortium of Banks.

7 The impugned order proceeds further while remitting the matter to the Tribunal by setting aside the order dated 7th August 2019 passed by it.

8 There is no discussion in the impugned order on the merits of the matter passed by the Debt Recovery Tribunal and therefore, the grievance is that the Appellate Tribunal ought to have proceeded in an manner contemplated by Rule 25 of Order 41 of Code of Civil Procedure, 1908.

9 Whilst it may be true that under SARFAESI Act, the Foras constituted under the said Act are not bound to follow the procedure contemplated by the Code of Civil Procedure in deciding original applications and appeals but that does not mean that they would not be guided by the fundamental principles of procedures contemplated by the Code of Civil Procedure.

10 That apart, if on an issue, a Fora of Original Jurisdiction rendered its judgment on merits, the same cannot be set aside in Appeal merely on the ground or premise that some issue which needed to be settled and decided was neither settled nor decided.

11 In such a situation, hearing of the Appeal has to be deferred with a direction to the Fora of Original Jurisdiction to

decide an issue which arise for consideration on the pleadings of the parties and has not been decided by the Fora of Original Jurisdiction.

12 Under the circumstances, we dispose of the Writ Petition setting aside the impugned order dated 9th January 2020 limited to a setting aside order dated 7th August 2019 passed in SA No.44 of 2018.

13 We uphold the impugned order insofar it has directed the learned Debt Recovery Tribunal to decide on the issue of limitation.

14 Meaning thereby, Appeal No.70 of 2019 is restored for adjudication afresh but after awaiting the decision of the DRT on the issue of limitation in SA No.44 of 2018.

15 Needless to state the party aggrieved by the decision of the Tribunal on the plea of bar of limitation waived by the Consortium of Banks would be entitled to file an Appeal against said decision and in such eventuality the said Appeal would be tagged and decided along with the Appeal No.70 of 2019.

16 Costs made easy.

SMT. BHARATI DANGRE, J **CHIEF JUSTICE**

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