**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.22219 of 2017(O&M)
Reserved on : January 07, 2020
Date of decision: July 15, 2020

Harjinder Singh s/o Waryam Singh ...Petitioner

Versus

The Recovery Officer-II and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Vikas Bahl, Senior Advocate with
Ms.Harbani Shinh, Advocate for the petitioner.

Mr.Anand Chhibbar, Senior Advocate with
Mr.Somesh Gupta, Ms.Shreya Bhakoo and
Mr.Ateev Raj Sandhu, Advocates for respondent No.2.

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Harinder Singh Sidhu, J. :

1. This petition has been filed impugning the possession notice dated 15.09.2017 and the consequent action of Respondent No.1, whereby, the physical possession of the residential house No.1019, Phase IV, Mohali, Punjab has been taken on 22.09.2017 which the petitioner claims to be his sole residential house and thereby protected from attachment and sale. The petitioner has also prayed that respondent No.1 be restrained from proceeding further against his residential house and that respondent No.1 be directed to give back the physical possession of the house to him.

2. Respondent No.3 – M/s Overseas Cables Ltd., a public limited company had taken financial assistance of Rs.5 crores from Respondent

No.2 (IFCI) for commercial purpose in 1997. After availing and enjoying the loan, respondent No.3 sought another loan of Rs.3 crore in 1998. This also was sanctioned and availed of by respondent No.3. In respect of both the loans the petitioner and his wife - Taranjit Kaur had stood guarantee and executed deeds of guarantee dated 13.11.1997 and 21.12.1998. As a condition of the loan Respondent No.3 had mortgaged its immovable properties viz 12415 sq. yds comprised in plot No.B-5, Focal Point, Rajpura together with buildings and structures constructed/ to be constructed thereon and all plant and machinery, fixtures etc. erected/ installed thereon.

3. Respondent No.3 failed to adhere to the repayment schedule. Vide notice dated 8.6.2000 respondent No.2 recalled the entire amount of Rs.8,76,29,365.00 outstanding in both the loan accounts together with interest. Vide notice dated 21.06.2000 it invoked the guarantees furnished by the petitioner and his wife. On failure of respondent No.3 and the guarantors to repay the outstanding amount, respondent No.2 filed OA No. 450/2000 for recovery of the amount before the Debt Recovery Tribunal-I, Delhi. The borrower company was defendant No.1 in the said OA. The petitioner and his wife were defendants No.2 and 3. The Ld. Tribunal vide judgment/order dated 26.11.2010 allowed the application. The defendants were directed to pay the amount within 2 months failing which the same was directed to be recovered from the sale proceeds of the mortgaged properties / hypothecated assets/ personal assets/ properties of defendants No.1 to 3 as per provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (DRT Act). Recovery Certificate was

directed to be issued forthwith.

4. Pursuant to the judgment/ order of the Debt Recovery Tribunal, the Recovery Officer-II, Debt Recovery Tribunal-III, New Delhi (respondent No.1) passed order dated 25.09.2012 for attachment of House No.1019, Phase IV, Mohali, the residential house of the petitioner. The petitioner filed an application for recalling the order of attachment which was dismissed vide order dated 16.10.2015. The petitioner filed another application for recalling the order which was dismissed vide order dated 08.09.2017. Physical possession of the house was taken over on 22.09.2017. Thereafter, he filed the present petition in which interim order dated 28.09.2017 was issued staying the sale of the house of the petitioner.

5. The petitioner in paragraph 3 of the petition has categorically stated that he is not impugning the final judgment and order of the Debt Recovery Tribunal for recovery of the outstanding amount. His grievances in this petition are two fold:

(i) The action of respondent No.1 - Recovery Officer-II, (Debt Recovery Tribunal-III, New Delhi) in directing the attachment of the residential house of the petitioner at Mohali (Punjab) is beyond his territorial jurisdiction and hence illegal.

(ii) House No.1019, Phase IV Mohali is the sole residential house of the petitioner and was not mortgaged. As such it is exempt from attachment and sale for recovery in terms of Rule 10 of the Second Schedule of the Income Tax Act, 1961 which is applicable in view of Section 29 of the DRT Act.

6. Having heard Ld. Counsel for the parties, we agree with the contention of the Ld. Counsel for the petitioner that the action of respondent No.1 in directing the attachment of the residential house of the petitioner which is situated at Mohali (Punjab) was beyond its territorial jurisdiction and hence illegal and void.

7. Section 19 of the DRT Act contains the procedure regarding the filing of the application to the Tribunal and the manner it is to be dealt with by the Tribunal. Section 19(1) deals with the territorial jurisdiction of the Tribunal to entertain applications. Section 19(23) provides for sending the certificate of recovery for execution to the Tribunal where the property is situated. Though certain sub-sections of Section 19 have been amended in 2013 and 2016 but there is no material amendment to sub-sections (1) and (23) thereof which would effect the determination of the question that arises in this petition.

8. Sub-Sections (1) and (23) of Section 19 of the DRT Act are reproduced below:

Section 19. Application to the Tribunal

"(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction,—

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one,

at the time of making the application, actually and voluntarily resides or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises;

xxx xxx xxx

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it."

9. As per Section 19(1) of the DRT Act the bank or financial institution which has to recover any debt from any person, may make an application to the Tribunal within the local limits of whose jurisdiction,—

(*a*) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(*b*) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business, or personally works for gain; or

(*c*) the cause of action, wholly or in part, arises;

This provision is akin to Section 20 of the Code of Civil Procedure.

10. Sub- Section (23) requires that in a situation where the property is situated within the local limits of the jurisdiction of two or more

Tribunals, the Tribunal, which has issued a certificate of recovery may send copies of the certificate of recovery for execution to such other Tribunals where the property is situated. As per the proviso to this sub-section, where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

11. A Full Bench of the Delhi High Court in ***Amish Jain v. ICICI Bank Ltd., 2012 SCC OnLine Del 4818 AIR 2013 Del 172 : ILR (2012) 6 Del 377*** while considering the the correctness of the judgment of the Division Bench of that Court in *Indira Devi* v. *Debt Recovery Appellate Tribunal* 171 (2010) DLT 439 (DB) which had held that an appeal under Section 17 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI ACT) could be filed not only in the Debt Recovery Tribunal (DRT) having jurisdiction where the mortgaged property is situated but also in DRT having jurisdiction where the branch of the Bank/Financial Institution which has disbursed the loan is situated as well as in all DRTs which would have jurisdiction in terms of Section 19(1) of DRT Act read with Rule 6 of the Debts Recovery Tribunal (Procedure) Rules, 1993.

12. While considering that question, the Full Bench examined the scheme of the DRT Act. It held that the proceedings referred to in Section 19(1) of the DRT Act were merely proceedings for recovery of debt and not for enforcement of mortgage. Even prior to coming into force of the DRT Act, the Bank was free to institute a suit, only for recovery of money and

territorial jurisdiction thereof was governed by Section 20 of CPC, containing the same principles as in Section 19(1) of the DRT Act.

13. The proceedings in the DRT for recovery of debt, culminate in . a 'Certificate of Recovery' which is equivalent to a Money Decree of a Civil Court. Just as a Money Decree of a Civil Court, could be transferred for execution to another Court where the assets of the Judgment Debtor from which recovery was to be effected are situated, under Section 19(23) of the DRT Act also, where the property from which recoveries are to be effected, is situated outside the local limits of the jurisdiction of the DRT which has issued the Certificate, the DRT is required to send a copy of the Certificate for execution to the DRT within whose jurisdiction the property is situated.

The relevant observations of the Full Bench are as under:

> *"11. We are however of the opinion that the Division Bench fell in error in assuming the debt/money recovery proceedings to be initiated by the Bank under the DRT Act as equivalent to legal proceedings subject whereof is a mortgaged property, within the meaning of Section 16 of the CPC. The proceedings referred to in Section 19(1) of the DRT Act are merely proceedings for recovery of debt and not for enforcement of mortgage. Even prior to coming into force of the DRT Act, the Bank, even if a mortgagee, was not mandatorily required to enforce the mortgage and which under Section 16 of the CPC could be done only within the territorial jurisdiction of the Court where the mortgaged property was situated and the Bank was free to institute a suit, only for recovery of money and territorial jurisdiction whereof was governed by Section 20 of CPC, containing the same principles as in Section 19(1)*

of the DRT Act. We are therefore unable to accept that any departure qua territorial jurisdiction has been made in the DRT Act, as has been observed by the Division Bench in Indira Devi.

12. The proceedings in the DRT for recovery of debt, culminate in .a 'Certificate of Recovery' which is equivalent to a Money Decree of a Civil Court. Just like a Money Decree of a Civil Court, can be transferred for execution to another Court where the assets of the Judgment Debtor from which recovery is to be effected are situated, under Section 19(23) of the DRT Act also, where the property from which recoveries are to be effected, is situated outside the local limits of the jurisdiction of the DRT which has issued the Certificate, the DRT is required to send a copy of the Certificate for execution to the DRT within whose jurisdiction the property is situated. Section 25 provides for modes of recovery of the debts specified in the Certificate, including by attachment and sale of property. The recovery proceedings under the DRT Act are thus equivalent to a suit for recovery of money before a Civil Court and cannot be said to be for enforcement of mortgage. Thus it cannot be said that the DRT Act has made any departure from Section 16 of the CPC."

14. It is thus clear that as per the scheme of the DRT Act where the assets of the judgment debtor from which the recovery is to be effected are situated outside the jurisdiction of the DRT which has issued the certificate of recovery, that DRT is required to send the certificate of recovery for execution to the DRT within whose jurisdiction the property is situated.

15. Hon'ble Supreme Court in **Mohit Bhargava v. Bharat Bhushan Bhargava, (2007) 4 SCC 795** was examining the question of the jurisdiction of the Court which passed the decree to execute the same where

the property was situated outside the local limits of its jurisdiction. It was held that after the amendment of Section 39(4) of the Code of Civil Procedure in 2002 the position was set at rest that the Court which passed the decree had no jurisdiction to execute the decree against any person or property outside the local limits of its jurisdiction.

Section 39 of the Code of Civil Procedure is reproduced below:

> ***"39. Transfer of decree****.— (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court [of competent jurisdiction],—*
>
> *(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or*
>
> *(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or*
>
> *(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or*
>
> *(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.*
>
> *(2) The Court which passed a decree may of its own motion send it for execution to any subordinate court of competent jurisdiction.*
>
> *[(3) For the purposes of this section, a Court shall be deemed to be a court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.]*

> *[(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.]*

The relevant observations of Hon'ble Supreme Court are as under:

> ***"5.*** *We shall first deal with the objection of the decree-holder to the transfer of the execution to the court at Indore having jurisdiction over the property sought to be brought to sale. The decree-holder who appeared in person as also the counsel who was appearing on his behalf in the petition for Special Leave to Appeal (Civil) No. 7742 of 2006 argued that Section 39(4) of the Code as amended in 2002, was not attracted since this was not a case to which Section 39(1) was applicable. It was contended that the court which passed the decree had the jurisdiction to execute the decree and the decree-holder had approached that court for execution of the decree. There was no defect in jurisdiction in seeking to enforce the decree through the court which passed the decree. It was submitted that the decree was being executed by the present court at Gwalior only because of the abolition of the court before which the execution petition was originally filed and the High Court misunderstood the factual position while coming to the conclusion that Section 39(4) was attracted. On behalf of the judgment-debtor it was pointed out that though normally it is correct to say that the court which passed the decree has the jurisdiction to execute the decree, the moment the decree-holder sought to execute such a decree against property lying outside the jurisdiction of that court, Section 39(4) of the Code was attracted and the court was obliged to transfer the decree for execution to the proper court. Section 42 of the Code was referred to. Counsel further contended that earlier, in terms of Section 39(1) of the Code, a discretion was vested in the court,*

either to proceed with the execution of the decree or to transfer the same to another court as understood by some of the decisions. There was a conflict of judicial opinion. The legislature had therefore stepped in with an amendment in the year 2002 curtailing that discretion and introducing sub-section (4) in Section 39 of the Code making it clear that any attempt of the court to proceed with the execution against a property outside the jurisdiction of that court, would be one without authority and this legislative intent had been properly understood by the High Court when it transferred the decree to another court. Both sides brought to our notice Salem Advocate Bar Assn. v. Union of India with particular reference to paras 22 to 24 dealing with Section 39 of the Code.

***6.** In that decision, clarifying the fields of operation of Order 21 Rule 3, Order 21 Rule 48 and Section 39 of the Code, this Court stated: (SCC p. 365, para 24)*

> *"24. Section 39 does not authorise the court to execute the decree outside its jurisdiction but it does not dilute the other provisions giving such power on compliance with the conditions stipulated in those provisions. Thus, the provisions, such as, Order 21 Rule 3 or Order 21 Rule 48 which provide differently, would not be affected by Section 39(4) of the Code."*

***7.** There cannot be any dispute over the proposition that the court which passed the decree is entitled to execute the decree. This is clear from Section 38 of the Code which provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 42 of the Code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing that decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is*

> *confined to the assets within its own jurisdiction or as authorised by Order 21 Rule 3 or Order 21 Rule 48 of the Code or the judgment-debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor. But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, some courts taking the view that the court which passed the decree and which is approached for execution cannot proceed with execution but could only transmit the decree to the court having jurisdiction over the property and some other courts taking the view that it is a matter of discretion for the executing court and it could either proceed with the execution or send the decree for execution to another court. But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1-7-2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the Code shall be deemed to authorise the court to proceed with the execution. In the light of this, it may not be possible to accept the contention that it is a matter of discretion for the court either to proceed with the execution of the decree or to transfer it for execution to the court within the jurisdiction of which the property is situate."*

16. Accordingly, it is held that the DRT Delhi-I was required to have sent the Certificate of Recovery for execution to the Tribunal within whose jurisdiction the property i.e., H.No.1019, Phase IV, Mohali was situated. The Certificate for Recovery could not have been executed by respondent No.1. Hence the impugned orders are set aside. The DRT-I Delhi may send the certificate for recovery for execution to the Tribunal

within whose jurisdiction the property of the petitioner H.No.1019, Phase IV, Mohali is situated.

17. In the light of the aforesaid we do not deem it necessary to opine on the second question as to whether H.No.1019 Phase IV, Mohali is the only residential house of the petitioner and hence exempted from attachment and sale.

18. During the pendency of this petition, various interim orders were passed including one dated 02.04.2018 whereby respondents No.1 and 2 were directed to make fresh effort to sell the mortgaged properties after getting their market value re-evaluated.

19. It appears that pursuant to this order sale was conducted and confirmed in favour of respondent No.4 on 28.01.2019. Thereafter respondent No.1 passed various orders against which respondent No.4 the auction purchaser has preferred an appeal before the Ld. Presiding Officer DRT-Delhi-I. It would be open to respondent No.4 or any other aggrieved party to pursue their remedies as may be permissible to them as per law.

20. Disposed of accordingly.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 15, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No