13-08-2021
sl. no. 64
tkm/ct. 8

WPA 8563 of 2020

M/s. Victory Casting Liited & Anr.
Versus
Canara Bank of India & Anr.
(Through Video Conference)

Mr. Ranjan Bachawat
Mr. S K Bjoria
… for the petitioners
Mr. Dipankar Das
… for the respondent

Petitioners assail a notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 issued by the bank.

Learned Senior counsel for the petitioners submits that the claim of the bank is barred by limitation on the date of issuance of the notice. He relies upon ***2017 SCC Online Cal 8742 (Dr. Dipankar Chakraborty vs. Allahabad Bank & Ors.)*** in support of his contention that once the claim is barred by limitation, provisions of the Act of 2002 cannot be invoked. He submits that ***Dr. Dipankar Chakraborty (supra)*** was noted in ***(2019) 10 SCC 750 (Jignesh Shah and Anr. Vs. Union of India & Anr.)*** by the Hon'ble Supreme Court of India and their Lordships held that the view expressed in ***Dr. Dipankar Chakraborty (supra)*** was correct in law.

Learned advocate appearing for the bank submits on a query from the court as to whether, there exist any event to bring the claim of the bank within the period of limitation, that his answer is in the negative.

Canara Bank granted several credit facilities to the first petitioner. The credit facilities became non-performing assets and were classified to be so. Canara bank instituted proceedings under section 19 of the Recovery of Debts due to Banks and Bankruptcy Act 1993. Such proceedings are pending. In such proceedings, approach was made by the first petitioner for one time settlement. Apparently, the same did not work out.

A reference of the first petitioner was made to the Board for industrial and financial reconstruction constituted under the provisions of Sick Industries Companies (Special Provisions) Act 1985 on November 3, 2004. The reference was dismissed at the behalf of the second creditor by an order dated July 14, 2007. Apparently, no appeal was carried against the order of dismissal of the reference.

Canara bank thereafter, issued the impugned notice under section 13(2) of the Act of 2002 on September 8, 2020.

As on September 8, 2020, the claim of the bank is barred by limitation. ***Dr. Dipankar Chakraborty (supra)*** is of the following view :

> *"**14.** Section 36 of the Act of 2002, bars a secured creditor from taking all or any measure under Section 13(4), unless*

the claim of such secured creditor is within the period of limitation prescribed under the Limitation Act, 1963. The provisions of the Limitation Act, 1963 are, therefore, applicable when a secured creditor seeks to initiate a proceeding under the Act of 2002. At least at the time of taking a measure under Section 13(4), the Limitation Act, 1963 would come into operation, that is to say that, the secured creditor is permitted by the Act of 2002 to take a measure under Section 13(4) only and only if, the measure sought to be taken is within the period of limitation as prescribed under the Limitation Act, 1963. The secured creditor is required to make his claim in respect of the financial asset within the period of limitation prescribed under the Limitation Act, 1963. Would lodging a proceeding under Section 19 of the Act of 1993 be construed to be making by a claim in respect of the financial asset within the period of limitation prescribed under Limitation Act, 1963 is another question which arises for consideration.

15. *In the facts of the present case, the petitioner has not contended that, the claim made by the secured creditor before the Debts Recovery Tribunal under Section 19 of the Act of 1993 is barred by the laws of limitation. In any event, the issue of limitation of the proceedings under Act of 1993 is an issue which is to be decided by the Debts Recovery Tribunal before which such proceedings are pending. A Writ Court in a collateral proceeding is not required to answer such an issue. Such an issue also does not fall for consideration in the present case. Rather the issue as to whether the lodging of the proceedings under Section 19 of the Act of 1993 continues the period of limitation, or in other words, stops the running of the period of limitation on and from the date of lodging of* *such proceedings has arisen for consideration in the present case.*

21. *Section 14 of the Limitation Act, 1963 saves the period of limitation in the event of a new proceeding being filed when the Court in which the former proceeding was being prosecuted suffers from defect of jurisdiction or defect of like nature. It does not contemplate two proceedings on the same cause of action at the same time. In the present case, the bank has not withdrawn the proceeding under Section 14 under the RDB Act, 1993, for defect in jurisdiction of the Tribunal to decide the same or otherwise. Rather the bank is proceeding under Section 19 of the RDB Act, 1993. It can proceed parallely by under the Act of 2002 provided that, the proceedings under the Act of 2002 are within the period of limitation. Pendency of the proceedings before the DRT, under the RDB Act, 1993, will not save the period of limitation for a proceeding under the Act of 2002, if the proceeding under the Act of 2002, is by itself barred by the laws of limitation. In other words, a bank cannot take the benefit of the pendency of the proceedings before the DRT to claim that, a proceeding under the Act of 2002, which is otherwise barred by limitation to be validly instituted within the period of limitation. Section 4, Section 14 and Section 15 of the Limitation Act, 1963, does not assist a bank to initiate a proceeding under Act of 2002 which is otherwise barred by limitation on the date of its initiation premised upon of a pendency of a proceeding under Section 19 of the RDB Act, 1993 before the DRT.*

25. *The issues raised are, therefore, answered by holding that, the initiation of the proceedings by the bank was barred by the laws of limitation on July 5, 2011 and all proceedings* *taken by the bank consequent upon and pursuant to the notice under Section 13(2) of the Act of 2002 dated July 5, 2011 are quashed including such notice."*

Dr. Dipankar Chakraorty (supra) was noted by the Hon'ble Supreme Court in ***Jignesh Shah & Anr. (supra)*** which was held as follows :

*"**16.** In Dipankar Chakraborty v. Allahabad Bank [Dipankar Chakraborty v. Allahabad Bank, 2017 SCC OnLine Cal 8742 : AIR 2017 Cal 289] , the fact situation was that a suit had been filed by the petitioner in the City Court at Calcutta for damages against the Allahabad Bank. The Bank, in turn, filed a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in 2001 before the Debt Recovery Tribunal, Calcutta. The civil suit was also transferred to the Debt Recovery Tribunal, Calcutta where both proceedings were pending adjudication. Meanwhile, under the Securitisation and Restructure of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"), a notice dated 3-3-2016 was issued under Section 13(2) of the SARFAESI Act. The question which arose before the Court was whether the invocation of the Sarfaesi Act, being beyond limitation, would be saved because of the pending proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Court negatived the plea of the Bank, stating: (SCC OnLine Cal para 22)*

"22. Section 14 of the Limitation Act, 1963 permits exclusion of the time taken to proceed bona fide in a court without jurisdiction. Such section permits a plaintiff to present the same suit, if the court of the first instance,

returns a plaint for defect of jurisdiction or other causes of like nature, being unable to entertain it. In the present case, a secured creditor is not withdrawing a proceeding pending before the Debts Recovery Tribunal under Section 19 of the Act of 1993 to invoke the provisions of the Act of 2002. Rather the secured creditor is proceeding, independent of its right to proceed under the Act of 1993, while invoking the provisions of the Act of 2002. This choice of the secured creditor to invoke the Act of 2002 is independent of and despite the pendency of the proceedings under the Act of 1993, has to be looked at from the perspective of whether or not such an action meets the requirement of Section 36 of the Act of 2002, when the secured creditor is proposing to take a measure under Section 13(4) of the Act of 2002. Although, a secured creditor, as held in Transcore [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] , is entitled to take a remedy or a measure as available in the Act of 2002, despite the pendency of other proceedings, including a proceeding under Section 19 of the Act of 1993, in respect of the self-same cause of action, in my view, the invocation of such independent right under the Act of 2002, has to be done within the period of limitation prescribed under the Limitation Act, 1963 in terms of Section 36 of the Act of 2002. The Act of 2002 gives an independent right to a secured creditor to proceed against its financial assets and in respect of which such asset the secured creditor has security interest. The right to proceed, however, is subject to the adherence to the provisions of limitation as enshrined in the Limitation Act, 1963. The provisions of the Limitation Act, 1963 are, therefore, attracted to a proceeding initiated under the Act of 2002. That being the legal position, the invocation *of the provisions of the Act of 2002 in the facts of the present case, on 5-7-2011, without there being an extension of the period of limitation by the act of the parties cannot be sustained.*

25. The issues raised are, therefore, answered by holding that, the initiation of the proceedings by the bank was barred by the laws of limitation on 5-7-2011 and all proceedings taken by the bank consequent upon and pursuant to the notice under Section 13(2) of the Act of 2002 dated 5-7-2011 are quashed including such notice."

In view of the pronouncement of ***Dr. Dipankar Chakraborty (supra)*** and ***Jignesh Shah (supra)***, invocation of the provisions of the Act of 2002 is bad in law. Therefore, the impugned notice dated September 8, 2020 issued by the bank is quashed.

WPA 8563 of 2020 is disposed of without any order as costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(DEBANGSU BASAK, J.)