

20.06.2023
Court No. 19
Item no.08
CP

C.O. 1636 of 2023

Bangla Bijuli Power Technologies Private Limited
Vs.
IDBI Bank Limited & anr.

Mr. R. N. Bag
Mr. Rohan Raj

.....for the petitioner.

Mr. Debasish Chakraborty
Mr. Shashwat Nayak

...for the opposite parties.

The revisional application has been filed challenging an order passed by the learned Debts Recovery Appellate Tribunal at Kolkata in Appeal No. 33 of 2018, arising out of S.A. No. 104 of 2014. The order appealed from is an order passed by the learned Debts Recovery Tribunal – 3, Kolkata on February 7, 2018. By the order impugned, the demand notice dated August 29, 2012, issued by the IDBI Bank to the petitioner/borrower was found to be erroneous and was quashed. All further actions taken subsequent to the demand notice was automatically quashed. The applicant/petitioner was allowed to submit a concrete proposal along with some upfront money, with a prayer for restructuring of its account within 3 weeks from the date of the order. It was further directed that upon receipt of

such proposal, the bank should consider the same as per the bank's policy and allow the petitioner to run the unit and repay the dues. In case of failure of the petitioner to submit the proposal within 3 weeks, the bank was granted liberty to issue fresh demand notice, as per law.

Such order was challenged in the appeal. By the order impugned, the learned appellate tribunal upon pointing out the defects in the order impugned before it, set aside the judgment dated February 7, 2018 and remanded the matter for a fresh hearing by DRT-3.

The order was passed by the DRT-3 pursuant to a direction of a Division Bench of this court in MAT 196 of 2017 on March 23, 2017. The facts are that a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was issued against the petitioner. The petitioner challenged the same by filing S.A. 104 of 2014. The notice was quashed and set aside by the learned tribunal. The bank filed a review of the order. The review was allowed. The said order was challenged by the borrower before the High Court, in W.P. No. 27330(W) of 2016. By an order dated January 18, 2017, the writ petition was dismissed. Such order was challenged by the petitioner before

the Hon'ble Division Bench. The Hon'ble Division Bench held that justice would be subserved by directing the Debt Recovery Tribunal-3, to dispose of the application filed by the petitioner under Section 17 of the SARFAESI Act, within two months. The Hon'ble Division Bench disposed of the appeal.

Pursuant to such direction, the order dated February 7, 2018 was passed. It appears to this court that the DRT-3 had recorded the facts, the submissions of the respective parties and had arrived at certain conclusions giving in details the reasons as to why such conclusions were plausible reasons for cancellation of the notice issued to the petitioner under Section 13(2) of the SARFAESI Act.

The decision was challenged by the bank before the learned appellate tribunal. Extensive arguments were advanced and the learned appellate tribunal upon finding errors in the order, set aside the order and remanded the matter for rehearing.

Learned advocate for the petitioner submits that there was no illegality in the order passed by the DRT-3, inasmuch as, the reasons were available in the order. The DRT-3 came to the conclusion that when the date on which the account had become NPA had not been mentioned, when the proposal for structuring had not been considered and when the bank could not come up with the possible

explanation as to why the entire loan was not disbursed, the notice suffered from irregularity. The learned appellate tribunal found that although the DRT-3 had come to various conclusions upon discussing the submissions of the parties in details, the materials leading to such conclusions, were not discussed.

Unfortunately, it appears to this court also that the learned appellate tribunal did not discuss those evidence or materials which were allegedly on record but were not considered by the DRT-3.

Mr. Nayak, learned advocate appearing on behalf of the bank, submits that it was not the requirement of law that the bank was supposed to mention the date on which the account became NPA in the notice issued under Section 13(2) of the SARFAESI Act. He also submitted that the bank was also not required to explain before the learned DRT-3 as to why the entire loan was not disbursed.

It appears to the court that the contentions of Mr. Nayak are on the merits of the findings and Mr. Nayak has not been able to show that material evidence had been left out. Rather, Mr. Nayak has argued on the law applicable in this regard and has formulated his arguments on the illegalities in the order.

The learned DRT-3, found various irregularities in the notice which have discussed the same in details. Thus, if Mr. Nayak's arguments with regard to the legality of the order is accepted and further if Mr. Nayak's contention of non-consideration of material evidence are also accepted, these are the issues which would have to be decided in the appeal. The appellate tribunal was equipped to decide the issue on the fact and law and pass necessary orders, instead of remanding the matter back to the tribunal where the matter had gone through several rounds of litigation on the same issue. There has to be a finality to the decision of the first court and the superior forum is always at liberty to assess the fact, law and the materials and decide the appeal on its own merits.

In the matter of ***Shivakumar and others v. Sharanabasappa and others***, reported in **(2021) 11 SCC 277** , the Hon'ble Apex Court held as follows:-

“26.3. A comprehension of the scheme of the provisions for remand as contained in Rules 23 and 23-A of Order 41 is not complete without reference to the provision contained in Rule 24 of Order 41 that enables the appellate court to dispose of a case finally without a remand if the evidence on record is sufficient; notwithstanding that the appellate court proceeds on a ground entirely different from that on which the trial court had proceeded.

26.4. A conjoint reading of Rules 23, 23-A and 24 of Order 41 brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an appellate court is to follow the mandate of Rule 24 of Order 41 CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the appellate court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the trial court may not be considered proper in a given case because the first appellate court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.”

In the matter of ***Arvind Kumar Jaiswal (D) THR. LR. Vs. Devendra Prasad Jaiswal Varun*** decided in ***Civil Appeal (@ SLP (C) No. 9172 of 2020)***, the Hon’ble Apex Court held as follows:-

“An order of remand prolongs and delays the litigation and hence, should not be passed unless the appellate court finds that a re-trial is required, or the evidence on record is not sufficient to dispose of the matter for reasons like lack of adequate opportunity of leading evidence to a party, where there had been no real trial of the dispute or there is no complete or effectual adjudication of the proceedings, and the party complaining has suffered material prejudice on that account.¹ Where evidence has already been adduced and a

decision can be rendered on appreciation of such evidence, an order of remand should not be passed remitting the matter to the lower court, even if the lower court has omitted to frame issue(s) and/or has failed to determine any question of fact, which, in the opinion of the appellate court, is essential. The first appellate court, if required, can also direct the trial court to record evidence and finding on a particular aspect/issue in terms of Rule 25 to Order XLI, which then can be taken on record for deciding the case by the appellate court. In the present case, the High Court, as the first appellate court, which is also a court of fact and law, has passed an order of remand observing that the judgment of the trial court was, in its opinion, not written as per the mandate of Section 33 and Rule 4(2) and 5 of Order XX of the Code, as the discussion and reasoning on certain aspects was not detailed and elaborate. This is not a case where the evidence is not adduced and on record. In fact, the first portion of the judgment of the High Court elaborately records the contention of the parties and the facts and evidence relied by the parties. In view of the aforesaid, we allow the present appeal, and set aside the impugned judgment and restore the first appeal to its original number before the High Court, to be decided on merits and in accordance with law, as per the provision of order XLI of the Code. As the appeal has been pending for a considerable time, the High court would decide the appeal expeditiously as possible.”

In this case, the grounds for remand are not established. Hence, the order of the learned appellate tribunal dated March 22, 2023 is set aside.

This court has neither gone into the merits of the issues raised by the bank in the appeal nor has this court made any observation on the merits of the finding of the learned DRT-3. This court has only supplied the reasons as to why the learned appellate tribunal ought to have decided the appeal on its own

merits, instead of remanding the matter back to the DRT-3.

The appeal shall be heard afresh and the learned tribunal shall pronounce judgment. The hearing of the appeal shall be concluded within a period of two months from the date of communication of this order.

As the order impugned before this court is set aside, the other observations made therein, do not survive. If the learned appellate tribunal found the reasons or the judgment to be incorrect or arbitrary it was the duty of the appellate court to correct the mistake instead of making observations on merits and then remanding the matter for rehearing. The remarks against DRT-3 was uncalled for.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)