

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-2975-2019
Reserved on 4.10.2023
Date of Decision: 06.12.2023

Gaurav Singh

....Petitioner

VERSUS

Internation Asset Reconstruction Company Private Limited and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Saurabh Bajaj, Advocate,
for the petitioner.

Mr. Aalok Jagga, Advocate with
Mr. Harkirat S. Jagdev, Advocate,
for the respondent No.1

KARAMJIT SINGH, J.

Present civil revision petition has been filed by the petitioner seeking setting aside of order dated 25.5.2017 (Annexure P-8) and 14.9.2018 (Annexure P-9) passed by Debts Recovery Tribunal-III, Chandigarh (in short, “DRT”) in SA-401-2017 and further, order dated 7.12.2018 (Annexure P-10)) passed by Debts Recovery Appellate Tribunal, Delhi (in short, “DRAT”), vide which, the appeal filed by the petitioner against order (Annexure P-8) was not entertained on account of non-compliance of Section 18 of SARFAESI Act, 2002 (in short ‘the 2002 Act’).

2. Case of the petitioner in brief is that the petitioner is a guarantor of loan advanced by the respondent-AXIS Bank (formerly known as UTI Bank) to M/s Commando Caterers Private Limited which defaulted in its repayment. Then the bank initiated proceedings under ‘the 2002 Act’ by

thereafter, notice under Section 13(4) of the said Act was also issued. Said notice being patently illegal, the petitioner filed CWP-21262-2010 but the same was disposed of by this Court vide order dated 30.11.2010 with liberty to the petitioner to approach the DRT and consequently, the petitioner filed SA-116 of 2011. Later on, the said Securitisation Application (in short SA) was transferred and it was fixed for 21.3.2017, without any intimation to the petitioner in this regard and he later on came to know that registration number of his SA was changed from SA-116 of 2011 to SA-401 of 2017 and the case was dismissed in default on 25.5.2017 vide order Annexure P-8. The petitioner filed application for restoration of his SA but the same was also dismissed vide order dated 14.9.2018 (Annexure P-9). Being aggrieved, the petitioner filed appeal before DRAT but the same was not entertained and the petitioner, who sought waiver of pre-deposit, was directed to deposit 25% of the amount of debt within a period of 2 months vide order dated 07.12.2018 (Annexure P-10). Being not satisfied, the petitioner has filed the present petition seeking quashing of orders Annexures P-8, P-9 and P-10.

3. I have heard counsel for the parties.

4. Counsel for the petitioner has contended that impugned order (Annexure P-8) is totally illegal. It has been further contended that the petitioner being guarantor filed SA-116 of 2011 as is evident from Annexure P-7 passed by DRT-II, Chandigarh which is dated 8.12.2016; that, subsequently, the said SA was transferred to DRT-III, Chandigarh and its registration number was also changed from SA-116 of 2011 to SA-401 of 2017 and all these proceedings were carried out at the back of the petitioner without issuing him any notice. It has been further contended that the petitioner was not aware of transfer of his SA from one DRT to another

DRT and finally, SA-401 of 2017 was dismissed for non-prosecution vide impugned order Annexure P-8 and no notice of pendency of SA-401 of 2017 was issued to the petitioner before passing of the impugned order (Annexure P-8). That order Annexure P-8 dated 25.05.2017 and subsequent order Annexure P-19 dated 14.09.2018 passed by DRT-III, Chandigarh are totally illegal and not sustainable in the eye of law.

5. Counsel for the petitioner has further submitted that order (Annexure P-8) being apparently illegal was challenged by the petitioner before DRAT, Delhi and the said Appellate Tribunal refused to entertain the appeal without pre-deposit and request for waiver was also declined without taking into consideration the fact that order under challenge in appeal was totally illegal. It is further contended that even otherwise, the petitioner is not principal borrower of the loan in question. So, prayer is made that the present petition be allowed. In support of his contentions, counsel for the petitioner has placed reliance upon **C.R.P. (NPD) No.794 of 2021 Punjab National Bank v. Shivakeshav Pillai and others** decided on 29.3.2021 by Madras High Court and Civil Revision Petition No.299 of 1998; ***Putumbaka Purnachandra Rao and another v. State Bank of India, Shamsheergunj, Hyderabad and others*** 1999(4) Civil LJ 568 (A.P.) wherein the writ petitions filed by the petitioners therein were entertained and disposed of by the High Courts against the orders passed by DRT concerned.

6. On the other hand, the counsel for respondent No.1 while supporting the impugned orders has inter alia contended that SA filed by the petitioner was rightly dismissed by DRT-III, Chandigarh for non prosecution and even the subsequent order Annexure P-9 is not suffering from any illegality or infirmity. It has been further contended that pre-deposit is

mandatory since it has been made a condition precedent for filing appeal under Section 18 of 'the 2002 Act', as per the ratio laid down by Hon'ble Supreme Court in *Narayan Chandra Ghosh Vs. UCO Bank and others 2011 (4) SCC 548*. The counsel for respondent No.1 while referring to impugned order Annexure P-10 passed by DRAT, Delhi, has submitted that the Appellate Tribunal rightly directed the petitioner to make a pre-deposit of the minimum amount of 25% of debt in question before entertaining the appeal filed by the petitioner against orders Annexure P-8 and Annexure P-9 and that there is no illegality in the said order. So prayer has been made that the revision petition be dismissed.

7. I have considered the submissions made by counsel for the parties.

8. There is no dispute with regard to factual matrix as has been detailed above. Admittedly, the petitioner is not a principal borrower and rather he stood as guarantor for repayment of loan which was availed by the principal borrower and he defaulted in repayment of loan and consequently, the concerned bank initiated action under 'the 2002 Act' against principal borrower and the petitioner (guarantor). On this the petitioner filed CWP No.21262 of 2010 and the same was disposed of by this Court vide order Annexure P-5 dated 30.11.2010 with liberty to the petitioner to approach DRT as the petitioner has taken plea that the 'secured assets' in respect whereof the impugned notice was issued is agricultural land and is exempted from any action under 'the 2002 Act' in terms of Section 31 (i) of the Act. Consequently, the petitioner filed SA-116 of 2011 as is evident from Annexure P-7 and the same remained pending in DRT-II, Chandigarh. However, from the perusal of Annexure P-8 it appears that later on aforesaid

SA was transferred to DRT-III, Chandigarh and its registration number was changed to SA-401 of 2017. It appears that before its transfer from one DRT to another DRT no notice with regard to the said transfer was issued to the petitioner by the Court concerned. From the perusal of Annexure P-8, it appears that SA-401 of 2017 was dismissed for non prosecution as on 25.05.2017 there was no representation on behalf of the petitioner before DRT-III, Chandigarh.

9. Impugned orders Annexure P-8 and Annexure P-9 are apparently erroneous. The reason being SA No.116 of 2011 was filed by the petitioner in DRT-II, Chandigarh and later on without issuing any notice to the petitioner, the same was transferred to DRT-III, Chandigarh and after its transfer to DRT-III, Chandigarh its registration number was changed as SA No.401 of 2017 and that to was also done without any intimation with regard to the same to the petitioner. Finally, after aforesaid transfer, SA No.401 of 2017 was dismissed on 25.05.2017 for want of prosecution vide order Annexure P-8. The DRT-III should have issued notice to the petitioner with regard to pendency of SA No.401 of 2017 before passing impugned order Annexure P-8. Thus, the said order is illegal. Even order Annexure P-9 was also passed by DRT-III, Chandigarh without any application of mind and thus, is not sustainable in eye of law.

10. Balance of equity and fair play demand that proceedings between the parties should be decided on merits and are not to be thrown out at the very initial stage that to without any prior notice to the aggrieved party. Further, this Court vide order Annexure P-5 while disposing of CWP No.21262 of 2010 observed that the petitioner has *prima facie* made out an arguable case and it being so the DRT should have made efforts to decide

the SA filed by the petitioner on merits, in accordance with law after taking into consideration the probable defence set up by the petitioner.

11. The Andhra Pradesh High Court in **Putumbaka Purnachandra Rao's case (supra)** has observed that it is trite to state that this Court in exercise of its power of superintendence under Article 227 of The Constitution of India can correct the orders of the Courts and judicial tribunals functioning within the territorial jurisdiction of the High Court. The similar view was taken by Madras High Court in **Shivakeshav Pillai's case (supra)**.

12. It is also trite law that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

13. The facts and circumstances of the case as are discussed above, reveals non application of mind and a failure by DRT-III, Chandigarh to exercise the jurisdiction vested in it in a proper and judicious manner. Thus, the impugned order Annexures P-8 and P-9 being illegal deserve to be set aside.

14. No doubt, Section 18 of the 2002 Act provides that any appeal under that section can be filed only if 50% of the amount of debt due from him, as claimed by secured creditors is deposited before the Appellate Tribunal. Of course, the Appellate Tribunal has the discretion to reduce the amount to 25%. In cases like, the present case, where it has been clearly demonstrated that DRT has failed to exercise a jurisdiction vested in it in a proper manner, it would be a negation of justice, if the person aggrieved is required to challenge such like orders in an appeal under Section 18 of the 2002 Act. Further as has been already discussed this Court in exercise of its

power of superintendence under Article 227 of the Constitution of India can always interfere in such like illegal orders passed by DRT functioning within the territorial jurisdiction of this Court. In the given circumstances, it cannot be said that as the petitioner has opted for appeal before DRAT, Delhi, he is debarred from approaching this Court under Article 227 of the Constitution of India.

15. For the forgoing reasons, the present petition is allowed and orders dated 25.05.2017 Annexure P-8 and 14.09.2018 Annexure P-9 passed by DRT-III, Chandigarh are hereby set aside. SA No.401 of 2017 will stand restored to the file of DRT-III, Chandigarh and the said Tribunal shall proceed ahead in the case in accordance with law.

16. Resultantly, appeal if any, filed by the petitioner in DRAT, Delhi against order Annexures P-8 and P-9 is rendered infructuous and thus, order Annexure P-10 also goes.

(KARAMJIT SINGH)
JUDGE

December 06, 2023
Paritosh Kumar/Yogesh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No