03.01.2023
Court No.19
Chamber

C.O. No. 903 of 2023

Asha Memorial Trust & ors.
Vs.
ICICI Bank Limited & ors.

Mr. Mainak Basu,
Mr. R.C. Prusti
Mr. Sanjib Das
…….for the petitioners.

Mr. Avishek Guha
Ms. Akansha Chopra

…….for the opposite parties.

The revisional application arises out of an order dated March 3, 2023 passed by the learned Debts Recovery Appellate Tribunal (in short DRAT) in Appeal No.67 of 2018/38 of 2023. The appeal arose out of OA No.89 of 2017.

The order impugned has two parts. By the first part of the order, I.A. No.100 of 2023 was allowed and the name of the respondent No.7 was deleted from the array of respondents.

The next portion of the order impugned, deals with the propriety and/or the legality of the order dated March 19, 2018 passed by the learned Debts Recovery Tribunal III (DRT III) Kolkata, in OA No.89 of 2017.

By the order dated March 19, 2018, the learned DRT III, Kolkata, allowed the demurrer application filed by the petitioners, inter alia, holding that the Tribunal lacked territorial jurisdiction to entertain the original application. It was directed that the papers be returned to the Bank for filing the original application before the DRT Cuttack.

Such order was challenged by the opposite party No.1/Bank, before the learned DRAT. According to the learned DRAT, the DRT III Kolkata had the territorial jurisdiction to entertain the original application. The DRT III, Kolkata, was directed to decide the OA No. 89 of 2017, in accordance with law.

The facts are that the petitioner No.1/borrower runs a residential college by the name of Kalinga Bharati Residential College. The said college is affiliated to Utkal University. The petitioner No.1 availed of loan of Rs.38.50 crores from the opposite party No.1/Bank, during the period 2011-12 to 2013-14. According to the petitioner No.1, an amount of Rs.30.44 crores (Rs.13.77 crores towards principal and Rs.16.67 crores towards interest) had been repaid. The loan facilities were sanctioned by a branch of the opposite party No.1/Bank, situated at Bhubaneswar. The loan agreement was signed at Bhubaneswar by the then Chairman of the petitioner No.1. The petitioner No.4 took up the charge of the petitioner No.1/trust, as the Chairperson, on April 6, 2017.

The college was facing a lot of challenges and the financial position started declining from 2015-16 onwards. The Bank declared the outstanding loan as a Non-performing Asset (in short NPA) during the year 2015-16. The Bank pressurized the Chairman to sell out the building situated at Satyanagar, Bhubaneswar, at a throw away price, as had been alleged by the by the borrower. The Bank had allegedly also assured to approve a one-time settlement (OTS) within April 4, 2017, but such promise was only a game plan of the ICICI Bank, who had deceived the petitioner No.1 and the Chairman. Thereafter, the Bank instituted a recovery proceeding before the DRT III Kolkata, for recovery of Rs.29,40,38,991/- calculated as on February 2, 2017 with further interest, which was numbered as OA No.89 of 2017.

According to the petitioners, the Bank had incorrectly pleaded in paragraph 3 of the said application that the DRT III Kolkata had the jurisdiction to entertain the O.A. The cause of action for institution of the said original application, did not arise at ICICI Bank House, 3A Gurusaday Road, Police Station Karaya Kolkata 700019. Only an averment that the Eastern Regional Office of the Bank, was situated within the jurisdiction of the DRT III Kolkata, would not confer jurisdiction upon the tribunal.

The averments with regard to the territorial jurisdiction of DRT III, Kolkata, were misleading and only to create an illusion of jurisdiction. The learned DRT at Cuttack, in the State of Odisha, was the appropriate forum before which the original application ought to have been filed. The petitioners' case is that the loan was sanctioned from Odisha, letters pertaining to the same had been addressed from Odisha and all actions were taken from the bank's office at Odisha.

With such preliminary objection, with regard to the territorial jurisdiction of the DRT III, Kolkata, the petitioners filed I.A. No.263 of 2018. The petitioners specifically contended that the loan had been sanctioned from the Bhubaneswar branch. The same was renewed and the credit limit was also enhanced from time to time, from the said branch office at Bhubaneswar. All documents were signed by the petitioner at the branch office of the respondent bank, at Bhubaneswar. The loan was disbursed by the respondent bank from its branch office at Bhubaneswar. The instalments of the term loan were repaid by the petitioners to the branch office at Bhubaneswar. The title deed of assets was deposited at Bhanjaprava building, at Bhubaneswar. The assets of the petitioner which had been mortgaged, were lying and situated in the State of Odisha. The petitioners were staying at various places within the State of Odisha.

By order dated March 19, 2018, the application filed by the petitioners was allowed and the learned DRT III, Kolkata, came to the conclusion that the cause of action arose at Bhubaneswar and the Tribunal did not have any jurisdiction to entertain the original application. The learned Registrar was directed to return the pleadings and the documents with the index filed by the Bank. A certificate regarding pendency of the original application and fees paid by the Bank was also directed to be provided. The entire exercise was to be concluded within two weeks from the date of the order.

The applicant/Bank was directed to submit/ file the original application before the appropriate Tribunal as per the law within, three weeks thereafter.

It was further ordered that the certificate regarding payment of fees issued by the learned

Registrar should be accepted by the learned Tribunal having jurisdiction to entertain the original application. Thus, the Bank was directed to proceed in the matter as per law, before the learned DRT Cuttack. I.A. No.263 of 2018 which raised the question of the maintainability of the original application before the learned DRT III, Kolkata on the ground of lack of territorial jurisdiction, stood disposed of.

Aggrieved, the Bank approached the learned appellate Tribunal by filing appeal No.67 of 2018/38-2023. The learned appellate Tribunal, allowed the Bank's appeal.

Mr. Mainak Bose, learned Advocate appearing on behalf of the petitioners submits that the entire cause of action arose within the jurisdiction of the learned DRT Cuttack. The office from which the loan was sanctioned was situated within the State of Odisha. The communication between the Bank and the petitioners were also made within the State of Odisha. The loan was disbursed from the State of Odisha. The place of execution of the loan was the State of Odisha. The title deeds were deposited at Bhubaneswar and the secured assets were situated at Bhubaneswar. Hence, the DRT Cuttack had the jurisdiction over the matter and not DRT III, Kolkata.

Reliance was placed Section 19(1)(a)(aa) and (b) of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the said Act). It is further contended that the entire cause of action arose in Odisha.

Mr. Bose places the sanction letter issued by the branch office of the Bank situated at Bhubaneswar and other relevant documents like the deed of hypothecation, the personal guarantee executed between the Bank and the guarantor in respect of the said loan and the credit arrangement letters written by the associate relationship manager to the petitioner No.1, requesting payment of the overdue amount, in order to substantiate his contention that the entire cause of action arose within the jurisdiction of the State of Odisha.

Reliance is placed on the provisions of the Code of Civil Procedure, with regard to the jurisdiction, specially Section 20 thereof. According to Mr. Bose, the proceeding should have been initiated within the jurisdiction of Cuttack in terms of Section 20(b) and (c) of the Code.

Mr. Guha, learned Advocate appearing on behalf of the Bank submits that the application under Section 19 of the said Act, was rightly filed before the learned DRT III, Kolkata for recovery of sum of Rs.29,40,38,991/- calculated as on February 2, 2017, along with interest accrued thereon, on account of failure on the part of the petitioners to repay the credit facilities availed from the Bank. The loan accounts of the petitioner No.1 was classified as a non-performing asset. The demurrer application taken out by the petitioner Nos. 1, 2 and 3, was only restricted to the point of lack of territorial jurisdiction of the DRT III, Kolkata. According to Mr. Guha, the contention of the petitioners that the entire transaction forming the subject matter of O.A. No.89 of 2017, had taken place at Bhubaneswar in the State of Odisha, was incorrect. It is contended that the documents had not been scrutinized properly by the DRT III, Kolkata. Those documents would clearly indicate that a considerable part of the cause of action, for initiation of the relevant proceedings, had arisen within the local limits of DRT III, Kolkata. The application seeking financial assistance was processed at the erstwhile regional office of the Bank, situated at 2B Gorky Terrace Kolkata 700017, now situated at premises No. 3A Gurusaday Road within Karaya police station, Kolkata 700019. The representative of the petitioner No.1 had attended the regional office. All discussions with regard to sanction of such loan and the relevant decisions were also taken at the regional office. The regional office had sanctioned the loan which resulted in the issuance of the relevant credit arrangement letter. The loan documents (facility agreements) were executed at the regional office. The mortgage of the immovable properties was also created at the regional office, irrespective of the place they were situated. The deed of hypothecation was executed between the petitioner No.1 and the Bank, having its zonal/regional/branch office at 2B Gorky Terrace Kolkata 700017. The memorandum of entry/constructive delivery, indicated that the representative of Asha Memorial Trust attended the regional office of the ICICI Bank at 2B Gorky Terrace Kolkata 700017. The said representative met Shri Amit Khuthari of the Bank. Special reference was made to paragraphs 1 and 2 of the said memorandum of entry/constructive delivery, which indicated that oral consent was given on behalf of the borrower to Amit Khuthari (representative of the Bank) to continue to hold and retain the title deeds, more particularly, described in the first schedule.

The documents of title, evidence, deeds, and writings, described in the first schedule, were deposited in the regional office with Mr. Amit Khuthari and Ms. Megha Ghosh, representatives of the Bank. It is next submitted by Mr. Guha, that the jurisdiction and the cause of action, has been set out in paragraph 3 of the original application, in compliance with Section 19(1)(c) of the said Act.

Mr. Guha further submits that the letters for invocation of guarantee furnished by the petitioner No.1, were all issued by the ICICI Bank Ltd., Kolkata, presently situated at 3A Gurusaday Road. Such communication with regard to invocation of guarantee furnished on behalf of the Asha Memorial Trust, were part of the original application. The notice with regard to recall of the credit facility dated June 6, 2016, was also issued by the authorized signatory of the ICICI Bank, situated at 3A Gurusaday Road, Kolkata. Thus, according to Mr. Guha, the proceedings were rightly instituted before the DRT III at Kolkata.

Heard the parties. Cause of action is a bundle of facts. In this case, the records and the documents annexed to the original application clearly indicate that the entire discussion with regard to the sanction of the loan took place in Kolkata at the erstwhile regional office. The regional office took the decision to approve the said loan and sanctioned the same. The title deeds which were mortgaged, were deposited with the representative of the Bank at the regional office at Kolkata that is, 2B Gorky Terrace Kolkata 700017. In the loan facility agreement executed between the borrower and the ICICI Bank, the address of the corporate office was mentioned as Mumbai, but the regional office was mentioned as 2B Gorky Terrace Kolkata 700017. The signature of Mr. Janaki Ballava Padhi, in the declaration, indicates that such declaration was signed at Kolkata. The memorandum of entry/constructive delivery clearly indicates that Mr. Janaki Ballava Padhi attended the regional office at 2B Gorky Terrace Kolkata 700017. Another notarized affidavit was filed in Kolkata. Thus, although, the petitioners reside in the State of Odisha and transactions had taken place at Odisha, part of cause of action arose within the jurisdiction of DRT III, Kolkata. Section 19(1)(c) of the said Act has been satisfied. The cause of action has been pleaded in the Original Application.

The scope of interference under Article 227 of the Constitution of India is limited. The learned Appellate Tribunal considered the relevant documents annexed to the original application and arrived at a conclusion that part of cause of action had arisen within the jurisdiction of DRT III, Kolkata. The hypothecation agreement, the memorandum of entry/constructive delivery, etc. were relied upon.

Moreover, this Court has also perused the loan recall notice and the communication invoking the guarantee given by the petitioner No.1, which were also issued from Kolkata. The order impugned is well reasoned. The order impugned has been passed upon consideration of the materials on record. Adequate opportunity was given to the parties to make their submissions. The relevant documents and evidence in support of the conclusion arrived at by the learned Appellate Tribunal, have been discussed in great detail. It does not deserve to be set aside.

Under such circumstances, this Court does not have any hesitation to hold that the learned Appellate Tribunal rightly set aside the order dated March 19, 2018, passed in O.A 89 of 2017. The DRT III Kolkata shall proceed to hear and dispose of O.A. 89 of 2017 expeditiously and strictly in accordance with law.

The order impugned is upheld.

The revisional application is dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)