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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 WRIT PETITION NO. 3337 OF 2024

KIRAN RAMRAO RAUT AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH THE DISTRICT COLLECTOR
AND OTHERS

Ms.Sakshi A. Kale a/w Shri Ajeet B. Kale, Advocates for the
Petitioners
Ms.Neha Kamble, AGP for Respondent Nos.1 and 2/State.

**(CORAM : RAVINDRA V. GHUGE AND
R.M. JOSHI, JJ.)**

DATE : APRIL 4, 2024

PER COURT :

1. This matter was heard for quite sometime yesterday and was posted today for the learned AGP to cite judicial pronouncements.

2. The learned Advocate for the Petitioners has drawn our attention to the fact that the loan amount is less than Rs.10 lac. The Petitioners, therefore, question as to whether, a proceeding before the learned Debts Recovery Tribunal (DRT) would be maintainable.

3. The learned AGP places reliance upon the judgment delivered by the Honourable Supreme Court in the ***State Bank of Patiala vs. Mukesh Jain and another, 2017 (1) SCC 53***, wherein, the ground raised was that the DRT has no original jurisdiction to entertain a suit or an application when the debt is less than Rs.10 lac. The Debtor has assailed the proceedings initiated by the Bank for recovery of dues amounting to Rs.8 lac. The Bank had opposed on the ground that the suit was filed before the Civil Court, which had no jurisdiction. This objection was rejected by the Trial Court on the ground that the provisions of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (RDDBFI Act), do not apply when the amount of debt is less than Rs.10 lac and the remedy lies only to the Civil Court.

4. As such, the Honourable Supreme Court came to the conclusion that an application filed by the Appellant Bank under Order 7 Rule 11 of the Code of Civil Procedure should have been granted by the Trial Court since the Civil Court had no jurisdiction to entertain any appeal arising under the said RDDBFI Act in view of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). It was ruled that the DRT constituted under the RDDBFI Act has jurisdiction to entertain the **Appeal** as per Section 17 of the

SARFAESI Act even if the amount involved is less than Rs.10 lac. It was further recorded that the appellate jurisdiction need not be misunderstood with the original jurisdiction of the DRT.

5. It would be apposite to reproduce the observations of the Honourable Supreme Court from paragraphs 13 to 29 in **State Bank of Patiala (supra)** as under:-

“13. The issue involved in the appeal is whether, in the instant case, the suit was maintainable against the proceedings initiated under the provisions of the Act. The application filed by the appellant under [Order VII Rule 11 of the CPC](#) was rejected mainly for the reason that the Tribunal had no jurisdiction to entertain the proceedings under the provisions of [Section 1\(4\)](#) of the DRT Act as the value of the suit was less than Rs.10 lakh and therefore, the Civil Suit was the only remedy available to the respondents (original plaintiffs).

14. It would be beneficial to consider the relevant provisions of the Act referred to hereinabove:

“17. Right to appeal (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of [Section 13](#) taken by the secured creditor or his authorized officer under this Chapter, [may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

“34. Civil Court not to have jurisdiction.- No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the [*Recovery of Debts Due to Banks and Financial Institutions Act, 1993*](#) (51 of 1993).”

15. [*Section 1\(4\)*](#) of the DRT Act reads as under:

“1. Short title, extent, commencement and application. -

(1)

(2)

(3)

(4) The provisions of this Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify.”

16. Upon perusal of [Section 34](#) of the Act, it is very clear that no Civil Court is having jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the appellate Tribunal is empowered by or under the Act to determine the dispute. Further, the Civil Court has no right to issue any injunction in pursuance of any action taken under the Act or under the provisions of the [DRT Act](#).

17. In view of a specific bar, no Civil Court can entertain any suit wherein the proceedings initiated under [Section 13](#) of the Act are challenged. [The Act](#) had been enacted in 2002, whereas the [DRT Act](#) had been enacted in 1993. The legislature is presumed to be aware of the fact that the Tribunal constituted under the [DRT Act](#) would not have any jurisdiction to entertain any matter, wherein the subject matter of the suit is less than Rs.10 lakh.

18. In the afore stated circumstances, one will have to make an effort to harmonize both the statutory provisions. According to [Section 17](#) of the Act, any person who is aggrieved by any of the actions taken under [Section 13](#) of the Act can approach the Tribunal under the provisions of the [DRT Act](#).

19. In normal circumstances, there cannot be any action of any authority which cannot be challenged before a Civil Court unless there is a statutory bar with regard to challenging such an action. [Section 34](#) specifically provides the bar of jurisdiction and therefore, the order passed under [Section 13](#) of the Act could not have been challenged by respondent no.1 debtor before any Civil Court.

20. In the afore stated circumstances, the only remedy available to respondent no.1 debtor can be to approach the Tribunal under the provisions of the [DRT Act](#) read with the provisions of the Act. But,

one would feel that as per [Section 1\(4\)](#) of the DRT Act, provisions of the [DRT Act](#) would not apply where the amount of debt is less than Rs.10 lakh.

21. The afore stated provision of [Section 1\(4\)](#) of the DRT Act must be read in a manner which would not adversely affect a debtor, who wants to have some remedy against an action initiated under the provisions of [Section 13](#) of the Act.

22. [The DRT Act](#) mainly pertains to institution of proceedings by a bank for recovery of its debt when the debt is not less than Rs.10 lakh. If the debt is less than Rs.10 lakh, no suit can be filed by the creditor bank in the Tribunal under the provisions of the [DRT Act](#). So, when the jurisdiction of the Tribunal has been referred to in [Section 1\(4\)](#) of the DRT Act, which limits the jurisdiction of the Tribunal to Rs.10 lakh, prima facie, the intention of the legislature is to limit the original jurisdiction of the Tribunal. If any claim is to be made before the Tribunal, the amount must be more than Rs.10 lakh and if the amount is less than Rs.10 lakh, the creditor bank will have to file a suit in a Civil Court. So, one can safely interpret the provisions of [Section 1\(4\)](#) of the DRT Act to the effect that it deals with original jurisdiction of the Tribunal under the provisions of the [DRT Act](#).

23. In the instant case, we are concerned with the challenge to the proceedings initiated under [Section 13](#) of the Act. There is a specific provision in the Act to the effect that the proceedings initiated under the Act cannot be challenged before a Civil Court because the Civil Court has no jurisdiction to entertain any matter arising under the Act and in that event, the concerned debtor has to approach the Tribunal under the provisions of [Section 17](#) of the Act.

24. Thus, the Tribunal would be exercising its appellate jurisdiction when the action initiated under the provisions of [Section 13](#) of the Act is challenged before the Tribunal. There is a difference between the Tribunal's original jurisdiction under the provisions of the [DRT Act](#) and the appellate jurisdiction under the Act.

25. The issue with regard to availability of a forum for challenging the action under the provisions of the Act had been dealt with by this Court in the case of [Mardia Chemicals Ltd.](#) (supra). This Court, in the said case, unequivocally held that the aggrieved debtor can never be without any remedy and we firmly believe that the legislature would normally not leave a person without any remedy when a harsh action against him is initiated under the provisions of the Act.

26. So as to know the appellate jurisdiction of the Tribunal, one has to look at the provisions of the Act as [Section 17](#) of the Act specifically provides a right to the aggrieved debtor to challenge the validity of an action initiated under [Section 13\(4\)](#) of the Act before the Tribunal. Moreover, the Act was enacted in 2002 and the legislature is presumed to have knowledge about the provisions of [Section 1\(4\)](#) of the DRT Act. So harmonious reading of both the aforesaid Sections would not be contrary to any of the legal provisions.

27. For the aforesaid reasons, we are of the view that the application submitted by the appellant bank under [Order VII Rule 11 of the CPC](#) should have been granted by the trial Court as, according to [Section 34](#) of the Act, a Civil Court has no jurisdiction to entertain any appeal arising under the Act.

28. Thus, we hold that the Debt Recovery Tribunal constituted under the [DRT Act](#) has jurisdiction to entertain an appeal as per

Section 17 of the Act even if the amount involved is less than Rs.10 lakh. But, the said appellate jurisdiction need not be misunderstood with the original jurisdiction of the Tribunal.

29. For the afore stated reasons, the impugned judgment as well as the order rejecting the application filed under Order VII Rule 11 are set aside. The appeal is allowed with no order as to costs.”

6. It is appears from the pleadings before us that the Petitioner can not approach the learned DRT u/s 17 of the SARFAESI Act, since the order sought to be challenged is dated 28.06.2023 and this Petition has been filed on 15.03.2024 which is beyond 45 days limitation as is prescribed. Section 17 of the SARFAESI Act reads as under :-

“17. [Application against measures to recover secured debts.]
[Substituted 'Right to appeal' by Act No. 44 of 2016.]

(1)Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application alongwith such fee, as may be prescribed,]
[Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 10, for "may prefer an appeal" (w.r.e.f. 21.6.2002).] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:
[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation - For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

(1A) [An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-

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

(b)where the secured asset is located; or

(c)the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

(2) [The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.]

(3) [If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

(a)declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured

creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) [Where-

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,-

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882; or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right

or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ([51 of 1993](#)) and the rules made thereunder.

[17-A. Making of application to Court of District Judge in certain cases. - In the case of a borrower residing in the State of Jammu and Kashmir, the application under section 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.

Explanation. For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons shall not entitle the person (including borrower) to make an application to the Court of District Judge under this section.]

7. In view of the above, the issue that crops up is whether this Court can condone a delay caused by exercising its extraordinary powers under Article 226 of the Constitution of India. This issue has been put to rest by the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and Others Vs. Glaxo Smith Kline Consumer Health Care Limited [(2020) (19) SCC 681]**.

8. The issue of entertaining a Writ Petition as an alternative remedy was considered in Glaxo Smith Kline (supra). It was concluded that interference by the High Court in such cases can not be permitted if the Writ jurisdiction is being exercised by

which the statutory regime would be undermined or defeated. In so far as entertaining a Writ Petition when the statutory limitation period under a specific Code or statute has expired and it does not prescribe condonation of delay after the additional/grace period or after the limitation period, it was held that even the Hon'ble Supreme Court cannot exercise jurisdiction under Article 142 to condone such delay. If in a given case, the litigant approaches the High Court before the statutory period of appeal expires to challenge the order under the appropriate statute before the appropriate forum, the High Court may accede and permit the litigant to avail of the remedy under the Statute before a particular forum only since the litigant had approached the Court within the maximum limitation period. However, if a litigant approaches the Court after the expiry of the maximum litigation period under a particular statute, the Hon'ble Supreme Court has held in paragraph No.18 as under :-

"18. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution."

9. In **Mardia Chemicals Ltd., Vs. Union of India [AIR 2004 SC 2371]**, the validity of the provisions of the SARFAESI Act were at issue. While turning down the challenge, the Hon'ble Supreme Court has recorded in paragraph Nos. 80 to 83 as under :-

"80. Under the Act in consideration, we find that before taking action a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows :-

1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the

information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under [Section 17](#) of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section (4) of [Section 13](#) and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under [Section 17](#) of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition at it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under [Section 17](#) of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court.

81. In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that

the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debt Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of economy of the country and welfare of the people in general which would subserve the public interest.

82. We, therefore, subject to what is provided in paragraph 80 above, uphold the validity of the Act and its provisions except that of sub-section (2) of [Section 17](#) of the Act, which is declared ultra vires of [Article 14](#) of the Constitution of India.

83. Before we part with the case, we would like to observe that where a secured creditor has taken action under [Section 13\(4\)](#) of the Act, in such cases it would be open to borrowers to file appeals under [Section 17](#) of the Act within the limitation as prescribed therefore, to be counted with effect from today.”

10. Sub Section 2 of Section 17 of the Act as it stood then, was held to be ultra vires to Article 14 of the Constitution of India. Subsequently, an amendment was introduced to insert sub-clause 2 u/s 17 by the Act of 30 of 2004, w.e.f. 11.11.2004.

11. Considering paragraph No.83 reproduced above in Mardia Chemicals (supra), it appears to us that the said directions

of the Hon'ble Supreme Court concluding that the borrowers have to file appeals u/s 17 within the limitation prescribed and permitted the limitation to be counted w.e.f. from the date the judgment delivered by the Hon'ble Supreme Court i.e. 18.04.2023, would be a direction under Article 142 of the Constitution of India.

12. In view of the above, this Court would not be justified in exercising its jurisdiction under Article 226 to entertain a Petition wherein the maximum statutory limitation period under the SARFAESI Act has already expired long ago. Therefore, this Petition cannot be entertained since the limitation for the Petitioner to approach the learned Tribunal u/s 17 has expired.

13. The last limb of the submissions of the learned Advocate for the Petitioner rests on a contention that Section 31(g) would be attracted. Section 31(g) reads as under :-

"31(g) - [any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act)] [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 ([30 of 2004](#)), Section 17, for "any properties not liable to attachment" (w.e.f. 11.11.2004).] or sale under the first proviso to sub-section (1)."

14. The Petitioner is unable to convince us that the

properties which are specifically charged with the debt, having been mortgaged with the Financial Institution and the debt being recoverable under the provisions of the Act, which have been excluded from the exemption to attachment, would include the properties mortgaged by the Petitioner. It is undisputed that the property at issue has been mortgaged and the proceedings have been initiated by the financial institution on account of a mortgage of the said properties.

15. It is further canvassed that the Petitioner should be given the benefit of the first proviso to Section 60(1) of the CPC, as is set out in Section 31(g). We have perused the first proviso below Section 60 of the CPC. The Proviso under clause (c), indicates a house and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him. U/s 31(g), the box bracketed portion was introduced by the Act 30 of 2004 w.e.f. 11.11.2004. It indicates that the properties specifically charged with the debt recoverable under this Act would not be included in the exception to the properties being liable to attachment. There is no dispute that the property at issue, though belonging to an

agriculturist, has been described in the indenture of mortgage and a charge has been specifically created on the said property which was mortgaged by the Petitioner for the purpose of taking loan. We, therefore, do not find that Section 31(g) would rescue the Petitioner. On this count as well, the Petition deserves to be dismissed.

16. In view of the above, **this Writ Petition is dismissed.**

(R.M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)