IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 1174 of 2022

The Buldhana District Central Co-op. Bank Limited, Buldhana and another

Versus

Viashanavi Sugar (India) Pvt. Limited, Mumbai

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri A.P.Wachasundar, Advocate for the petitioners.
Shri M.G.Sarda, Advocate for the respondent.

CORAM : N.R.BORKAR, J.
DATED : 12th NOVEMBER, 2024.

This petition takes exception to the order dated 22nd October, 2021 passed by the Maharashtra State Co-operative Appellate Court, Mumbai in Civil Appeal No. 19 of 2020.

2. The petitioner No.1 is the Co-operative Society registered under the provisions of Maharashtra Cooperative Societies Act, 1960 and is co-operative bank for the purposes of Section 5(c) of the Banking Regulation Act. The head office of the petitioner No.1 is situated at Sahakar Bhavan, Buldhana. The petitioner No.2 is the branch office of petitioner No.1 at Shendurjana.

3. The respondent is a company registered under the provisions of the Companies Act and is having its Industrial undertaking for production of sugar and allied products.

4. By the order impugned, the learned Maharashtra State Cooperative Appellate Court has dismissed the appeal filed by the present petitioners and has confirmed the order passed by the cooperative Court by which the application filed by the petitioners seeking dismissal of the dispute filed by the respondent against them was dismissed.

5. I have heard the learned counsel for the petitioners and the learned counsel for the contesting respondent.

6. It is not in dispute that various loans to the tune of Rs.16,89,20,000/- were availed by the respondent from the petitioner-bank. The respondent defaulted in repayment of loan amount. The loan account of the respondent was thus classified as non performing asset. A demand notice dated 15th February, 2008 in terms of Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (for short "SARFAESI Act") was issued. As the liability was not discharged in terms of Section 13(4) of the SARFAESI Act, the petitioners – bank took the possession of the sugar stock of about 14414 quintals.

7. The respondent, alleging that sugar stock was never hypothecated and thus it's seizure was illegal, has filed dispute in question seeking damages to the tune of Rs.57,27,29,960/- including the damages for loss of reputation and good will. Taking exception to the jurisdiction of the cooperative Court to entertain the dispute, it's dismissal was sought.

8. Learned counsel for the petitioners submit that the claim of the respondent is based on the premise that the action taken by the petitioners of taking possession of sugar stock was illegal. It is submitted that the respondent has, thus, in effect challenged the action taken by the petitioners in terms of Section 13(4) of the SARFAESI Act. It is submitted that in such situation, the only remedy available to the respondent was to file an application under Section 17 read with 19 of the SARFAESI Act before the jurisdictional Debt Recovery Tribunal. It is submitted that jurisdiction of the co-

operative Court is akin to the jurisdiction of the Civil Court and if the situation is covered by Section 17 of the SARFAESI Act, then Section 34 of the Act bars the jurisdiction of any such Courts. It is submitted that the Courts below therefore erred in not dismissing the dispute filed by the respondent. It is submitted that the orders impugned therefore cannot be allowed to stand and they need to be set aside and the dispute filed by the respondent needs to be dismissed.

9. On the other hand, learned counsel for the contesting respondent submits that the sugar stock was never hypothecated with the petitioners still without any right sugar stock of 14414 was seized. It is submitted that though it was returned after six months, however, the entire stock was damaged, as it was kept in open space. It is submitted that Section 17 of the SARFAESI Act provides for the remedy only against the measures taken by the secured creditor under Section 13(4) of SARFAESI Act. It is submitted that the reliefs sought in the dispute in question are not restricted to measures taken by the petitioners and thus no interference is called for in the impugned orders.

10. To appreciate the rival contentions, it would be appropriate to reproduce Sections 17 and 19 of the SARFAESI Act, which read thus:

> ***17. [Application against measures to recover secured debts.]*** *(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,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:*
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> *[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]*
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> *[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.]*
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> *[(1-A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-*
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> *(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 (4 of 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.]

19. Right of borrower to receive compensation and costs in certain cases *– If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17-A*

> *or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18-A, holds that the possession of secured assets by the secured creditors is not in accordance with the provisions of this Act and rules made thereunder and directs the secured creditors to return such secured assets to the [concerned borrowers or any other aggrieved person, who has filed the application under section 17 or section 17-A or appeal under section 18 or section 18-A, as the case may be, the borrower or such other person] shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18-B.]*
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> **(emphasis supplied)**

11. A plain reading of the above sections would show that Debt Recovery Tribunal under Section 17 of the SARFAESI Act can very well examine the legality of the measures taken by the secured creditor under Section 13(4) of the SARFAESI Act. Section 19 of the SARFAESI Act would indicate that if Debts Recovery Tribunal holds that possession of secured assets by the secured creditor was not in accordance with the provisions of SARFAESI Act and rule made thereunder then in addition to other reliefs can order payment of compensation. Section 34 of the SARFAESI Act bars the jurisdiction of the civil Court, in respect of any matter which Debts Recovery Tribunal under the SARFAESI

Act is empowered to determine. Though there is no specific bar with regard to the jurisdiction of the cooperative Court to entertain the dispute, however, the intent of legislature behind enacting Section 34 of the SARFAESI Act appears to be to oust the jurisdiction of any other Court in respect of any matter which Debts Recovery Tribunal under the SARFAESI Act is empowered to determine.

12. The grievance made in the dispute filed by the respondent is squarely covered by Section 17 of the SARFAESI Act. In that view of the matter the impugned orders cannot allowed to be stand. The orders impugned are set aside. As a consequence of it, the dispute filed by the respondent before the co-operative Court shall stand dismissed. However, it would be open to the respondent to file an application under Section 17 read with Section 19 of the SARFAESI Act before the jurisdictional Debts Recovery Tribunal. If such application is filed within the period of four weeks from the date uploading of the order on official website of this Court, it shall be treated as filed within limitation.

13. The Writ Petition is disposed of in aforesaid terms.

[N.R.BORKAR, J.]