IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O.3266 of 2022
M/s. Shaila Motors Private Limited & Ors.
VS.
Indian Bank & Ors.

For the Petitioners :Mr. Ranjan Kali, Adv.
Ms. Payel Nath, Adv.
Mr. Avik Pramanik, Adv.

For the Indian Bank :Mr. Shivmanagal Singh, Adv.

For the Opposite Party no. 3 :Mr. Debashis Karmakar, Adv.
Mr. Arya Nandi, Adv.
Mr. Parikshit Lahotia, Adv.
Mr. Satyam Ojha, Adv.

Last Heard On :**17.12.2024**

Judgment On :11.03.2025

Bibhas Ranjan De, J. :

1. The instant revision application stems out of an order passed by the Ld. Chairperson Debts Recovery Appellate Tribunal, Kolkata in connection with Appeal no.17 of 2022 and Appeal No. 83 of 2022 arising out of S.A. 171 of 2020 passed by the Ld. Presiding Officer, D.R.T – II, Kolkata. Vide the order impugned, Ld. Appellate Authority was pleased to set aside the order passed by the Ld. Tribunal and sent back the case on open remand, on the ground that the Ld. Tribunal did not apply proper judicial mind before arriving at a conclusion.

Backdrop:-

2. The case of the petitioners in brief is that the petitioners preferred an application under the SARFAESI Act being S.A.171 of 2020 before the Learned Presiding Officer, DRT-II at Calcutta with a prayer for quashment of the impugned sale notice dated 06.11.2020 to the SARFAESI application. It is stated that the SARFAESI application was duly taken up for hearing by the Learned Presiding Officer. It is further stated that the Opposite Party/Bank duly filed objection against the allegations made in the SARFAESI application and consequently after protracted and contested hearing, the Learned Presiding Officer was pleased to pass an order on 15.11.2021 allowing the SARFAESI application being S.A No. 171 of 2020 filed by the petitioner holding, *inter-alia*, the defendant Bank shall refund the sale consideration along with Bank interest to the auction purchaser within 15 days from the date of the order. The defendant Bank shall resume possession of Schedule property from the auction purchaser as sale effected on 25.11.2020 is held to be invalid and, therefore, quashed & on refund of sale consideration by the Bank, auction purchaser was to deliver property.

3. Being aggrieved by and/or dissatisfied with the order dated 15.11.2021 by the Learned Presiding Officer, DRT-II, Kolkata in connection with S.A.171 of 2020, the Opposite Party/Bank as well as Auction purchaser preferred 2(two) separate appeals before the Learned Chairperson, DRAT, Kolkata which were registered as Appeal No.17 of 2022 and Appeal No. 83 of 2022 respectively.

4. It is further stated that both the appeals were taken up for hearing by the Appellate Authority and consequently by an order dated 30.09.2022 was pleased to allow both the appeals filed by the Opposite Party/Bank and the Auction purchaser by holding, inter-alia, that the matters are remanded to DRT-II, Kolkata for deciding the matters afresh in the light of the observation made in the judgment. Being aggrieved by and/or dissatisfied with the order dated 30.09.2022 passed by the Hon'ble Chairperson, DRAT, KOLKATA, the petitioner preferred the instant revisional application under Article 227 of the Constitution of India before this Hon'ble Court, praying inter-alia, for setting aside of the same.

At the Bar:-

5. Ld. Counsel, Mr. Ranjan Kali, appearing on behalf of the petitioners has specifically contended that the impugned sale notice dated 06.11.2020 is not at all maintainable in the eye of law as it has been issued in gross violation of Rule 8(6) read with Rule9 (1) of the SARFAESI Rule and in violation of Rule 8(5) and Rule 8(7) of the SARFAESI Rule, 2002. Mr. Kali has further submitted that the Learned Presiding Officer, DRT-II has correctly passed the order dated 15.11.2021 allowing the SARFAESI application being S.A. 171 of 2021 filed by the petitioner by passing a detailed and reasoned order and also taking into consideration the factual matrix of the case. Therefore, Mr. Kali has argued that the Ld. Chairperson, DRAT has committed a material error by remanding the matter back to

DRT-II, Kolkata due to the fact that the opposite Party has been deprived of sufficient opportunity to represent and place its case on merit on gross violation and principles of natural justice and fair play.

6. Mr. Kali has also added that such observation of the Appellate Authority is not the proper reflection of the sequence of events and the factual matrix of the case. Hence, in no stretch of imagination it can be said that the opposite party/defendant has been denied and deprived of their opportunity to file written statement or they are unable to place their case in gross violation of the principle of natural justice and fair play. Such observation of the Hon'ble Chairperson, DRAT, Kolkata is also erroneous and contrary to the records as the Learned Tribunal has given an elaborate reasoning in support of the decision and also took note of the decision relied upon by the opposite party/defendant and thereafter multiplied the said decision as not applicable in the facts and circumstances of the instant case. Hence, the observation made by the Ld. Appellate Authority that the order dated 30.09.2022 is non-speaking and non-reasoned order is not correct.

7. It has been further contended on behalf of the petitioner that the Hon'ble Chairperson has remanded the entire matter before the Learned Presiding Officer, DRT-II at Kolkata without making any serious attempt to dispose of the matter on its merit instead of sending the matter on all issues for fresh remand without framing any particular issue for an outright remand on all issues. Such observations made by the Hon'ble Chairperson, DRAT, Kolkata is also in violation of Order 41 Rule 23 and Order 41 Rule 25(A) of the Civil procedure Code.

8. In support of his submission, Mr. kali has submitted that an order of remand cannot be made as matter of course by the Appellate Court particularly when the entire issue of dispute was before the appellate court and materials on record and also respective pleading of the parties as well as the documents were before the Appellate Court instead of sending the matter for fresh remand, the appellate court ought to have disposed of the appeal on merits.

9. In support of his submission, Mr. Kali has cited the following cases:-

- **State through Special Cell, New Delhi vs. Navjot Sandhu alias Afshan Guru and others reported in (2003) 6 Supreme Court Cases 641**
- **Arvind Kumar Jaiswal (D) Thr. LR. Vs. Devendra Prasad Jaiswal Varun in SLP (c) No. 9172 of 2020**

10. Per contra, Ld. Counsel, Mr. Shivmanagal Singh, appearing on behalf of the Indian Bank has submitted that The Learned DRT has just narrated the facts in its order. But, no findings or reasonings were recorded by the Learned Tribunal below to arrive at the finding as to why the point of maintainability as raised by the opposite party/ bank in their affidavit-in-opposition before the Learned Tribunal below in S. A. No. 171 of 2020 was not sustainable.

11. Mr. Singh further contended that the Learned DRT was required to record its findings on all the issues raised by the parties which were not done by the Learned DRT. Therefore, the judgment passed by the Learned DRT in S. A. No. 171 of 2021 is a non-speaking and unreasoned one and Insistence of reasons is a requirement for both judicial accountability and transparency.

12. Merely recording the submissions of the Learned Counsel of the parties and thereafter not recording its own view is nothing but arbitrary exercise of powers which could not be permissible under the law.

13. In support of his contention, Mr. Singh has cited the following cases:-

- ***Uco Bank, Churchgate Branch vs. Kanji Manji Kothari and Co.,*** reported in ***2008(3)BOMCR290***
- ***Shakeena vs. Bank of India and ors.*** reported in ***AIRONLINE 2019 SC 2414***
- ***Suo motu writ petition no. (c) No. 3/2020***
- ***Celir llp Vs. Bafna Motors (Mumbai) Pvt. Ltd. & Ors.*** reported in ***[2023] 13 S.C.R. 53***

14. Lastly, Ld. Counsel, Mr. Debashis Karmakar, appearing on behalf of the opposite party no. 3 has submitted that in the said Section 17 application the Respondents have challenged the maintainability point on various grounds.Firstly, Mr. Karmakar has highlighted the fact that Company filed the Sec.17 application without the Board Resolution, which point was also taken up by the bank in its affidavit in opposition with a prayer for dismissal of the same but such point was not dealt with by the Learned Tribunal and therefore Learned Appellate Tribunal validly remanded back the matter to the Learned Tribunal for fresh decision.

15. Mr. Karmakar has further argued that the Petitioner had no authority to file and proceed with the said Section 17 application as it was barred by the law of limitation. In this regard, he has also argued that Appeal was filed by the Petitioner before the Learned Debts Recovery Appellate Tribunal by annexing an unsigned copy of the SA application. Although such copy is not signed by the Deponent but the same is identified by the Learned Advocate and Notarised. The above fact is well evident from the pleading of such Section 17 proceeding. Even in the impugned judgement dated 15th November 2021, the Learned Presiding Officer, Debts Recovery Tribunal-II, Kolkata has taken note of such preliminary objections. However, without deciding such maintainability issue first, the Learned Tribunal below decided the main Section 17 application, which is bad in law.

16. Before parting with, Mr. Karmakar has vehemently contended that admittedly on 1st December 2020 the sale certificate was issued in favour of the respondent No.3 and also physical possession was handed over to the respondent No.3 and at the relevant point of time said property was like a waste-land.

Thereafter, the respondent No.3 invested huge funds for development of the property not less than an amount of Rs.5,87,85,000/- and set-up a Renault Showroom-cum-Service Centre. He has also stated that when the Respondent No.3 developed the said property, the Respondent No.3 was holding title over the said property. The Respondent No.3 was added a party in the said proceeding after she had already invested such huge amount. Respondent No.3 invested such amount by obtaining bank loan but none of these facts have been considered by the Learned Tribunal below. Therefore, Mr. Karmakar has tried to make this Court understand that interest of a bonafide purchaser needs to be protected.

17. In support of his argument, Mr. Karmakar has relied on the following cases:-

- ***Industrial credit and Investment Corporation of India Ltd. vs. Grapco Industries Ltd. and others.*** reported in ***(1999) 4 Supreme Court Cases 710.***
- ***Valji Khimji and Company vs. Official Liquidator of Hindustan Nitro Product (Gujrat) Limited and others*** reported in ***(2008) 9 Supreme Court Cases 299***

- ***Sadashiv Prasad Singh vs. Harendar Singh and others*** reported in ***(2015) 5 Supreme Court Cases 574***
- ***Mrs. Sangita Maity vs. Indian Bank & Ors*** in ***WPA 21010 of 2021.***

Ratio of the cases relied on behalf of the parties:-

For the petitioner:-

18. In the case of ***Navjot Sandhu*** (supra) the Hon'ble Apex Court observed that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to oversee that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.

19. In **Arvind Kumar Jaiswal** (supra) the Hon'ble Supreme Court was pleased to hold that an order of remand prolongs and delays the litigation and hence should not be passed unless the appeal court finds that retrial 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 trial of the dispute or there is no complete or effectual adjudication of the proceeding and the party complained has suffered material prejudice on that account where the evidence has already been adduced and a decision can be rendered or 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 issues and has failed to determine any question of fact which in the opinion of the Appeal Court is essential. First Appeal Cout, if required, can also direct the Trial Court to record evidence and finding of a particular aspect/issue in terms of Rule 25 of the Order 41 which then can be taken on record for deciding the case by appellate court.

For the Bank:-

20. In the case of ***Uco Bank*** (supra) it was held that the right to file appeal under Section 17 accrues only after measures under Section 13(4) of the NPA Act are taken and described. The appeal under Section 17 is the next safeguard available to a borrower within the framework of the NPA Act after measures under Section 13(4) are taken. The Supreme Court concluded that 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 to the borrower to file an appeal under Section 17 before the DRT. Thus, appeal can be filed from the date on which any measures have been taken under Section 13 (4) of the NPA Act till the date of sale/auction of the property. Therefore, after sale, there can be no appeal.

21. In the case of ***Shakeena*** (supra) the Court made an observation that the sale of the secured asset in public auction as per section 13(4) of SARFAESI Act, which ended in issuance of a sale certificate as per rule 9(7) of the Rules is a complete and absolute sale for the purpose of SARFAESI Act and same need not be registered under the provisions of the Registration Act.

22. In ***Suo motu writ petition no. (c) No. 3/2020*** (supra) the Hon'ble Apex Court while dealing with the issue of service of notice during the period of lockdown directed that such service of notices, summons and pleadings may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date.

23. In the case of ***Bafna Motors*** (supra) the Hon'ble Supreme Court held that as per the amended Section 13(8) of the SARFAESI Act, once the borrower fails to tender the entire amount of dues with all cost & charges to the secured creditor before the publication of auction notice, his right of redemption of mortgage shall stand extinguished/waived on the date of publication of the auction notice in the newspaper in accordance with Rule 8 of the Rules of 2002.

For the auction purchaser:-

24. In ***Grapco Industries*** (supra) the Hon'ble Supreme Court handed down that there is no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that the High Court can even interfere with interim orders of the courts and tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When the facts of the case brought before the High Court are such that the High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in a vacuum.

25. In the case of ***Valji Khimji*** (supra) the Hon'ble Apex Court was of the view that where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction-purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statue or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by the authority, certain rights accrue in favour of the auction-purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud.

26. In ***Sadashiv Prasad Singh*** (supra) the Hon'ble Supreme Court observed that the challenge of the petitioner should be rejected if it is due to delay and laches on his part especially if third-party rights had emerged in the meantime. More so, because the auction-purchaser is a bona fide purchaser for consideration, having purchased the property in furtherance of a duly publicised public auction. Interference by the High Court even on the ground of equity is clearly uncalled for in the given circumstances.

27. In ***Sangita Maity*** (supra) The Hon'ble Co-ordinate Bench of this Court remarked that if the borrower has not been able to repay the bank's dues within a substantial period of time and the account is non-performing asset and there have been several attempts to put up the secured assets for sale, if the borrower has not been able to repay the dues of the bank or any part or position thereof despite several notices of sale and a lapse of substantial amount of time, it is unlikely that he would be able to so repay it even if 15 day's notice was given before the sale. The provisions of the Rule of 2002 must be given a purposive interpretation in the facts of each case.

Issue:-

28. After consideration of the arguments advanced by the Ld. Counsel appearing on behalf of the parties to this revision application and also keeping in mind the factual matrix of the case, in my humble opinion, the main contentious issue involved in this revision application revolves around the sole determining factor i.e.

- Whether the order of remand passed by the Ld. Appellate authority is sustainable in the eye of law or not?

Analysis:-

29. At the very outset, I would first like to reproduce the specific provisions regarding remand of a case envisaged in the Code of Civil Procedure which runs as follows:-

> *“ **O. XLI R 23.Remand of case by appellate court**.—Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.*
>
> ***R 23-A. Remand in other cases**.—Where the court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the appellate court shall have the same powers as it has under Rule 23.”*

30. In order to properly answer the contentious issue involved in this application it would be pertinent to go through the specific observations of the Ld. Tribunal as well as the Ld.

Appellate Tribunal. After a careful scrutiny of the order passed by the Ld. Debt Recovery Tribunal, especially discussion of the issues, it would be clear that the Ld. Tribunal recorded its observation on the finding that the impugned sale notice dated 06.11.2020 was in gross violation of Rule 8 (6) read with Rule 9 (1) of the SARFAESI Rule 2002. But, a bare reading of the order would clearly highlight the fact that there was no discussion regarding the maintainability issue raised at the behest of the opposite parties in connection with the S.A No. 171 of 2021. In that score, I am absolutely agreeable with the view of the Ld. Counsel for the Bank as well as the intending purchaser that the tribunal ought to have first decided the maintainability issue and then should have proceeded with the merit of the main application preferred under Section 17 of the SARFAESI Act.

31. In this regard, it is absolutely essential to focus my attention on the settled proposition of law which clearly mandates that if a preliminary issue like maintainability is not properly addressed by DRT then the DRAT is generally expected to remand the case back for fresh adjudication as DRAT is not positioned to act as the first forum for determining issues involving disputed facts or when there are unresolved preliminary issues that require examination of evidence. In this regard, Hon'ble Apex Court is also of the opinion that DRT must conduct a thorough examination of evidence and apply the law to the facts before any appellate review can take place. If DRT fails to perform its obligations in it's entirety then DRAT will be absolutely justified in remanding the case back.

32. Based on the legal principles outlined hereinabove, if I keep both the orders passed by the DRT as well as the DRAT in juxta position, in my opinion, it would be clear that DRT has not performed its due obligation in resolving the preliminary issue relating to maintainability as well as the issue of limitation. The operative portion of the order passed by the Ld. DRT would also crystallize the fact that there is hardly any reasoning to justify its observation which is not permissible in the eye of law.

33. In that score, the Ld. DRAT through the impugned order rightly remanded back the matter to the Ld. DRT for fresh adjudication and give a reasoned order after giving an opportunity of hearing to both the parties without making any remark on the merit of the case.

34. As a gradual progression of the discussion made in the foregoing paragraphs as well as keeping the intricacies of the case at hand in mind, I find hardly any reason to interfere with the order impugned in this revision application in connection with Appeal no.17 of 2022 and Appeal No. 83 of 2022 arising out of S.A. 171 of 2020.

35. As a sequel, the instant revision application being no. C.O. 3266 of 2022 stands dismissed with no order as to costs.

36. Considering the long pendency of the case, Ld. Tribunal is requested to dispose of the matter as expeditiously as possible after giving opportunity of hearing and without affording unnecessary adjournment to either of the parties. However, I would like to make it abundantly clear that the Ld. Tribunal should not be influenced in any manner whatsoever with any observation made hereinabove and is expected to dispose of the matter in strict accordance with law.

37. Interim Order, if there be any, stands vacated.

38. Connected applications, if there be, also stand disposed of accordingly.

39. Parties to act on the server copy of this order duly downloaded from the official website of this Court.

40. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]