



W.P. No.24778 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2025

WEB COPY

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

W.P.No.24778 of 2023

and W.M.P.Nos.24198 of 2023 and 29745 of 2024

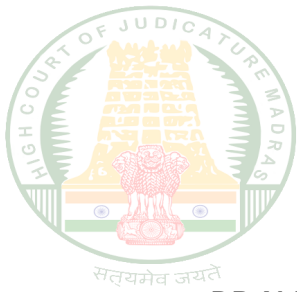
Priyadharsini Athreya
No. 47 Thasami Sumara Apartment,
Athuliya Garden, Kovai Pudur,
Coimbatore 641 042

Petitioner

Vs

- 1.The Authorized Officer
Union Bank of India,
Namakkal Branch,
6/1168A, Paramathi Road,
Namakkal 637 001
- 2.M/s.Hillord Pharmaceuticals India
Rep. by its Directors,
D.No.87-B, Pillayar Kovil Street,
Ganesapuram,
Namakkal 637 001

Respondents



W.P. No.24778 of 2023

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records and to quash the final orders passed by the Debt Recovery Appellate Tribunal in RA(SA) No. 5 of 2023 dated 13.07.2023.

For Petitioner: Mr.S.Sivaraman

For Respondents: Mrs.Ananda Gomathy Murugesan
for respondent No.1

R2 – Not Ready in Notice

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Heard learned counsel for the parties.

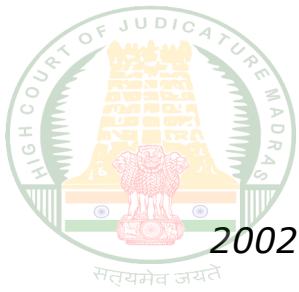
2. This petition is directed against the order passed by the Debt Recovery Appellate Tribunal (DRAT), by which the petitioner's appeal against the order passed by the Debts Recovery Tribunal (DRT) was dismissed.



W.P. No.24778 of 2023

3. The instant petition has been filed by the petitioner aggrieved by the measures taken by the bank in the matter of recovery of loan advanced to the borrower, the second respondent herein, in respect of which, the petitioner, admittedly, stood as a guarantor.

4. Indisputedly, the borrower was declared as Non-Performing Asset (NPA) by the bank, as the borrower failed to repay the installments according to the schedule. The borrower having failed to challenge any steps taken by the bank, including declaration of the borrower's account as NPA, the bank was left with no other option, but to initiate proceedings towards recovery of the loan amount and, for that purpose, the bank had issued notice of possession on 05.09.2019. Aggrieved upon the receipt of notice of possession, the petitioner approached the DRT by moving an application under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "*the Act of*



W.P. No.24778 of 2023

2002").

WEB COPY

5. In the application, the petitioner confined challenge more to the manner in which the loan was advanced to the borrower and also sought to raise an issue that borrower was wrongly granted loan without compliance of several conditions.

However, in the entire application, no specific ground was raised by the petitioner to satisfy as to how the initiation of proceedings towards recovery of the loan by issuance of notice of possession was, in any manner, violative of the provisions contained in the Act of 2002 or the Rules made thereunder.

6. The DRT, vide its order dated 13.11.2020, rejected the application, which led to the filing of an appeal before the DRAT. By the impugned order, the DRAT dismissed the appeal.

7. Learned counsel for the petitioner vehemently submitted that the DRT as well as DRAT have committed gross illegality in



W.P. No.24778 of 2023

WEB COPY

holding that the issue relating to irregularity in the advancement of loan by the bank in favour of the borrower could not be gone into in exercise of powers under Section 17 of the Act of 2002. He would submit that the scope of enquiry under the said provision is very wide and not only the illegality of the action taken by the bank towards the recovery of loan could be examined, but also whether the loan was granted in a proper manner and in compliance with various conditions, subject to which loan could be granted by the secured creditor in favour of the borrower.

8. The next limb of submission of learned counsel for the petitioner is that the petitioner stood as guarantor. The bank had issued a demand notice against the borrower for recovery of a sum of Rs.1,90,07,990.50 on 03.06.2019, but, thereafter, three properties belonging to the borrower as well another guarantor have been sold successfully on 19.8.2020 for a sale price of Rs.55.75 lakhs; on 4.8.2021 for a sale price of Rs.82.60 lakhs



W.P. No.24778 of 2023

and thereafter on 30.8.2022 for a sale price of Rs.35.50 lakhs.

Therefore, the stand now taken by the bank that despite huge amount collected through more than one auction, still an amount of Rs.95.91 lakhs, as on 31.12.2023, is outstanding is wholly unjustified and without any basis and only a devise to somehow sell the property of the petitioner/guarantor.

9. On the other hand, learned counsel for the bank would submit that the order passed by the DRT and the DRAT holding that an enquiry into the procedural aspects relating to release of loan amount in favour of the borrower could not be gone into by the DRT, does not warrant any interference. It is submitted that Section 17 of the Act of 2002 confers upon the Tribunal, limited jurisdiction to examine the issue with regard to the proceedings taken by the secured creditor towards recovery of the loan amount and the dispute arising therefrom as between the bank, borrower or any other person.



W.P. No.24778 of 2023

WEB COURT

10. Further submission of learned counsel for the bank is that though three properties were sold in 2020, 2021 and 2022, even after the adjustment of the sale price collected thereon, still a total amount of Rs.95,91,865/- as on 31.12.2023 was liable to be paid by the guarantor. A specific affidavit to that effect was filed on 29.1.2024, which has not been disputed. Learned counsel for the bank would submit that, as on today, as huge amount remains unpaid, on which interest is leviable, including other expenditures incurred in holding auction, etc., and the petitioner/ guarantor is liable to pay the same.

11. We have heard learned counsel for the parties and perused the materials on record.

12. The application, which was submitted by the petitioner/guarantor before the DRT, in order to assail the correctness and validity of the notice of possession, goes to show that the petitioner raised issues *inter alia* that though the



W.P. No.24778 of 2023

WEB.COM

petitioner followed up with the constant updates to start the dealership, however, the petitioner was given to understand that neither the company started any kind of manufacture at their factory, nor they have taken any steps to make the guarantor, their dealer and have not complied with any of the conditions and in this manner, they represented the applicant that they have not received the loan from the bank. The other ground taken in the application was that the bank proceeded to release loan in favour of the borrower without complying with the conditions, subject to which alone loan could be disbursed and, therefore, in such circumstances, the liability, if any, towards outstanding dues could not be fastened upon the guarantor. Yet another ground taken was that the possession notice issued on 05.09.2019 was cryptic and does not elaborate on the vital facts of the term loan agreement and it has not been mentioned whether or not, the bank conducted any inspection at the borrower's factory before disbursement of the loan, as stipulated in the banking laws.



W.P. No.24778 of 2023

WEB COPY

13. The DRT rejected the application and rightly so. The power conferred on the DRT under Section 17 of the Act of 2002 clearly reveals that the DRT has limited jurisdiction and does not enjoy plenary jurisdiction to decide all the issues, much less an issue as to whether the loan was properly released in favour of the borrower. Whether the borrower had complied with the terms and conditions for release of loan and for that reason, the bank had committed illegality or irregularity in disbursement of loan, in our view, is completely outside purview of the jurisdiction of the DRT.

14. Section 17 of the Act of 2002 provides for filing an application against the measures to recover the secured debts and amongst other provisions also delineates the jurisdiction of the DRT.

Section 17 of the Act of 2002 provides:

"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



WEB COPY



W.P. No.24778 of 2023

taken by the secured creditor or his authorised 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 measure 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



WEB COPY



W.P. No.24778 of 2023

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



WEB COPY



W.P. No.24778 of 2023

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 subsection (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



WEB COPY



W.P. No.24778 of 2023

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 part 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."



W.P. No.24778 of 2023

Sub-section (2) of Section 17 clearly provides that the DRT 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 the Act of 2002 and the Rules made thereunder.

As provided in sub-section (3) thereof, if the DRT 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 the Act of 2002 and the Rules made thereunder, it may require restoration of the management or restoration of possession of the secured assets to the borrower or other aggrieved person. The DRT has power to 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. The DRT is also empowered to pass such other directions as it may consider proper and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.



W.P. No.24778 of 2023

WEB COPY 15. Power and jurisdiction of the DRT has been extended by introducing sub-section 4A vide "*Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, dated 16.8.2016 with effect from 1.9.2016*". The aforesaid provision also confers limited jurisdiction on the Tribunal for the purposes of enforcement of security interest to examine the validity of lease or tenancy with respect to the aspects mentioned in clauses (a), (b), (c) and (d) of sub-section 4A(i) thereof. It has been conferred power to pass such order as it deems fit, once it is satisfied that the tenancy right or leasehold rights claimed in secured asset falls under any of the clauses.

16. None of the provisions, as extracted herein above, confer power on the DRT to deal with any issue, much less whether the disbursement of loan was proper or warranted.



W.P. No.24778 of 2023

WEB COPY

17. The scope and ambit of the jurisdiction of the DRT was considered by the Hon'ble Supreme Court in the case of ***Central Bank of India v. Prabha Jain, (2025) 4 SCC 38***, wherein it was emphatically held that the Tribunal is a creature of the statute and cannot go beyond the four corners of the Act of 2002. It was further held that, as per Section 17 of the Act of 2002, the Tribunal has jurisdiction to determine whether any of the measures referred to in Section 13(4) of the Act of 2002 taken by the secured creditor are in accordance with the Act or Rules framed thereunder. It was emphasized that the Act of 2002 is enacted essentially to provide a speedy mechanism for recovery of debts by banks and financial institutions and has not been enacted for providing a mechanism for adjudicating upon the validity of documents or to determine questions of title finally.

In the aforesaid decision, their Lordships in the Supreme Court relied upon an earlier Constitution Bench judgment of the Supreme Court in the case of ***O.P.Gupta v. Rattan Singh***,



W.P. No.24778 of 2023

WEB COPY

reported in **1962 SCC OnLine SC 111**, wherein, their Lordships

authoritatively declared that the Tribunals being creatures of the statute have limited jurisdiction. It was held thus:

"4. The Controller, therefore, must be taken to have decided that there was a relationship of landlord and tenant between the parties, and secondly, that the tenant was entitled to the protection under the Act. It is true that the Act does not in terms authorise the authorities under the Act to determine finally the question of the relationship of landlord and tenant. The Act proceeds on the assumption that there is such a relationship. If the relationship is denied, the authorities under the Act have to determine that question also, because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the Act. True, they are tribunals of limited jurisdiction, the scope of their power and authority being United by the provisions of the Statute. But a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act, because the simplest thing in the world would be for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant. The tribunals under the Act being creatures of the Statute have limited jurisdiction and have to function within the four-corners of the Statute creating them."



W.P. No.24778 of 2023

WEB COPY

In the decision of **Central Bank of India** (supra), as regards the limitation of jurisdiction of the DRT, it was pertinently observed as follows:

"28. Thus, in paras 18, 19 and 20, respectively, referred to above, this Court in Jagdish Singh case, (2014) 1 SCC 479, held that the words "any person" are wide enough to cover any person affected by action taken under Section 13(4) of the Securitisation Act. However, it appears that this Court overlooked the fact that while the words are wide enough, the DRT has powers only to grant reliefs with respect to the measures taken by the secured creditor under Section 13(4) and not beyond that. This Court missed to take note of the word "restore" used in Section 17(3) which means that the DRT can only restore back the possession to the one who was in possession and not to one who was not in possession.

29. In para 24 of Jagdish Singh case, (2014) 1 SCC 479, this Court held that DRT has jurisdiction with respect to "measures" taken by the secured creditor under Section 13(4) and that in respect of such matters, the civil court's jurisdiction is ousted. However, thereafter, there is no further discussion on the nature of the suit and without recording any finding that DRT has the power to decide partition suits, this Court straightaway affirmed the rejection of the plaint under Order 7 Rule 11. While doing so, this Court missed to consider that under Section 17, DRT has no power to partition properties and hence, the civil court's



WEB COPY



W.P. No.24778 of 2023

jurisdiction to grant a decree of partition cannot be said to be ousted. When there is no finding in the judgment that the DRT has the jurisdiction to grant the relief of partition, the judgment cannot be said to be a precedent on that point.

.....

42. The Debts Recovery Tribunal is a creature of the RDB Act of 1993 and is empowered to exercise powers under that Act and the SARFAESI Act of 2002. The Tribunal is bound by the powers conferred to it by Parliament. Interestingly, when this Court in Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd., (2014) 6 SCC 1, held that the tenant cannot approach the DRT because the re-possession can be only in favour of the borrower, Parliament stepped in and amended the SARFAESI Act. Sub-sections (3) and (4) of Section 17, respectively, are instructive to the level of examination that the DRT can undertake, and the same is limited to the validity of the measures under sub-section (4) of Section 13. Hence, the DRT is not permitted to examine the validity of the earlier sale deed, whereafter the mortgage was executed in favour of the Bank."

18. The decision in the case of **Central Bank of India** (supra) defines the contours of the jurisdiction of the DRT by holding that the DRT has jurisdiction with respect to "measures"



W.P. No.24778 of 2023

WEB COPY

taken by the secured creditor under Section 13(4) of the Act of 2002 and that in respect of such matters, the Civil Court's jurisdiction is ousted. It is clear from the observations made in paragraph 29 of the decision, referred to above, that the DRT has no power to partition properties. Such conclusion, obviously, was arrived at, taking into consideration that the DRT does not have plenary jurisdiction, but only limited jurisdiction in respect of the matters enumerated under Section 17 of the Act of 2002.

19. Therefore, close analysis of the provisions contained in Section 17 of the Act of 2002 does not support the case of the petitioner that an issue with regard to alleged irregularity in disbursement of loan could also be examined by the DRT. In other words, the allegation levelled in the writ petition that the loan has been disbursed without thorough verification/inspection of the site of the borrower is beyond the scope of power conferred on the DRT. In our opinion, the view taken by the DRT was just and in accordance with law and cannot be said to be



W.P. No.24778 of 2023

WEB COPY

20. The view taken by the DRAT on this count is also in conformity with the settled legal position, which we have adumbrated in our order herein above.

21. This leaves us to consider the other issue with regard to the validity of possession notice dated 05.09.2019. The only ground taken was that the notice was cryptic and does not set out vital facts of the term loan agreement. Notices which have been issued to the petitioner are in conformity with the provisions contained in Section 13(4) of the Act of 2002. The law, in terms, does not require the notices to contain those facts which are stated by the petitioner in her application. Moreover, even the Rules also do not provide that in the notice of possession, all those details, which the petitioner insists, should have been disclosed. Moreover, the ground that in the notice, it was not mentioned whether any inspection was carried out in the



W.P. No.24778 of 2023

WEB COPY

borrower's factory before disbursement of loan is also liable to be rejected at the threshold, because it is neither the requirement of law, nor is contemplated expressly or even impliedly under any of the provisions contained in Section 13 or Section 14 of the Act of 2002 or even in any other provisions contained in the Rules that the notice should contain all those details.

22. Therefore, in view of above consideration, we find that the application of the petitioner before the DRT did not have any merit. The application was, therefore, rightly rejected by the DRT and the appeal also rightly dismissed by the DRAT.

23. Despite the petitioner having lost before the Tribunal, this Court had made an attempt to bring about settlement between the parties. Various orders passed by this Court from time to time reveal that the petitioner was given an opportunity to show her *bona fide* by depositing approximately Rs.55 lakhs with the bank and then file an application seeking consideration



W.P. No.24778 of 2023

under One-Time Settlement (OTS) scheme. Unfortunately, the petitioner did not avail this opportunity also. It is on record that, after the dismissal of the appeal and after the order passed by this Court, the petitioner instead of offering Rs.55 lakhs to the bank, proceeded to withdraw the amount from the accounts of the DRAT. The submission of learned counsel for the petitioner that after the dismissal of the appeal that amount was returned to the petitioner does not appeal to us. Assuming that the amount was returned to the petitioner, in order to invoke the discretionary jurisdiction of this Court, the petitioner consistent with the statement made before the Court, ought to have voluntarily deposited Rs.55 lakhs with the bank. That was also not done. Learned counsel for the bank also informs the Court that the petitioner had made statement to commit breach, inasmuch as she did not submit any application seeking settlement under OTS.

24. Therefore, viewed from any angle, conduct of the



W.P. No.24778 of 2023

petitioner shows that the petitioner was never serious in settling the amount, but only trying to buy time on one count or the other.

25. In the result, we do not find any merit in this petition and it is, therefore, dismissed. Consequently, W.M.P.No.24198 of 2023 is also dismissed. The interim order passed earlier stands vacated and W.M.P.No.29745 of 2024 filed by the bank is allowed. There shall be no order as to costs.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (SUNDER MOHAN,J)
12.08.2025

Index : Yes
Neutral Citation : Yes
bbr

To:

The Authorized Officer
Union Bank of India,
Namakkal Branch,
6/1168A, Paramathi Road,
Namakkal 637 001



WEB COPY



W.P. No.24778 of 2023

THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN,J.

bbr

W.P.No.24778 of 2023

12.08.2025