

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CO 1429 of 2024

Calcutta Infrastructure Infotech Projects Limited
Vs
A.R.S. Enterprises Private Limited & Ors.

For the Petitioner : Mr. Joy Saha, ld. Sr. Adv.(V/C)
Mr. Bhaskar Mukherjee,
Mr. D. Dutta.

For the Opposite Party No. 1 : Mr. Abhrajit Mitra, ld. Sr. Adv.
Ms. Radhika Singh,
Mr. Sourojit Dasgupta.

Judgment reserved on : 20.01.2026

Judgment delivered on : 13.02.2026

Shampa Dutt (Paul), J.:

1. The civil revision has been preferred praying for setting aside of the impugned order dated 19th October, 2023 passed by the Debt Recovery Appellate Tribunal and the order impugned in the appeal dated 13th May, 2014 passed by the Debt Recovery Tribunal and dismissal of R.A. No. 1 of 2014 pending before the Debt Recovery Tribunal.
2. The petitioner's revisional application is directed against the failure on the part of the learned Debt Recovery Appellate Tribunal on the limited question as to whether or not the opposite party no. 1 had any locus

standi to institute the review proceedings before the Debt Recovery Tribunal when admittedly no conveyance has been executed or sale certificate has been issued in favour of the opposite party no. 1 and consequently, it has no claim of ownership in respect of the concerned property.

3. It is further contended that the learned Debt Recovery Tribunal has no jurisdiction to adjudicate and declare title of any property.

4. **The petitioner in its written argument has put it's case as follows:-**

"The challenge to the impugned order of the DRAT dated 19th October, 2023 is limited only to:-

- a. The affirmation by the DRAT of the order allowing IA No. 366 of 2014;*
- b. The portion of the order of the DRAT directing the DRT to entertain, decide its jurisdiction and to dispose of R.A. No. 1 of 2014;*
- c. The observations made by the DRAT in paragraphs 43 and 47 of the said order read with paragraph 22 thereof."*

5. **The opposite party herein in their written notes have stated as follows:-**

*"Vide the learned DRAT's order dated 19th October, 2023, the petitioner's application for amendment of M.A. No. 19 of 2014, which was disallowed by the learned DRT, has been set aside and the amendment allowed by the learned DRAT. In fact, **the petitioner has implemented the DRAT order by having the amendments carried out on or about 22nd November, 2023 i.e. much before filing of the present civil revisional application, and thereafter, participated in the hearing before the learned DRT on the basis of the amended M.A. No. 19 of 2014 on 1st December, 2023, 9th January, 2024, 15th March, 2024 and 5th April, 2024.**"*

6. It appears from the impugned order dated 19th October, 2023, that the learned DRAT has kept all the points open for the learned DRT to decide. The relevant part of the order is as follows:-

“47. Right to challenge by the respondent No. 1 or whether the applications R.A. No. 01 of 2014 is legally maintainable or not, are the issues which have to be decided by the learned DRT. Further, what will be the effect of the orders of the Hon’ble Calcutta High Court dated 13.09.2006 passed in C.O. NO. 1909 of 2004 is also to be decided by the learned DRT at the time of adjudication.”

7. **The Debt Recovery Tribunal vide an order dated 13.05.2014, decided as follows:-**

“15. In the above circumstances it is ordered as follows :

- (i) The application being IA No. 366 of 2014 for condonation of delay is allowed.*
- (ii) CIPL or their agent, servant or any person claiming under them are restrained from making any construction on the basis of sanction plan using the 2.74 acres of the disputed property as an integral part for availing the floor area etc.*
- (iii) No ad interim order can be passed on MA/19/2014 unless the delay is condoned by this Tribunal.”*

8. **Vide the impugned order dated 19th October, 2023, the DRAT, Kolkata passed the following order:-**

“43. No doubt, it is trite law that jurisdiction to a Court cannot be conferred by consent of the parties. Herein jurisdiction is not being conferred by the consent of the parties. A direction was issued by the Hon'ble Delhi High Court although in a Company petition on 07.02.2014 that "the parties may approach the Debts Recovery Tribunal or Calcutta High Court for any further orders that the parties may require in respect of determining the title of the portion of this property which is contended to be in dispute." This

order was not challenged by the either party and attained finality. It is held in Kiran Devi vs Bihar State Sunni Wakf Board on (2021) 15 SCC 15 that a party cannot be permitted to approbate and, reprobate, in the same breath. When parties have accepted the jurisdiction of DRT and moved application before the DRT for adjudication then now they cannot be permitted to challenge the jurisdiction of the DRT more particularly when the orders of the Hon'ble Delhi High Court were not challenged.

47. *As far as merits of R.A. No. 01 of 2014 and MA No. 19 of 2014 are concerned, they have yet to be adjudicated by the Learned DRT. Much emphasis has been laid by the Learned Counsel for the parties on the merit of these two applications. Right to challenge by the Respondent No. 1 or whether the applications R.A. No. 01 of 2014 is legally maintainable or not are the issues which have to be decided by the Learned DRT. Further, what will be the effect of the orders of the Hon'ble Calcutta High Court dated 13.09.2006 passed in C.O. No. 1909 of 2004 is also to be decided by the Learned DRT at the time of adjudication. Any finding on these issues or any issue touching the merits of the R.A. No. 01 of 2014 or MA No. 19 of 2014 by this Appellate Tribunal would prejudice the rights of the parties."*

9. From the materials on record it appears that in the present case:-

- i) In 1994, the title execution case was transferred to DRT.
- ii) Admittedly, the point of jurisdiction was not raised before the DRT by the petitioner herein.
- iii) From Para 12 of the order of the DRT dated 13.05.2014, it appears that the **petitioner has participated in the proceeding**, and raised the issue that "*the tribunal has no power to rehear upon the title of the property, when the same has already been sold by the order of the tribunal*".

10. Thus, the findings of the learned DRAT regarding the jurisdiction of DRT (at Para 43) of its order dated 19th October, 2023 being in accordance with law requires no interference by this Court.

11. In respect of the appellant's submission at **Para 22** of the impugned order, the same has been duly considered by the DRAT and the finding has been given at **Para 47** of the impugned order, wherein not only the merits of applications, but even the maintainability of the same has been left for the DRT to decide.
12. As such, whether the said review application is maintainable or not is for the DRT to decide and not by this Court at this stage.
13. Thus, the impugned order dated 19th October, 2023 passed by the DRAT, Kolkata being in accordance with law requires no interference.
14. The reasoning given for affirmation of the order of the DRT allowing IA 366 of 2014, being as per the provisions of the Limitation Act, is in accordance with law and calls for no interference.
15. The judgment in ***Nahar Industrial Enterprises Limited vs. Hong Kong & Shanghai Banking Corporation*** reported in **(2009) 8 SCC 646** relied upon by the petitioner relates to transfer of civil suits from Civil Courts to DRT and applicability of application under Section 22 to 24 CPC in such cases.
16. The judgment in ***A. Stephen Samuel & Anr. vs. UOI & Ors. (2004) 118 Comp Case 82*** (Madras High Court) is relied upon by the opposite party herein and the following observation of the Court has been placed:-

"..... We find that the Rules framed under the ITCP Rules largely correspond to the relevant Rules occurring under Order 21 of the Code of Civil Procedure relating to the execution of a decree. Rule 39 of the ITCP Rules corresponds to Order 21, rule 95 of the Code of Civil

Procedure which deals with the delivery of possession in occupancy of judgment debtor and Rule 40 of the ITCP Rules corresponds to Order 21, rule 96 of the Code of Civil Procedure.....”

- 17. In the present case no civil suit has been transferred. It is only the execution proceedings which has been transferred,** relating to recovery of debts due to banks and financial institution and as such the judgment in ***Nahar Industrial (supra)*** is not applicable to the present case.
- 18. CO 1429 of 2024 is thus dismissed. The tribunal to proceed expeditiously with the proceedings before it, as directed by the DRAT.**
- 19.** Connected application, if any, stands disposed of.
- 20.** Interim order, if any, stands vacated.
- 21.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)