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(2010) 1 All LJ 281 : (2010) 78 ALR 502 : (2010) 2 Bank J 132 : (2010) 1 DRTC 340 :
(2009) 27 LCD 1666 : (2010) 28 LCD 269 : (2010) 110 RD 460

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

SINGLE BENCH

BIPIN BECHARI LAL SRIVASTAVA — Appellant

Vs.

ALLAHABAD BANK — Respondent

(Before : Mr. Narayana Shukla, J.)

W.P. No. 4704 of 2009.

Decided on : 06-10-2009

A. Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) — Sections 13(2), 13(4), 17, 34, 35 — Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Jurisdiction of Civil Courts — Maintainability of suit — The Civil Court lacks jurisdiction to entertain a suit against proceedings initiated under Sections 13(2) and 13(4) of the SARFAESI Act, 2002, as the exclusive remedy lies with the Debts Recovery Tribunal (DRT) under Section 17 of the Act. Section 34 of the SARFAESI Act expressly bars the jurisdiction of civil courts over matters which the DRT or Appellate Tribunal is empowered to determine, including actions taken or to be taken under the Act. Section 35 provides for the overriding effect of the SARFAESI Act over other laws. (Paras 3, 4, 9, 12, 13)

B. Jurisdiction — Ouster of Civil Court Jurisdiction — SARFAESI Act, 2002 — Supreme Court precedents clarify that the bar on civil court jurisdiction under Section 34 of the SARFAESI Act extends to all matters that the Debts Recovery Tribunal can take cognizance of, even if no specific measure under Section 13(4) has yet been taken. This ensures that the specialized forum created for dispute resolution under the Act maintains its exclusive domain. (Paras 11, 12, 13)

C. Precedent — Judicial Dicta — Effect of directions in previous proceedings — While a Division Bench in a previous writ petition may have, in passing, mentioned an option to file a "Regular Suit", this cannot be interpreted as conferring jurisdiction upon a Civil Court where the relevant statute clearly bars such jurisdiction. A court or tribunal cannot assume jurisdiction simply by wrongly deciding a jurisdictional fact; its authority must emanate from the statute itself. The specific liberty granted was to file objections under Section 13(2) of the SARFAESI Act before the competent authority. (Paras 5, 7, 8)

D. Remedy — Availability of — Post-quashing of civil suit proceedings — Parties whose civil suit has been quashed due to lack of jurisdiction under the SARFAESI Act are at liberty to approach the Debts Recovery Tribunal (DRT) for appropriate relief. If such an application is made within a week, it should be entertained on its merits without being dismissed on grounds of limitation. (Para 15)

E. Injunctions — Against statutory proceedings — Civil Court's power — The Civil Court cannot grant an injunction restraining the enforcement of orders or proceedings before a specialized forum like the Debts Recovery Tribunal, which is created by a special enactment for specific claims, unless there is a clear case of fraud or other vitiating factors. (Para 10)

Counsel for Appearing Parties

Gopal Kumar Srivastava, Advocate, for the Petitioner; Sandeep Dixit, Atul Kumar Singh, Advocate, for the Opposite Party

Final Result : Allowed

JUDGMENT

Mr. Narayana Shukla, J.—Mr. Atul Kumar Singh, learned Advocate put in appearance on behalf of opposite party No. 1 and files a short counter affidavit on his behalf. The same is taken on record.

2. Heard Mr.Gopal Kumar Srivastava, learned counsel for the petitioner and Mr.Sandeep Dixit, learned counsel for opposite party No. 2 and Mr.Atul Kumar Singh, learned counsel for opposite party No. 1.

3. The petitioner has challenged the order dated 19th of May, 2009, passed by the Civil Judge (Sr.Div.), in Original Suit No. 163 of 2009, inter alia, on the ground that the order passed by the Civil Judge is without jurisdiction as the suit filed before him itself is not maintainable in view of Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (here-in-above referred to as the

Act, 2002). The Civil Court has taken cognizance against the proceeding initiated under Section 13(2) and 13(4) of the Act, 2002, whereas against the proceeding initiated under the aforesaid Section, the only remedy is to file an application before the Debts Recovery Tribunal under Section 17 of the Act. Learned counsel for the petitioner further submits that the suit is barred by Section 34 of the Act, 2002. Section 35 speaks that the provisions of this Act shall have over riding effect over other laws, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

4. Learned counsel for the petitioner further invites the attention of this court towards Section 31 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which provides that every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action where on it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal, provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any court. In this background he submits that the proceeding of the Civil Court as well as the order passed therein is without jurisdiction and deserves to be quashed.

5. On the other hand Mr.Sandeep Dixit, learned counsel for the opposite parties invites the attention of this court towards the order passed by this court in writ petition No. 8077 (MB) of 2008 in the subject matter and submitted that the Division Bench of this court itself opened option to the petitioner to file Regular Suit or objection in response to notice issued under sub-Section (2) of Section 13 of the Act 2002. Accordingly, the opposite parties have rightly exercised the option opened for them and filed the Suit, which has been entertained by the Civil Court, thus there is nothing wrong in the proceeding and once the jurisdiction has been conferred by the court, nobody can raise objection against the proceeding. Mr.Dixit by inviting the attention towards the relief sought in the suit submitted that the opposite parties have filed the suit for issuing a mandatory injunction to the Bank to accept the total money of loan and close the loan account and return the title of the property mortgaged against the loan and further submitted that the relief sought in the suit cannot be granted by the Debts Recovery Tribunal, therefore, the opposite parties 1 and 2 rightly chose to file the suit.

6. In reply Mr.Gopal Kumar Srivastava, the learned counsel for the petitioner submitted that there are several loan accounts against which the property has been mortgaged as a collateral security, therefore, unless and until all the loans are repaid, the title of the documents cannot be redeemed and thus he submitted that this is only an incidental relief, which can be sought for before the Tribunal itself.

7. He further submitted that in the case of **Shrisht Dhawan (Smt.) v. M/s.Shaw Brothers reported in (1992) 1 SCC 534**, the Hon'ble Supreme Court has held that no statutory

authority or Tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or Tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. In the aforesaid decision the Hon'ble Supreme Court has referred the decision of **Raza Textiles Ltd. v. ITO, (1973) 1 SCC 633**, in which the Hon'ble Supreme Court held that the court or Tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly. He further submits that no doubt in paragraph 5 of the judgment passed in writ petition No. 8077 (MB) of 2008, the Division Bench of this court opened two options to the petitioner to avail the remedy, but in paragraph 6 of the same very judgment, it provided as under :-

"No case for interference is made out. However, we give liberty to the petitioner to file objection in response to the notice issued under sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In case the petitioner files any objection, the respondents shall consider and decide the same by passing a speaking and reasoned order within two months from the date of filing of objection and receipt of certified copy of this order and communicate the decision. For a period of two months or till disposal of the objection, no further recovery shall take place"

8. Thus he submitted that by opening the aforesaid two options the court further had given liberty to the petitioner to file objection in response to the notice issued under sub-section (2) of Section 13 of the Act, 2002 with the direction to decide the same within stipulated period, therefore, there was no occasion for the opposite parties to file the suit. He further submitted that out of two options the opposite parties were under obligation to choose the option which was permissible under the Act, as has been held by the Hon'ble Supreme Court in the case referred to here-in-above.

9. Section 17 and 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are reproduced hereunder :-

"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 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."

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)."

10. On the point of jurisdiction the learned counsel for the petitioner further cited the case of **Industrial Investment Bank of India Ltd. v. marshal's Power & Telecom (I) Ltd. And another (2007) 1 SCC 106**. Paragraph 8 of which is reproduced hereunder:-

"We also find that the Division Bench has clearly acted illegally in purporting to pass an interim order of injunction restraining the enforcement of any order that may be passed by the Debts Recovery Tribunal. The Debts Recovery Tribunal is a special forum created by a special enactment for the purpose of enforcement of special types of claims arising in favour of financial institutions. Thus, competent proceedings are instituted before such a Tribunal by a financial institution seeking to enforce its claimed rights. Whatever defences the plaintiff herein may have against the claims of the first defendants before the Debts Recovery Tribunal, have to be put forward by the plaintiff before the Debts Recovery Tribunal. The mere fact that the plaintiff chose to rush to the civil court on receipt of a notice from the first defendant in an attempt to thwart the enforcement of the obligations it has allegedly incurred, does not justify the grant of an interim order of injunction restraining the enforcement of the rights arising out of an alleged hypothecation and a charge created by the plaintiff in favour of the first defendant. That apart, to grant an injunction restraining the enforcement of orders passed by the Tribunal having jurisdiction to pass such orders cannot normally be granted unless it is a case of fraud or the existence of some such vitiating factors is established or prima facie made out. Even then, the order of injunction as now granted could be granted only in exceptional cases."

11. He further cited another decision of Hon'ble Supreme court rendered in the case of **Mardia Chemicals Ltd. and others v. Union of India and others reported in (2004 4 Supreme Court Cases 311**. Paragraph 50 of which is reproduced hereunder :-

"50. It has also been submitted that an appeal is entertainable before the Debts Recovery Tribunal only after such measures as provided in sub-section (4) of Section 13 are taken and Section 34 bars to entertain any proceeding in respect of a matter which the Debts Recovery Tribunal or the Appellate Tribunal is empowered to determine. Thus before any action or measure is taken under sub-section (4) of Section 13, it is submitted by Mr.Salve, one of the counsel for the respondents that there would be no bar to approach the Civil Court. Therefore, it cannot be said that no remedy is available to the borrowers. We, however, find that this contention as advanced by Shri Salve is not correct. A full reading of Section 34 shows that the jurisdiction of the civil court is barred in respect of matters which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to determine in respect of any action taken "or to be taken in pursuance of any power conferred under this Act." that is to say, the prohibition covers even matters which can be taken cognizance of by the Debts Recovery Tribunal though no measure in that direction has so far been taken under Sub-section (4) of Section 13. It is further to be noted that the bar of jurisdiction is in respect of a proceeding which matter may be taken to the Tribunal. Therefore, any matter

in respect of which an action may be taken even later on, the civil court shall have no jurisdiction to entertain any proceeding therefor. The bar of civil court thus applies to all such matters which may be taken cognizance of by the Debts Recovery Tribunal, apart from those matters in which measures have already been taken under sub-section (4) of Section 13."

12. After hearing the learned counsel for the parties as well as upon perusal of record, I am of the view that before this court only the question for decision is whether in light of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Civil Court has jurisdiction to entertain the suit against the proceedings initiated, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and pass an interim order therein?

13. The provisions of the Act which are quoted here-in-above, are very clear which bars the jurisdiction of Civil Court to take cognizance of the proceeding initiated under the Act, 2002. The Hon'ble Supreme Court has also clarified the position through the above noted judgment, therefore, I am of the view that there is no doubt that the Civil Court has no jurisdiction to take cognizance of the proceedings initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 as it is only the Debts Recovery Tribunal, which has jurisdiction to take cognizance of the matter, therefore, I conclude the matter in the manner that the proceeding of the suit in question as well the order passed therein is without jurisdiction, therefore, I hereby quash the order dated 19th of May, 2009, passed by the Civil Judge, Senior Division, Faizabad in Regular Suit No. 163 of 2009 as well as the proceedings of Suit No. 163 of 2009 pending before the learned Civil Judge (Sr.Div.), Faizabad.

14. In the result the writ petition is allowed.

15. The opposite parties 1 and 2 are at liberty to move the necessary application before the Debts Recovery Tribunal, and if they move so, within a week, the same shall be entertained on merit without throwing it out on the ground of limitation.