

A.L. Shah Vs. The Authorised Officer, State Bank of Hyderabad and Others

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Court : Chennai

Decided On : Feb-02-2016

Judge : Satish K. Agnihotri & The Honourable Dr. Justice P. Devadass

Appeal No. : C.R.P.Nos.1728 to 1730 of 2015 & M.P.Nos.1, 1, 1, 2, 2 & 2 of 2015

Appellant : A.L. Shah

Respondent : The Authorised Officer, State Bank of Hyderabad and Others

Judgement :

(Petitions filed under Article 227 of The Constitution of India against the order passed by the Debt Recovery Appellate Tribunal, Chennai in A.I.R.(SA) Nos.136, 137 and 138 of 2015, dated 9.4.2015.) Common Order: (Satish K. Agnihotri, J.)

1. The instant petitions arise from the common order dated 9th April, 2015 passed by the Debt Recovery Appellate Tribunal, Chennai in A.I.R.(SA) Nos.136, 137 and 138 of 2015. Having regard to the commonality of question of law involved in all petitions, all petitions are considered and decided by this common order.

2. The facts in nutshell are that the petitioner, claiming to be the lawful owner of the subject property, filed three applications under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short SARFAESI Act ?), before the Debt Recovery Tribunal-I, Chennai, questioning the legality and validity of the notices dated 22nd March 2012 issued under Section 13(4) of the SARFAESI Act by the first respondent Bank, on the

ground that the second respondent had mortgaged the property in question without having legal title over the property in question. The subject matter was under dispute with regard to the ownership and title. By judgment and decree dated 19th December, 2014 in O.S.No.7 of 2006, the III Additional District Judge, Puducherry declared the petitioner herein as absolute owner of the property and the two sale deeds dated 22nd November, 1996 as null and void.

3. The description of the property in the notices issued under Section 13(4) reads as under :

Vacant Plot with A.C. Sheet shed, Old Door No.12, Lally Tollandal Street, admeasuring 412 Sq. ft., R.S.No.239pt, T.S.No.98, Ward-C and Block No.25, Puducherry Town and R.V., Village No.40, Puducherry Municipal limits, Puducherry Sub-R.D. and R.D. - 605 001.

Boundaries :

To the North of the Street, to the East of the house belongs to Natarajan and Lourdu Xavier, to the South of the house belongs to Lebinthokkan and to the West of the house belongs to Francois Martin. ?

4. The Debts Recovery Tribunal-I, Chennai considered all three applications, being S.A.Nos.55 to 57 of 2012, together and dismissed all applications by a common order dated 13th February, 2015, holding that the respondent Bank has initiated proceedings to recover the public money under SARFAESI Act, which is not vitiated. Thereagainst, the petitioners have preferred three appeals before the Debt Recovery Appellate Tribunal, Chennai (for short DRAT ?)

5. An office objection was raised to the payment of court fee. The learned Chairperson of the DRAT held that the petitioner is liable to pay the full court fee under Rule 13(2)(1)(c) and (d), not under Rule 13(2)(1)(e) of the Security Interest (Enforcement) Rules, 2002 (for short Rules 2002 ?). Accordingly, the appeals were returned for compliance of office objection by the impugned order dated 9th April, 2015.

6. Keeping in view the question of law involved herein, Shri S.R.Rajagopal, learned Advocate was requested to assist the Court as Amicus Curiae. He has kindly acceded to the request of the Court.

7. The common question of law involved herein is as to whether a person, who is neither a borrower nor guarantor nor transferee from the borrower or guarantor in respect of the secured asset, but is the owner of the secured asset, is required to pay the court fee, as stipulated under Rule 13(2)(1)(a) to (d) or under Rule 13(2)(1)(e) of the Rules, 2002?

8. The learned counsel appearing for the petitioner submits that the petitioner is covered under fee schedule prescribed under Rule 13(2)(1)(e) of Rules, 2002, i.e., any other application by any person. The petitioner is neither a borrower nor a guarantor nor has mortgaged the property in question. The property in question, legally owned by the petitioner, has been mortgaged by the second respondent, i.e., R.Gopal to obtain financial assistance on the basis of false sale deeds, which have been held as null and void. Thus, the petitioner is not liable to pay the court fee as prescribed under Rule 13(2)(1)(a) to (d).

9. It is further contended that the petitioner has no information or knowledge of the mortgage of the property. The Bank has accepted the mortgage without verifying its title and ownership. Thus, the Bank is not entitled to recover the possession of the said property.

10. On the other hand, Mr.K.N.Chinnikrishnan, learned counsel appearing for the Bank would submit that the Bank has verified the authenticity of sale deeds and also the revenue records. The Bank was not made as party to the suit, which resulted into passing of judgment and decree in favour of the petitioner. The Bank has exercised its power as available under Section 13(4) of the SARFAESI Act for recovery of possession. Thus, the bank was not at fault. The petitioner, who is claiming ownership, is liable to pay the court fee.

11 Shri S.R.Rajagopal, assisting the court, had examined the entire gamut of dispute. He would contend that a conjoint reading of Section 13(4), Section 17 of the SARFAESI Act read with Rule 13 of the Rules, 2002 makes it clear that fee is

payable in respect of the property, as the value of the fee is determined on the basis of the amount of debt recoverable. The provisions do not distinguish between borrower and guarantor or any other person, claiming to be aggrieved by the action of the bank for recovery of its money. Thus, the petitioner is liable to pay the court fee as specified under Rule 13(2)(1)(c) and (d) of Rules 2002, depending on the amount of debt due.

12. The learned Amicus Curiae relies on several decisions of the Supreme Court in support of his contentions. (i) *Gopabandhu Biswal Vs. Krishna Chandra Mohanty and others* (1998) 4 SCC 447), (ii) *Shobha Suresh Jumani Vs. Appellate Tribunal, Forfeited Property and another* (2001) 5 SCC 755), (iii) *Mardia Chemicals Ltd. Vs. Union of India* (2004) 4 SCC 311), (iv) *Tara Chand and others Vs. Gram Panchayat, Jhupa Khurd and others* (2012) 13 SCC 269) and (v) *Jagdish Singh Vs. Heeralal and others* (2014) 1 SCC 479).

13. We have heard the submissions of learned counsel appearing for the parties and perused the pleadings and documents appended thereto.

14. For better appreciation and understanding, it is apt to refer to the relevant provisions of the SARFAESI Act and Rules 2002.

15. Section 2(f) of the SARFAESI Act reads as under:

(f) borrower means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance; ?

16. Section 13(4) of the SARFAESI Act reads as under:

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely: ”

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt. ?

17. Section 17 of the SARFAESI Act reads as under:

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.]

[*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.]

[(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 of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of Section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order 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.

(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.]

18. Section 18 of the SARFAESI Act reads as under:

18. Appeal to Appellate Tribunal.(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under Section 17, may prefer an appeal along with such fee, as may be prescribed] to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]

[Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to

in the second proviso.]

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder. ?

19. Rule 13 of the Rules 2002 reads as under:

13. Fees for applications and appeals under sections 17 and 18 of the Act.-
(1) Every application under sub-section (1) of section 17 or an appeal to the Appellate Tribunal under sub-section (1) of section 18 shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated.

(2) The amount of fee payable shall be as follows:

No.	Nature of Application	Amount of Fee payable
1.	Application to a Debt Recovery Tribunal under sub-section (1) of section 17 against any of the measures referred to in sub-section (4) of section 13	
(a)	Where the applicant is a borrower and the amount of debt due is less than Rs.10 lakhs	Rs.500 for every Rs.1 lakh or part thereof.

(b)	Where the applicant is a borrower and the amount of debt due is Rs.10 lakhs and above	Rs.5,000+Rs.250 for every Rs.1 lakh or part thereof in excess of Rs.10 lakhs subject to a maximum of Rs.1,00,000
(c)	Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is less than Rs.10 lakhs	Rs.125 for every Rupees One lakh or part thereof.
(d)	Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs.10 lakhs and above.	Rs.1250+Rs.125 for every Rs.1 lakhs or part thereof in excess of Rs.10 lakhs subject to a maximum of Rs.50,000
(e)	Any other application by any person	Rs.200

20. Section 17 of the SARFAESI Act contemplates making an application along with such fee by any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13. Proviso to Section 17 makes it clear that the fee schedule may be prescribed for making the application by the borrower and the person other than the borrower. The borrower is defined, as aforesaid, as any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution.

21. The word 'any person', as prescribed under Section 17(1) of the SARFAESI Act, came up for consideration before the Supreme Court in Jagdish Singh (supra), wherein it was observed as under:

19. The expression 'any person' used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the judgment of this Court in Satyawati Tondon case.

20. Therefore, the expression 'any person' referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitisation Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case the Bank (secured creditor) adopts any measure including the sale of the secured assets, on which the plaintiffs claim interest. ?

22. The word 'any person' in respect of the Tenancy Act was considered in Tara Chand and others (supra), wherein the Supreme Court held that the word 'any person' has to be understood in the context that was intended by the legislature with respect to concerned Act. The relevant paragraph reads as under:

18. The word 'any person' has to be understood in the context that was intended by the legislature with respect to the Tenancy Act, keeping in mind the purpose for which the statute was enacted. The provisions of the Act, thus, have to be construed to achieve the purpose of its enactment. The Court has to adopt a constructive approach not contrary to attempted objective of the enactment. The Court must examine and give meaning to the said words, in view of the statute of which it is a part, considering the context and the subject of the said statute. (Vide *Shri Balaganesan Metals v. M.N. Shanmugham Chetty and Sahyadri Sahakari Sakhar Karkhana Ltd. v. CCE.*) ?

23. 'Aggrieved person' is also held to be understood in respect of the particular enactment. [See : *Shobha Suresh Jumani (supra)*].

24. The word 'aggrieved party' is defined in Black's Law Dictionary as under :

a party whose personal, pecuniary or property rights have been adversely affected by another person's actions or by a court's decree or judgment. -- Also termed party aggrieved; person aggrieved ?

25. There is no dispute that petitioner is an aggrieved person, as the property in question is stated to be under the legal ownership and title of the petitioner, as has been held in the civil suit. The question as to whether the civil suit can determine the title of the land is not in issue. There is a bar to civil court jurisdiction in respect of any matter, which is under consideration under the provisions of the SARFAESI Act. [See : Mardia Chemicals Ltd. and Jagdish Singh (supra)].

26. In the case on hand, we are concerned with the fee payable by the petitioner. Indisputably, the petitioner was neither borrower nor guarantor, but any other person under the SARFAESI Act. Section 17 of the SARFAESI Act does not distinguish between borrower, guarantor or any other person, who is aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the SARFAESI Act. The proviso to Section 17 of the SARFAESI Act prescribes payment of fee by the borrower and the person other than the borrower.'

27. The Central Government, in exercise of its power conferred by sub-section (1) and clause (b) of sub-section (2) of section 38 read with sub-sections (4), (10) and (12) of section 13 of the SARFAESI Act, framed the Security Interest (Enforcement) Rules, 2002. As aforesaid, Rule 13 of the Rules, 2002 prescribes for two kinds of person. One is the borrower and the other is the person other than borrower. For borrower, fee prescribed is under Rule 13(2)(1)(a) and (b) of the Rules 2002. For person other than the borrower, the fee is prescribed under Rule 13(2)(1)(c) and (d) of the Rules 2002. Rule 13(2)(1)(e) is for any other application by any person.

28. A bare perusal of Clause (e) of Rule 13(2)(1) of Rules 2002 makes it clear that the expression any other application by any person means for any application other than the main application filed under Section 17 or Section 18 of the SARFAESI Act by any person, including the borrower, the fee payable is fixed at Rs.200/-. But, in the main application, invoking the jurisdiction under Section 17(1) or Section 18(1) of the SARFAESI Act, the fee schedule is one and the same. The

fee payable by any person in the main application is determined under Amount of fee payable, prescribed in Rule 13(2)(1)(c) and (d) of the Rules 2002, depending on the amount of debt due.

29. The petitioner is deriving the benefit under the main application or main appeal and there is no contemplation of payment of different set of fee for any other person. The petitioner is other than the borrower and also is aggrieved. Thus, he is competent to make application under Section 17 as well as appeal under Section 18 of the SARFAESI Act. The fee payable is same, as payable for application under Section 17 or appeal under Section 18 of the SARFAESI Act.

30. In such view of the matter, we are of the considered view that the petitioner is liable to pay fee as prescribed under Rule 13(2)(1)(c) and (d) of the Rules 2002, depending on the amount of debt due.

31. Before parting with the decision, we record our appreciation for valuable assistance rendered by Shri S.R.Rajagopal, learned counsel.

32. For the reasons mentioned herein-above, the civil revision petitions are dismissed, granting two weeks time to the petitioner for compliance of the office objection Nos.2 and 3 raised by the office of the DRAT from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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