

Mayur Coirs P. Ltd. and ors. Vs. Development Credit Bank Ltd.

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Court : Delhi

Decided On : Apr-11-2008

Reported in : 149(2008)DLT740; 2008(103)DRJ191; (2008)151PLR13

Judge : T.S. Thakur and; Aruna Suresh, JJ.

Acts : Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 - Sections 13, 13(2), 13(3), 13(10), 14 and 32; Recovery of Debts Due to Banks and Financial Institutions Act - Sections 19 and 24; Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Ordinance (II), 2002 - Sections 13(2)

Appeal No. : W.P.(C) 191/2008

Appellant : Mayur Coirs P. Ltd. and ors.

Respondent : Development Credit Bank Ltd.

Advocate for Def. : None

Advocate for Pet/Ap. : Hemant Chaudhary and; Dhananjay Kumar, Advs

Disposition : Petition dismissed

Judgement :

T.S. Thakur, J.

1. In this petition for a writ of certiorari, the petitioner calls in question the validity of an order dated 6th December, 2007 passed by the Debt Recovery Appellate Tribunal, Delhi whereby Misc. Appeal No. 182/2006 arising out of O.A. No. 31/2004 (DRT-II, Delhi) has been dismissed. The petitioners further seek a declaration to the effect that proceedings initiated against them by the respondent bank under the Securitisation Act, 2002 have become void and stand withdrawn with a direction to the bank to de-seal the first floor of property No. R-82/5, Ramesh Park, Laxmi Nagar Illaka, Shahdara, Delhi. The controversy arises in the backdrop of the following facts:

2. Upon the failure of the petitioners to liquidate an outstanding debt of Rs. 78,34,862.39, the respondent bank invoked the provisions of Sections 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Ordinance (II) 2002 and called upon the petitioners herein to pay the amount mentioned above with interest @ 19% p.a. with effect from 1st February, 2003 compounded quarterly till the date of payment within a period of 60 days from the receipt of the notice failing which the bank threatened to exercise the powers vested in it under Section 13(3) of the Act by taking possession and management of the secured assets referred to in para 3 of the notice. On receipt of the said notice, the petitioners submitted their objections which were disposed of by the bank in terms of a communication dated 26th August, 2004, whereby the bank turned down the objections raised by the petitioners and reiterated its claim and demand for payment of the outstanding amounts failing which it threatened action under the provisions of the Act mentioned above. Since no payment was made by the petitioners, an application under Section 14 of the Act aforementioned was made by the respondent bank before the Chief Metropolitan Magistrate, Delhi who passed an order on 5th May, 2003 appointing Sh. Rajender Tuteja as a Receiver to take possession of the entire immovable property No. R-82/5 situate in village Khreji Khas and first, second and third floor portions of property bearing No. 32 in Block K of the same village. The receiver was also authorised to take possession of the hypothecated stocks mentioned in the order.

3. It is common ground that in pursuance of the above order, the possession of the first floor of property No. R-82/5, Ramesh Park, Laxmi Nagar, Delhi was taken

over by the receiver and the property sealed by him. Aggrieved by the said order, the petitioners filed Writ Petition No. 3964/2003 in this Court in which the parties were directed to maintain status quo. The petitioners also moved an application before the CMM for vacation of her order dated 5th May, 2003 which was dismissed by the said court on 12th January, 2004 with the observation that since the High Court had already directed maintenance of status quo, it would be inappropriate to pass any order on the application moved by the petitioners.

4. While the proceedings under the Securitisation Act were still pending, the respondent bank filed OA No. 31/2004 before the DRT-II for recovery of a sum of Rs. 96,44,283.18p which included the principal amount and interest due up to the date of the application. In the meantime, Writ Petition No. 3964/2003 was dismissed by this Court in the light of the decision of the Supreme Court in Transfer Case (Civil) No. 92-95/2002, Mardia Chemicals Ltd. Etc. Etc. v. UOI and Ors. Etc. Etc. decided on 8th April, 2004

5. The petitioners then filed is No. 788/2004 in OA No. 31/2004 pending with the DRT-II in which they prayed for dismissal of the OA on the ground that the same was not maintainable during the pendency of the proceedings under the Securitisation Act. The petitioners in the alternative prayed for a direction to the respondent bank to withdraw the steps initiated by them under the Securitisation Act, 2002. The Tribunal, while entertaining the said application and directing notice and objections in the same, ordered the parties to maintain status quo qua the property in question. The application was finally disposed of by the Tribunal by an order dated 8th September, 2006 holding that the defendants-petitioners herein had not filed their written statement for a long time which they were directed to do. Any default in doing so was to result in forfeiture of the right to file a written statement. Aggrieved by the said order, the petitioners appealed to the Debt Recovery Appellate Tribunal in Misc. Appeal No. 182/2006 to argue that proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act (hereinafter referred to as the RDDBFI Act) were not maintainable during the pendency of the proceedings taken under the Securitisation Act. The Appellate Tribunal rejected that contention relying upon the provisions of the two enactments and the decision of the Supreme Court in Transcore v. Union of India : AIR 2007

SC712 . The Tribunal was of the view that just as withdrawal of an original application pending before the DRT under Section 19 of the RDDBFI Act was not a condition precedent for taking recourse to Securitisation Act, recourse to the RDDBFI Act during the pendency of proceedings under the Securitisation Act was also not legally barred. That was particularly so according to the Tribunal because any application under Section 19 of the RDDBFI Act has to be filed by the bank or the financial institution within the period of limitation prescribed for the same. In the face of the legal requirement of instituting a claim under the said Act within the time prescribed, a bank or financial institution could not wait till the conclusion of the proceedings under the Securitisation Act. The Tribunal also took the view that merely because Section 13(10) of the Securitisation Act provides for recovery of the balance amount of dues by resort to proceedings before the DRT, it did not imply that such proceedings before the DRT could be filed only after the conclusion of the proceedings under the Securitisation Act. The Tribunal observed:

A declaration is required to be given by the Bank or Financial Institution to be effect that the application is within the limitation prescribed in Section 24 of the RDDBFI Act. Thus, it is crystal clear that any application under Section 19 of the RDDBFI Act has to be made within the period of limitation. In case the Bank or Financial Institution is made to wait for the conclusion of the proceedings under the SARFAESI Act before filing of the O.A., its claim, wholly or in part, may become time-barred and then the Bank or the Financial Institution concerned would be left with no legal remedy to recover the same. Maybe, that after the filing of the O.A. and before its final decision, some amount is recovered under the SARFAESI Act. In that eventuality, the O.A. would be decreed for a lesser amount and adjustment would be allowed for the amount recovered under the SARFAESI Act. In that eventuality, the O.A. would be decreed for a lesser amount and adjustment would be allowed for the amount recovered under the SARFAESI Act during the pendency of the O.A. However, no such remedial redressal can be there if the Bank omits to file O.A. waiting for the conclusion of the proceedings under the SARFAESI Act and ultimately there is a shortfall in the recovery of the secured debt, but the filing of the O.A. has become time-barred.

6. The Tribunal further held that the remedy under the Securitisation Act was an additional remedy to the one provided by RDDFBI Act and that the doctrine of election had no application. The secured creditor could chose one or more of the remedies available to him under the law as the object underlying both the RDDFBI Act as well as the SARFAESI Act is to ensure quick recovery of debts due to the banks and financial institutions. The present writ petition assails the correctness of the above order as already noticed earlier.

7. Appearing for the petitioners, Mr. Choudhary made a two-fold submission before us. Firstly, he contended that the invocation of the Securitisation Act was improper inasmuch as the proceedings under the said Act had started with a notice under Section 13(2) of the Act issued by Sh. Atul Batra, advocate for the bank and not the bank itself. This, argued the learned Counsel, constituted fatal defect in the said proceedings which could and ought to be quashed on the ground that the powers vested in the bank had not been properly invoked. Secondly, he submitted that pending conclusion of the proceedings under the Securitisation Act, proceedings for recovery of the outstanding dues could not be instituted before the DRT. The Appellate Tribunal was, argued Mr. Choudhary, in error in holding to the contrary.

8. We have given our careful consideration to the submissions made by Mr. Choudhary but find it difficult to accept either one of them. The invocation of the power vested in banking/financial institutions under Section 13 of the Securitisation Act is not subject to the limitation which Mr. Choudhary reads into the scheme of the Act, namely, that the notice under Section 32 must be issued by the bank through one of its officials and not through Counsel duly authorised inter instructed. There is in our opinion nothing in the scheme of the Act or Section 13 for that matter to support the contention urged by the petitioners. What is important is that a notice must be issued to the debtor in default for payment of the outstanding amount. This notice could indeed be by an authorized officer of the bank but merely because the bank engages the services of a lawyer who is authorized to issue such a notice would not render the invocation of the said powers illegal or otherwise objectionable. So long as the Counsel is duly authorized and instructed by the bank, any notice issued by him/her on behalf of

the bank in terms of Section 13(2) would be valid and cannot be faulted on the ground that the bank itself ought to have issued a notice. A notice by the Counsel for the bank is in law and for all intents and purposes a notice by the bank.

9. Equally untenable is the second submission made by Mr. Choudhary that the pendency of proceedings under the Securitisation Act would debar the bank from instituting proceedings for recovery of the debt by obtaining a decree from the DRT under the RDDBFI Act. There is no gainsaying that both the enactments are intended to ensure speedy recovery of the outstanding debts due to banks and financial institutions. There is nothing in either the provisions of the Securitisation Act or in the RDDBFI Act to suggest that invocation of one would forbid the invocation of the provisions contained in the other. That position has been, in our opinion, sufficiently explained by the Supreme Court in Transcore's case (supra) where the issue was whether the bank could, without withdrawing the proceedings instituted before the DRT, take resort to the Securitisation Act. Answering the question in the negative, the Court held that withdrawal of the OA before the DRT was not a condition precedent for invoking the Securitisation Act. We see no reason why the converse also cannot be true. If securitisation proceedings are permissible during the pendency of the recovery proceedings under the RDDBFI Act, there is no reason why the recovery proceedings would become legally bad just because the bank had taken resort to Securitisation Act. What is important is that both the proceedings can be instituted and maintained simultaneously. If that be so, just because the proceedings under the Securitisation Act had been instituted earlier would not render the proceedings before the DRT bad. The Appellate Tribunal was, in our opinion, perfectly justified in holding that the scheme of the two enactments did not debar simultaneous resort to the provisions thereof. The fact that there is a period of limitation prescribed for filing of the suits before the DRT also makes it necessary for the banks and financial institutions to institute such suits within the period of limitation stipulated for the same. Any delay in doing so would jeopardize the maintainability of such suits which no banking institution can afford to risk especially where the amounts outstanding against the borrowers are huge. In that view, the application made by the petitioners was an effort to somehow delay the proceedings in the OA pending before the Tribunal.

10. In the result, this writ petition fails and is accordingly dismissed with costs assessed at Rs. 10,000/- to be deposited in the Delhi High Court Advocates Welfare Fund.

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