

Change of counsel and procedure before DRT: DRAT KOLKATA

M/s Mennonite Brethren Property Association of India Private Limited

...Appellant

Punjab National Bank

...Respondent

Case No: Appeal No. 121 of 2022

Date of Judgement: 20th April, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Asad Hussain with Ms. Ansumala Bansal and Ms. Prarthana Singha Roy.

For Respondent: Mr. Pankaj Kumar Mukherjee.

Facts:

Appellant M/s Mennonite Brethren Property Association of India Pvt. Ltd. filed an appeal against the order of DRT-2 Hyderabad dismissing its applications for change of counsel and to allow its director Dr. Margret Anuradha Perumalla to represent it. Appellant had filed 3 applications – IA No. 1282/2021 for change of counsel to Mr. Asad Hussain, IA No. 1283/2021 and IA No. 1284/2021 to allow Dr. Perumalla to represent it before DRT in the SARFAESI proceedings. It also filed IA No. 1285/2021 to receive copy of board resolution and master data. The Registry returned the applications without registering them. Appellant's counsel filed a memo that since earlier counsel was not giving no objection, appellant was entitled to change counsel. The applications were then placed before presiding officer of DRT and

notices were issued. DRT dismissed the applications holding that it had to decide the SARFAESI application on merits and there was a direction by Supreme Court for expeditious disposal. Appellant filed the present appeal and also an application to implead Mr. P.A. John, earlier authorized signatory, as respondent no. 14 claiming he was a necessary party.

Elaborate Opinion of the Tribunal:

The Tribunal held that section 22(2)(h) and section 151 CPC regarding procedure and inherent powers are residuary provisions and do not empower DRT with any inherent powers. It held that provisions of Order 3 Rule 4 CPC regarding change of counsel were not complied as no leave of court was taken as required by Rule 4(2). The procedure prescribed under Rule 5 of DRT Procedure Rules 1993 was also not followed. The Registry could not have returned the applications without scrutiny and opportunity to rectify defects. Only the Registrar can decline registration which is appealable before Presiding Officer. In the present case, this procedure was not followed. Hence appeal against impugned order is not maintainable. The Tribunal referred to the findings of the High Court that individual members cannot question banks' action to recover loans. Only authorized person can represent society's grievances in courts. If management fails, only remedy is to dethrone and elect new committee. It held that change of counsel's provisions were not followed. Scope of DRT is limited under RDDBFI Act and SARFAESI Act and individual disputes between members cannot be adjudicated. Parties can approach appropriate forums. It dismissed the application to implead Mr. P.A. John as he was not party before DRT and impugned order does not adversely affect his rights.

Arguments:

Appellant:

Rule 5 Procedure Rules were not followed. Appellant entitled to change counsel when earlier counsel not giving no objection. Mr. P.A. John is necessary party who filed SARFAESI application. Non-joinder has been raised.

Respondents/Banks:

Compliance of Rule 5 Procedure Rules not made regarding change of

counsel. Provisions of Order 3 Rule 4 CPC also not followed.

Respondents 5 and 11-13:

Individual members cannot question banks' action to recover loans. Scope of DRT is limited, individual disputes can't be adjudicated.

Sections:

Section 17 of SARFAESI Act

Section 22(2)(h) of RDDBFI Act

Order 3 Rule 4 CPC

Section 151 CPC

Rule 5 of DRT (Procedure) Rules

Cases Referred:

WP 147 of 2019, 1230 of 2019 and 1343 of 2019 dated 28.02.2019 of High Court

Laws Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)

Code of Civil Procedure, 1908

Debts Recovery Tribunal (Procedure) Rules 1993

Conclusion:

The Tribunal dismissed the appeal holding that mandatory provisions for change of counsel were not followed. Procedure under DRT Rules was defective. Scope of DRT is limited under RDDBFI and SARFAESI Acts. Mr. P.A John is not a necessary party. Appeal lacks merit and liable to be dismissed.

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Full Text of Judgment:

1. Aggrieved by the impugned order dated 31.10.2022 passed by Ld. DRT-2 Hyderabad, the Appellant preferred the Appeal challenging the order dated 31.10.2022.

2. From the pleadings as well as the impugned order it transpires that IAIR No. 1282 of 2021 was filed by the Director of petitioner Company viz. Dr. Margret Anuradha Perumalla to allow vakalatnama of Mr. Asad Hussain, Advocate in place of existing Counsel representing the Company. Another IAIR No. 1283 of 2021 and IAIR No. 1284 of 2021 were filed by the Director of Petitioner Company viz. Dr. Margret Anuradha Perumalla to permit her to represent the petitioner Applicant Company in the S.A. proceedings.

3. Another IAIR No. 1285 of 2021 was filed by the Director of the petitioner Company Dr. Margret Anuradha Perumalla to receive documents-

(i) Copy of Board Resolution dated 06.08.2021 and (ii) copy of Master Data of petitioner/ Applicant Company.

4. The Applications were disposed of and dismissed by the Ld. DRT holding that the scope of the Tribunal is to enquire whether the sale was held in accordance with the provisions of the SARFAESI Acts and Rules framed thereunder. Further, there is a direction of the Hon'ble Apex Court to dispose of the matter expeditiously. Applicant cannot be permitted to drag the proceedings by filing vexatious petitions.

5. Feeling aggrieved Appellant preferred the Appeal. Pending Appeal an application I.A. No. 118 of 2023 was filed to implead Mr. P.A. John as Respondent No. 14 who was the Authorised Signatory. Application was moved on the ground that Mr. P.A. John is a necessary party who had filed the SARFAESI Application. A plea was raised regarding non-joinder of necessary party. Hence, Mr. P.A. John may be impleaded as a necessary party as Respondent No. 14. Objections are also filed against the Application.

6. I have heard the Learned Counsel for the parties and perused the record.

7. Impugned order was passed basically on an Application under Section 22(2)(h) of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and Order III Rule 4 read with Section 151 of the Civil Procedure Code 1908.

8. Section 22(2)(h) of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 reads as under:

22. Procedure and powers of the Tribunal and the Appellate Tribunal

(1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person examining him on oath.

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses or documents'

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte.

(g) setting aside any order of dismissal of any application for default or any other passed by it ex parte;

(h) any other matter which may be prescribed.

9. Order III Rule 4 of Civil Procedure Code, 1908 reads as under"

4. Appointment of pleader- (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be (filed in Court and shall, for the purposes of sub-rule(1), deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the

case may be, and filed in Court, or until the client or the pleader

dies, or until all proceedings in the suit are ended as far as regards the client”.

10. Section 151 of Civil Procedure Code 1908 reads as under:

“Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

11. As far as Section 22(2) (h) and Section 151 of Civil Procedure Code 1908 are concerned, they are the residuary provisions, Section 151 of Civil Procedure Code provides for inherent powers of Civil Court while Section 22 (2) (h) of Recovery of Debt Due to Banks and Financial Institutions Act, 1993 nowhere empowers the Tribunal with inherent powers.

12. Order III Rule 4 sub Rule (1) deals with the appointment of pleader by a person by a document in writing signed by such person. Sub Rule (2) provides the time limit till when such appointment shall remain in force until determined with the leave of the Court by a writing signed by the client or the pleader and filed in Court.

13. In the present case, no leave of the Court was sought as provided in Sub Rule 2 of Rule (4) of Order III, Civil Procedure Code 1908. Rather, an application was made along with an affidavit with a prayer to allow the present vakalatnama to represent the authorized signatory Dr. Margret Anuradha Perumalla on behalf of petitioner/ Applicant Company in the present securitization Application. Although it is stated that the earlier Counsel, refused to give no objections, but the provisions of Sub Rule (2) of Rule 4 order III of Civil Procedure Code were not complied. What appears from the impugned order that even the Authorised signatory was sought to be changed.

14. Learned Counsel for the Respondent submits that the compliance of Rule 5 of Debts Recovery Tribunal (Procedure) Rules 1993 (hereinafter referred to as Rules) is also not made which reads as under:

5. Presentation and scrutiny of applications

(1) The Registrar, or, as the case may be, the officer authorised by

him, shall endorse on every application the date on which it is presented or deemed to have been presented under Rule 4 and shall sign endorsement.]

(2) If on scrutiny, the application is found to be in order, it shall be duly registered and given a serial number.

[(2A) After registration of the application under sub-rule (2), the Tribunal shall issue summons to the defendants in Form IV.]

(3) If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to rectify the same in his presence and if the said defect is not formal in nature, the Registrar, may allow the applicant such time to rectify the defect as he may deem fit.

(4) If the concerned applicant fails to rectify the defect with the time allowed in sub-rule (3), the Registrar may by order and for reasons to be recorded in writing, decline to register the application.

(5) An appeal against the order of the Registrar under sub-rule(4) shall be made within 15 days of the making of such order to the Presiding Officer concerned in chamber whose decision thereon shall be final.

15. In the present case as would appear from the impugned order, IAIR No. 1282 of 2021, 1283 of 2021 and 1285 of 2021 along with the affidavit of Dr. Margret Anuradha Perumalla and petitions presented by Mr. Asad Hussain, a proposed Counsel were presented before the Ld. Registrar, but the Registry returned the petitions. Thereafter, Mr. Asad Hossain filed a memo dated 19.08.2021 stating that the earlier Counsel is not giving the no objection the party is entitled to change their Counsel. On his request, the petitions were placed before the Ld. Presiding Officer at the Bench. Thereafter, notices were also issued to the parties and the impugned order was passed. A bare perusal of Rule 5 of the Debts Recovery Tribunal Procedure Rules 1993 will show that if the Registrar on a scrutiny find the Application to be defective, he may allow the Applicant to rectify the defect. In case the defects are not rectified, Registry may decline to register the Application under Rule 3 sub Rule 4 of Debts Recovery Tribunal Procedure Rules 1993. An appeal against the order of the Registrar

under sub Rule 4 can be filed within 15 days before the Presiding Officer in Chamber whose decision shall be final.

16. In the present case, the Registry did not register the petition and the same without following the procedure as prescribed in Rule 5 of Debts Recovery Tribunal Procedure Rules. The matter was taken up before the Presiding Officer DRT in Bench and impugned order was passed. This procedure itself was defective. However, since the Applications have been finally disposed of by the Ld. Presiding Officer DRT, hence, the mandatory provisions of Rule 5 of Debts Recovery Tribunal Procedure Rules are not complied. It would be pertinent to observe that the Registry has no power under the Rules 5 to return any application. Rather, Procedure is provided under Sub Rule 3, Rule 5 that in case any defect is found, Registrar should give an opportunity to Applicant to rectify the defect and if defect is not rectified, he is well empowered under Sub Rule 4 to decline to register the Application. Its quasi- judicial function which is to be performed by the Registrar. Accordingly, regulations provides that Appeal against the order of the Registrar may be filed before the Presiding Officer in Chambers within 15 days of the Registrar's passing the order. These Rules have not been followed. Rather, without registering the Application, matter was taken up by the Ld. Presiding Officer and impugned order was passed. Hence, it is absolutely clear that the Procedure prescribed under Rule 5 of Debts Recovery Tribunal Procedure Rules 1993 were not followed. Accordingly, the Appeal challenging the impugned order is not maintainable on this count only.

17. As far as the question of change of Counsel is concerned as has been held earlier, no leave of the Court is taken as required under Order III Rule 4 of Civil Procedure Code, 1908.

18. It would be pertinent to mention that the Hon'ble Supreme Court had issued directions for expeditious disposal of the matter. The SARFAESI Application was filed under Section 17 of the SARFAESI Act which is to be decided on the basis of its own merits or demerits. In the SARFAESI Application there is a challenge to the sale of the secured assets. It is to be looked into by the Ld. DRT as to whether the sale was conducted in accordance with the provisions of the

SARFAESI Act as well as the Rules framed thereunder. As far as any private dispute between the parties i.e. Mr. P.A John and Dr. Margret Anuradha Perumalla is concerned, the dispute cannot and should not be adjudicated by the Ld. DRT. Jurisdiction of the DRT is limited as defined under the provisions of Recovery of Debts and Bankruptcy Act, 1993 as well as SARFAESI Act. In case of any dispute between the parties as referred above, they can approach the appropriate forum for redressal of the issues. As far as present dispute is concerned, the observations made by the Hon'ble High Court in W.P. No. 147 of 2019, 1230 of 2019 and 1343 of 2019 dated 28.02.2019 are very relevant which are as under:

"12. The management of a Society vests under the Societies Registration Act, with an elected body known as the Committee of Management. It is only through a person authorized by the bye-laws of the

Society that the Society can ventilate its grievances in a Court of law. If all individual members seek to move Courts for ventilating the grievances of the Society, there would be no end to litigation. If the Committee of Management fails to safeguard the interest of the Society, the only remedy open to the individual members is to take recourse to the provisions of the bye-laws or the statute, to dethrone the members of the Committee of Management and elect a new body. The individual members of a Society, who failed to question the action of the Management in availing the loan from the Banks, cannot now question the action of the banks in seeking recovery....."

19. Finding of the Hon'ble High Court is binding upon the parties.

20. The erstwhile Authorised signatory was authorized by Dr. Margret Anuradha Perumalla to file the SARFAESI Application. As far as change of Counsel is concerned, mandatory provisions of law have not been followed.

21. As far as I.A. No. 118 of 2023 for impleadment is concerned, Sri P.A. John was not a party before DRT. Further impugned order is not prejudicial to him. It nowhere adversely affects the right of Sri P.A. John. Accordingly. PA John is not a necessary party. I.A. No. 118 of 2023 is accordingly dismissed.

22. On the basis of discussion made above, I am of the view that Appeal lacks merit and is liable to be dismissed.

Appeal is dismissed. No Order as to costs.

File be consigned to Record Room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT. Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 20th day of April, 2023.