

Invent assets Securitisation & Reconstruction Pvt. Ltd. v. Bank of Baroda & Ors.

Invent assets Securitisation & Reconstruction Pvt. Ltd.

...Appellant

Bank of Baroda & Ors.

...Respondent

Case No: Appeal No. 20/2022

Date of Judgement: 19/05/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Rajesh Nagory along with Mr Rohit Gupta, Mr Harsh Behany, Mr Gaurave Gandhi and Rajat Jain, i/b Mr Harsh L Behany, Advocates.

For Respondent: Mr Bhaskar Sharma, Ms Aanandini Thakare, i/b M/s. Phoenix Legal, Mr Shubham Dubey, i/b Ms Mumtaz Khan, Advocates.

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Facts:

Invent Assets Securitisation & Reconstruction Pvt. Ltd. (Appellant) filed an appeal (Appeal No. 20/2022) before the Debts Recovery Appellate Tribunal (D.R.A.T.), Mumbai, impugning the judgment and order dated 31/03/2022 of the Debts Recovery Tribunal-I, Ahmedabad (D.R.T.). The 2nd Respondent, M/s Hans Ispat Ltd., is the borrower company that was granted financial assistance by the Appellant's assignor, the State Bank of India (SBI), and the 1st Respondent Bank (Bank of Baroda) in the ratio of 60:40. The debt was secured by an equitable mortgage created by the deposit of title deeds. The borrower

company defaulted on payment, and the account was classified as a Non-Performing Asset (NPA). In a negotiated settlement, the company agreed to dues estimated at ₹45 crores payable to the Appellant in 18 quarterly installments, and an agreement was executed on 15/06/2015. Later, the settlement was rescheduled for 15/03/2019. The Bank of Baroda (BOB) had filed an Original Application (O.A.) No. 525/2015 before the D.R.T., which was allowed on 15/04/2019, and a Recovery Certificate was issued in favor of BOB for a sum of ₹32,82,25,570/-. The order of the D.R.T. stands challenged before the D.R.A.T., and the appeal is still pending consideration. The secured assets were put up for sale in Recovery Proceedings No. 246/2019 by the Recovery Officer. After several failed auctions and reductions in the reserve price, the property was purchased by the 5th Respondent, Kemo Steel Industries Pvt. Ltd., for ₹33.03 crores. The bid was confirmed, and the entire sale consideration was paid. A Sale Certificate was issued in favor of the 5th Respondent on 07/04/2022, and possession was handed over. On 19/04/2022, the D.R.A.T. directed the status quo to be maintained by both sides. The Appellant contended that the borrower had defaulted on the settlement terms, and consequently, the settlement agreement was withdrawn on 16/09/2021. The Appellant claimed the right to proceed against the secured asset for the realization of the debt. When the borrower attempted to remove certain movables from the secured asset, the Recovery Officer appointed commissioners to take an inventory and a Receiver to monitor the removal of goods. The Appellant had challenged the order before the Hon'ble High Court of Gujarat by filing SCA 117750/2021, which was disposed of with a direction to the Appellant to file an appeal challenging the order of the Recovery Officer. Consequently, the Appellant filed Appeal No. 2/2022 before the D.R.T. under Section 30 of the Recovery of Debts and Bankruptcy (RDB) Act. The D.R.T. disposed of the appeal directing the Recovery Officer to distribute the proceeds of the auction sale rateably between the Banks and confirmed the sale. The Appellant filed the present appeal (Appeal No. 20/2022) before the D.R.A.T., aggrieved by the D.R.T.'s order. The D.R.A.T.'s order of status quo was later modified vide order dated 10/08/2022 in the stay application filed as I.A. No. 80/2022, permitting the auction purchaser (5th Respondent) to run the factory subject to the ultimate decision by the D.R.A.T. In

the present application (I.A. No. 356/2022), the Appellant sought to amend the appeal memorandum by adding paragraphs explaining how the impugned order was passed by the D.R.T. and the Recovery Officer, and to add a prayer to quash and set aside all consequential orders passed pursuant to the impugned order dated 31/03/2022 and to declare the handing over of possession to the 5th Respondent as bad in law, unenforceable, and perverse.

Arguments by the Respondents:

Respondent No. 1 (Bank of Baroda): a. The application for amendment is not maintainable as the appeal was filed on 04/04/2022, and the order of the Recovery Officer confirming the sale on 04/04/2022 was not challenged. b. The order of the Recovery Officer can only be challenged before the Presiding Officer, D.R.T., under Section 30 of the RDB Act. No such appeal was filed by the Appellant. c. Each cause of action must be challenged by way of a separate appeal. The Appellant cannot challenge the order of the Recovery Officer directly in the appeal before the D.R.A.T. without resorting to the remedy under Section 30 in the first instance. d. The borrower had challenged the order before the Hon'ble High Court of Gujarat by filing SCA No. 6913/2022, which was disposed of as withdrawn on 07/04/2022. The Appellant had also filed SCA No. 7087/2022 before the Hon'ble High Court of Gujarat, which was disposed of as withdrawn on 13/04/2022.

Respondent No. 5 (Kemo Steel Industries Pvt. Ltd.): a. The fifth Respondent is a bona fide purchaser after depositing the sale consideration of ₹33.36 crores. b. The Appellant financial institution had approached the Recovery Officer, laying a claim over the secured assets. The Recovery Officer had disposed of the application, against which the Appellant had approached the D.R.T., which had granted relief to the Appellant to share the sale proceeds with B0B. c. In consequence of the D.R.T.'s order, the sale was confirmed, and possession was handed over to the auction purchaser (fifth Respondent). d. The order of the D.R.T. is under challenge in the appeal before the D.R.A.T. e. The confirmation of the sale by the Recovery Officer in consequence of the disposal of the appeal by the D.R.T. is now sought to be challenged by way of amendment in this

appeal. f. Whether the action of the Recovery Officer in confirming the auction sale and handing over possession of the secured assets to the auction purchaser was proper or in accordance with the Rules is a fresh cause of action for the Appellant to be challenged under Section 30 of the RDB Act. g. Without exercising its remedy under Section 30, the Appellant cannot approach the D.R.A.T. directly. Since the remedy cannot be exercised directly before the second Appellate Forum, no such relief by way of amendment can be allowed.

Court's Elaborate Opinions:

The D.R.A.T. observed that the question that may have to be determined in the appeal is whether the order of the D.R.T. upholding the auction of the property is justified or not. The D.R.A.T. noted that the confirmation of the sale by the Recovery Officer in consequence of the disposal of the appeal by the D.R.T. is now sought to be challenged by way of amendment in this appeal. The D.R.A.T. opined that whether the action of the Recovery Officer in confirming the auction sale and handing over possession of the secured assets to the auction purchaser was proper or in accordance with the Rules is a fresh cause of action for the Appellant to be challenged under Section 30 of the RDB Act. The D.R.A.T. held that without exercising its remedy under Section 30, the Appellant cannot approach the D.R.A.T. directly, and since the remedy cannot be exercised directly before the second Appellate Forum, no such relief by way of amendment can be allowed.

Sections and Laws Referred:

Section 30 of the Recovery of Debts and Bankruptcy (RDB) Act.

Cases Cited:

None

Final Order:

The D.R.A.T. dismissed the application for amendment (I.A. No. 356/2022) filed by the Appellant, Invent Assets Securitisation & Reconstruction Pvt. Ltd.