

J. M. Financial Asset Reconstruction Company Ltd & Anr. v. M/s Veer Aluminium Industries Pvt. Ltd

J. M. Financial Asset Reconstruction Company Ltd & Anr.

...Appellant

M/s Veer Aluminium Industries Pvt. Ltd

...Respondent

Case No: Transfer Petition No. 05/2022

Date of Judgement: 20/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Rohit Gupta along with Ms Somya Tripathi, i/b M/s. M/s. T. N. Tripathi & Co., Advocate.

For Respondent: Mr S.V. Adwant, i/b Ms Sanjana Goghare, Advocate.

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Facts:

J.M. Financial Asset Reconstruction Company Ltd & Anr. (Appellants/Transfer Petitioners) filed Transfer Petition No. 05/2022 and Transfer Petition No. 09/2023 before the Debts Recovery Appellate Tribunal, Mumbai. The Appellants sought transfer of Securitisation Application (S.A.) No. 158 of 2021 and Original Application (O.A.) No. 172 of 2013 from the Debts Recovery Tribunal, Aurangabad (D.R.T.) to any other Tribunal within the jurisdiction of the Appellate Tribunal. The parties involved in both proceedings are M/s Veer Aluminium Industries Pvt. Ltd. (Respondent) and others. The Appellants alleged

that they apprehended bias on the part of the Ld. Presiding Officer of the D.R.T., Aurangabad, during the pendency of the matters before it. The Respondents had filed S.A. No. 158 of 2021 on 07.10.2021 and sought interim relief against the Sarfaesi measures in June 2022. On 17.06.2022, the D.R.T. granted an order that no possession shall be taken till it hears the matter, despite the Appellants' counsel seeking adjournment. On 23.06.2022, the D.R.T. recorded that the Respondents had agreed to the Applicants in S.A. depositing ₹1 crore, which was denied by the Respondents' counsel. The Appellate Tribunal vacated the D.R.T.'s stay order/injunction dated 23.06.2022. On 23.08.2022, the D.R.T. granted another order in favor of the Applicants in S.A. without requiring any deposit. The D.R.T. attempted mediation and permitted the redemption of the property at market value, contrary to orders of higher courts. The Respondents filed Writ Petition No. 4509 of 2023 before the Bombay High Court, seeking directions to decide the O.A. and S.A. expeditiously, which was disposed of with a direction to the D.R.T. to decide the matters by 31.12.2023, subject to the decision of the Transfer Petitions.

Arguments by Appellants (Transfer Petitioners):

The Appellants argued that the actions of the Ld. Presiding Officer raised a reasonable apprehension of bias in their minds. They relied on the decisions in Satish Jaggi vs. State of Chhattisgarh (2007) 3 SCC 62 and My Palace Mutually Aided Co-operative Society vs. B Mahesh & Ors. Civil Appeal No. 5784 of 2022 to argue that if there is a reasonable apprehension that justice will not be done, they are entitled to get a transfer of the case, as not only must justice be done, but it must also be seen to be done.

Arguments by Respondents:

The Respondents argued that the allegations against the Ld. Presiding Officer are unsustainable, and the Appellants cannot be granted the freedom of forum hunting. They submitted that the O.A. is of the year 2013 and has become ripe for trial, and just because the transfer of the S.A. is sought, the O.A. need not be transferred. They relied on various precedents to argue that the transfer of a case should be

granted only in extraordinary situations or for compelling reasons, and not on trivial issues. They argued that the Presiding Officers and Judges should be able to discharge their duties without fear or favor, and wild allegations of bias or false implications will have a negative impact on the independence of the judiciary.

Court's Elaborate Opinions:

The Appellate Tribunal observed that the Ld. Presiding Officer may have involved himself in getting the dispute resolved and shown over-enthusiasm, but deciding an issue wrongly does not automatically imply bias. The Tribunal stated that judicial officers should conduct themselves in a manner that precludes any perception of bias, but from the facts revealed in the present case, it did not find any explicit attitude of bias or prejudice in the actions or orders passed by the Ld. Presiding Officer. The Tribunal held that some of the Ld. Presiding Officer's orders may not have been appropriate from a judicial perspective, but in such instances, his orders would stand corrected/quashed or rectified by higher courts. The Tribunal observed that the Appellants themselves had approached the Appellate Tribunal impugning the Ld. Presiding Officer's order, and instances of interference in appeal cannot attribute prejudice on the part of the Presiding Officer. The Tribunal directed the Ld. Presiding Officer to dispose of the O.A. and the S.A. expeditiously, as directed by the Bombay High Court in Writ Petition No. 4509 of 2023.

Cases Cited:

Satish Jaggi vs. State of Chhattisgarh (2007) 3 SCC 62

My Palace Mutually Aided Co-operative Society vs. B Mahesh & Ors.
Civil Appeal No. 5784 of 2022

Mrs. Maneka Sanjay Gandhi & Ano. vs. Ms. Rani Jethmalani (1979) 4 SCC 167

Vikram Singh Raghubanshi vs. State of Uttar Pradesh (2011) 7 SCC 776

O.P. Sharma vs. High Court of Punjab and Haryana (2011) 6 SCC 86

Charu K. Mehta vs. Chetan P. Mehta & Ors. 2010 (2) Mh. L.J. 433

Naisam & Ors. vs. Station House Officer & Ors. 2023 SCC OnLine Ker
4482

Sections and Laws Referred:

Section 17-A(2) of the Recovery of Debts and Bankruptcy Act, 1993 (RDB
Act)

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