

Maintainability of Revision Application under Sec 17A of RDDBFI Act, 1993: DRAT KOLKATA

Mr. Manoj Asopa

...Appellant

Canara Bank

...Respondent

Case No: M.A. Diary No. 593 of 2021

Date of Judgement: 14th February, 2023

Judges:

Anil Kumar Srivastava,J – Chairperson

For Appellant: Mr. Prabhat Sil

For Respondent: Mr. Debasish Chakrabarti
with Ms. Sharmistha Pal

Facts:

Applicant Manoj Asopa filed Misc. Application under Sec 17A of RDDBFI Act read with Rule 22 of DRAT Procedure Rules, 1994 seeking revision of order passed by Debts Recovery Tribunal-I, Kolkata allowing bank's recovery application. Two IAs were filed by applicant seeking relief under Sec 26 to set aside sale of property by bank's Authorised Officer. Tribunal held Sec 26(1) not applicable and no irregularity in proclamation of auction sale. It was held that remedy lies in appeal against Recovery Officer's order. Applicant has now filed this application for revision of Tribunal's order under Sec 17A and Rule 22.

Arguments by Parties:

Applicant's Counsel argued that Appellate Tribunal has revisional powers over Tribunal's orders under Sec 17A(1) to correct jurisdictional errors. He also cited Sec 115 CPC in support. Bank's Counsel objected to maintainability, stating the Act provides no revisional power to Appellate Tribunal. Sec 19 provides complete procedure for appeals against Recovery Officer's orders under Sec 30, requiring 50% deposit under Sec 30A.

Court's Reasoning and Conclusions:

Sec 17A RDDBFI Act and Power of Chairperson. The Court held that the RDDBFI Act is a complete code providing appeals under Sections 30 and 30A against Recovery Officer's orders. Sec 17A confers only administrative superintendence over Tribunals for their functioning. If the intention was to provide revisional power, specific provision like Sec 115 CPC would have been there. Sec 17A(1) only provides superintendence to review performance of Presiding Officers. The power under Sec 17A cannot be equated with revisional power. Rule 22 also does not confer any revisional power to Appellate Tribunal.

Judgment in L Chandra Kumar Case

The Tribunal's jurisdictional powers defined in L Chandra Kumar case do not imply revisional powers over judicial orders, which lies in appeals under the Act. The Tribunals can examine vires of legislations subject to scrutiny by High Courts. But they cannot adjudicate upon their parent statutes' validity. Tribunal continues to be court of first instance in its specialized area, subject to appeal before Division Bench of High Courts. This does not enable it to exercise revisional jurisdiction.

Maintainability of Present Application

Sections 17A and Rule 22 confer only administrative superintendence over Tribunals for their smooth functioning. They do not confer judicial revisional powers. Judicial orders can only be challenged in appeal as provided under Section 30 of the Act. Hence, the present application seeking revision of Tribunal's judicial order is not maintainable.

Conclusion:

In conclusion, the Misc. Application was held not maintainable and accordingly dismissed.

Case Laws Referred:

No case laws were referred in the order.

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Court

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Full Text of Judgment:

1.Applicant, Sri Manoj Asopa, has filed the instant application under Section 17A of the Recovery of Debts Due To Banks And Financial Institutions Act, 1993 (hereinafter referred to as the “Act) read with Rule 22 of DRAT Procedure and Rules, 1994 for revision of order, dated 9th September, 2021, passed by Learned Presiding Officer, Learned Debts Recovery Tribunal-I, Kolkata (Hereinafter referred to as “Tribunal”) in connection with I.A. 119 of 2021 arising out of R.C. 81 of 2015, arising out of O.A. 175 of 2008.

2. From the pleadings and the impugned order it appears that two I.A.s bearing No. 118 and 119 of 2021 arising out of O.A. 175 of 2008 were filed by the present applicant, along with Smt. Rama Devi Asopa, Mukesh Asopa and Mamta Jagodia (who have not been impleaded as party in this Misc. Application), seeking relief under Section 26 of the Act to set aside the sale of the property conducted by the Authorised Officer of the Respondent Bank with a further direction to the Bank to 2 M.A. Diary No. 593 of 2021 disclose particulars of the possession and for an injunction restraining the Bank from dealing with the security in question.

3. O.A. 175 of 2008 was filed by the Respondent Bank which was allowed on 12th June, 2015 Recovery Certificate was issued on 22nd June, 2015. Recovery Proceedings were initiated before the Recovery Officer; Demand Notice and Possession Notice were issued thereafter; proclamation of sale notice was issued; reserved price was fixed on the basis of the valuation report. Auction sale was challenged before the Learned Tribunal. A preliminary objection was raised by the

Learned Tribunal about the maintainability and Learned Tribunal held that Section 26 (1) of the Act is not applicable in this case. As far as challenge for proclamation of auction sale was concerned, Learned Tribunal recorded a finding that no irregularity was conducted. Accordingly, it was held that if the Applicant was aggrieved by any order of the Recovery Officer, he could have preferred an appeal against the order.

4. Feeling aggrieved, present application under Section 17A of the Act read with Rule 22 of DRAT Procedure and Rules, 1994 is filed. Heard the Learned Counsel for the parties and perused the record.

5. Section 17A of the Recovery of Debts Due To Banks And Financial Institutions Act, 1993 reads as under : [17A. Power of Chairperson of Appellate Tribunal.—

(1) The Chairperson of an Appellate Tribunal shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of Presiding Officers.

(2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties, and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal.] Rule 22 of the DRAT (Procedure) Rules, 1994 reads as under: "22. Orders and directions in certain cases

3M.A. Diary No. 593 of 2021 The Appellate Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to

its orders or to prevent abuse of its process or to secure the ends of justice."

6. At the very outset, Learned Counsel for Appellant submits that this Court, under Section 17A of the Act, has power to look into the jurisdictional error in the orders passed by the Learned Tribunal. Learned Counsel further submits that since Appellate Tribunal has power of superintendence and control over the Tribunal under Section 17A Sub section (1), hence jurisdictional error can be looked by this Appellate Tribunal. Learned Counsel has further placed reliance on

Section 115 of the C.P.C.

7. Learned Counsel for Respondent at the very outset objected about maintainability of the application. Learned Counsel further submits that the Appellate Tribunal has no revisional power under the Act. Section 115 of C.P.C. will not be attracted. Recovery of Debts Due To Banks And Financial Institutions Act is a complete Act wherein procedure is also provided under Section 19. If any person is aggrieved by the orders of the Recovery Officer, he can file an appeal under Section 30 of the Act. Under Section 30A, 50% of the amount of debt due is to be deposited by the Applicant.

8. I find substance in the submission made by the Learned Counsel for Respondent. Recovery of Debts Due To Banks And Financial Institutions Act, 1993 is a complete code in itself. It is a Special Act wherein provision for filing of appeal against the order passed by the Learned Tribunal or Recovery Officer is given. Had it been the intention of the Legislature that the Appellate Tribunal can also exercise the revisional jurisdiction then specific provision akin to Section 115 of C.P.C. could have been made. No such provision is made in the Act. As far as power of superintendence is concerned specific power under Section 17A (1) power of superintendence and control over the Tribunals is given in order to supervise the functioning of the Debts Recovery Tribunals. It is an administrative power which 4 M.A. Diary No. 593 of 2021 is further clear from Section 17A Sub section (1A) wherein general power of superintendence and control was further defined to the extent that Chairperson may direct the Tribunals to furnish any such form; information relating to pending cases, disposal, filing of new cases or other information which is necessary. Chairperson may also convey meetings with the Presiding Officers periodically to review their performance. It is an administrative power which is given in order to have effective control over the functioning of Tribunals. This administrative power in no way can be equated with the revisional jurisdiction akin to Section 115 of C.P.C.

9. Learned Counsel for Applicant has placed reliance upon a judgment passed by the The Hon'ble Apex Court in the matter of L. Chandra Kumar -vs- Union of India & Others, reported in (1997) 3 SCC 261 wherein in

para 93 it is held:

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals, will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, 5 M.A. Diary No. 593 of 2021 as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

10. Jurisdictional powers of the Tribunals have been defined by the The Hon'ble Apex Court. There could not be any dispute on this point.

11. Application moved under Section 17A of the Act read with Section 22 of the DRAT (Procedure) Rules could not be held to be maintainable. Power of superintendence can, by no imagination be stretched to an extent of invoking revisional power by the Appellate Tribunal, which

is not conferred by the Act. Rule 22 is also not attracted for exercising the revisional power by the DRAT. Rule 22 empowers the Appellate Tribunal for making such orders or issue such directions which are necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. This provision nowhere empowers Appellate Tribunal to exercise the revisional jurisdiction.

12. So far as maintainability of the Misc. Application is concerned, application is made under Section 17A of the Act read with Rule 22 of the Debts Recovery Appellate Tribunal (Procedure) Rules. Section 17(A) specifically empowers the Chairperson of the Appellate Tribunal to exercise general power of superintendence and control over the Tribunals within his jurisdiction, including the power of supervising the work and recording of Annual Confidential Report of the Learned Presiding Officers. Sub-section 1(A), as amended from 1.9.2016, further extends the general power of superintendence and control over the Tribunals under the jurisdiction of the Chairperson. Chairperson may direct Tribunals to furnish required information with regard to number of cases disposed of etc. Chairperson can also convene meetings of the Presiding Officers periodically to review their performance. Rule 22 of the Debts Recovery Appellate Tribunal (Procedure) Rules provides issuance of orders or directions by the Appellate Tribunal to give effect to its order or prevent abuse of its 6 M.A. Diary No. 593 of 2021 process to secure the ends of justice. Sections 17A and Rule 22, as already referred to above, clearly demonstrate that the power, which was given to the Chairperson of the Appellate Tribunal by the amended Act of 1 of 2000, is for general superintendence for smooth functioning of the Tribunals working under the jurisdiction of Appellate Tribunal. This power of general superintendence relates to the administrative control over the Tribunals; this is the reason that Appellate Tribunal has been empowered to call for different statements and other information from the Tribunals, even the Annual Confidential Reports of the Presiding Officers are recorded by the Chairperson of the Appellate Tribunal. This administrative power of general superintendence can in no way be extended in the judicial matters.

13. So far as judicial process is concerned, Section 30 provides for appeal against the orders of Recovery Officer. If any order is passed by any authority in a judicial proceedings and there is option for filing an appeal, provided by the Act, aggrieved party will be at liberty to exercise that option. But a judicial order cannot and should not be set aside or overturned in exercise of the administrative powers.

14. Learned Counsel for Appellant made certain submissions on the merit of the matter which could not be dealt with as the application, filed under Section 17A of the Recovery of Debts Due To Banks And Financial Institutions Act, 1993 read with Section 22 of the DRAT (Procedure) Rules, 1994, itself is not maintainable.

13. On the basis of the discussions made above, I am of the view that the Misc. Application is liable to be dismissed as not maintainable. Misc. Application, being Misc. Application Diary No.593 of 2021, is dismissed as not maintainable. Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT. File be consigned to Record room. 7M.A. Diary No. 593 of 2021 Order dictated, signed and pronounced on this the 14th day of February, 2023 in open Court.