

Setting aside of DRT order for non-recording of reasons and remanding matter back to DRT for fresh consideration: DRAT KOLKATA

UCO Bank & Anr

...Appellant

Eastern Timber Commo Trade Pvt. Ltd. & ors.

...Respondent

Case No: Appeal No. 05 of 2021

Date of Judgement: 20th June, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Arjun Mukherjee, Mr. S.N. Patra Bhatta, Advocates.

For Respondent: Ms. Jayati Chowdhury, Ms. Mandobi Chowdhury, Ms. Ranjana Seal, Advocates.

Facts:

Appellant banks had given several credit facilities to Respondent 1 company. Respondents 2 and 3 were directors of the company. Loan account became NPA. Banks initiated SARFAESI proceedings and put the secured property for auction. Respondents filed an application before DRT challenging the auction. The DRT allowed the application without giving any reasons. Aggrieved by the DRT order, banks have filed this appeal.

Arguments by Banks:

The impugned DRT order is arbitrary as no reasons have been assigned

while allowing the Respondents' application. Non-recording of reasons makes the order unsustainable in law.

Arguments by Respondents:

The property put to auction by the banks is an agricultural land on which SARFAESI proceedings cannot be initiated. Therefore, DRT has rightly set aside the auction sale.

Observations and Decision by DRAT:

It is a fundamental principle that courts and tribunals must assign cogent reasons while rendering decisions. Non-recording of reasons makes the order arbitrary and violation of principles of natural justice. The Latin maxim "cessante ratione legis cessat ipsa lex" means that when the reason for law ceases, the law itself ceases. Thus, reasons are the soul of any decision and without reasons the decision cannot sustain. In the present case, the DRT allowed the Respondents' application without recording any reasons. In view of the settled position of law, such an order cannot be sustained. Therefore, the impugned DRT order is set aside and matter is remanded back for fresh consideration in accordance with law after hearing both sides.

Key Legal Provisions and Cases:

Reasoned decisions are hallmark of rule of law and constitutional governance [Para 32.5 from Brijmani Devi case].

Reasons ensure fairness and accountability and act as check against arbitrary exercise of power [Para 32.2 from Brijmani Devi case].

Reasons are virtually a component of principles of natural justice that have to be complied by courts and tribunals [Para 32.3 from Brijmani Devi case].

Latin maxim "cessante ratione legis cessat ipsa lex" means when reason for law fails, the law itself fails [Para 34 from Brijmani Devi case].

Conclusion:

In view of the elaborate enunciation of applicable legal principles regarding recording of reasons by judicial/quasi-judicial authorities, the impugned unreasoned DRT order could not be sustained.

The matter has been rightly remanded back to DRT for fresh

adjudication in accordance with law. This will serve interests of justice and rule of law.

Case Laws Referred:

No case laws were referred in the order.

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Full Text of Judgment:

1. Heard the Learned Counsel for the parties and perused the record. Instant appeal has arisen against an order dated 25th February, 2020 passed by Learned Presiding Officer DRT-1 Kolkata in I.A. No. 363 of 2002 filed in S.A. No.152 of 2011 (Eastern Timber Commo Trade Pvt. Ltd. & Ors Vs. UCO Bank & Ors) whereby the Ld. DRT-1 allowed the SARFAESI Application. Feeling aggrieved, Appeal is preferred by the Bank. As far as facts are concerned, they are not very much in dispute wherein Applicant No. 1 namely Eastern Timber Commo Trade is a private Limited Company who is the borrower and is engaged in the business of timber trading and such other allied products and the Applicant No. 2 and 3 are the Directors of the Company. Several credit facilities were availed by them from the Bank. Payments became irregular and the loan was classified as NPA. SARFAESI proceedings were initiated by the Bank. Challenging the sale SARFAESI Application was filed by the Applicant which was decided by the Ld. DRT by the impugned order. On bare perusal of the impugned order will show that this order is nothing but an arbitrary exercise of the power by the Ld. Debt Recovery Tribunal. What are the ingredient of a judgment is well discussed in the case of Brijmani Devi Vs. Pappu Kumar(2022) 4 SCC 497 wherein it was held that –

“On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasijudicial authority, it would be useful to refer to a judgment of this Court in Kranti Associates (P) Ltd. v. Masood Ahmed Khan, wherein after referring to number of judgments this Court summarised at para 47 the law on the point. The relevant principles for the purpose of this case are

extracted as under:

32.1. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

32.2. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

32.3. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

32.4. Reasons have virtually become as indispensable a component of decision-making process as observing principles of natural justice by judicicia quasi-judicial and even by administrative bodies.

32.5. The ongoing judicial trend in all countries committed to rule law and constitutional governance is in favour of reasoned decisions base on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

32.6. Judicial or even quasi-judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve o common purpose which is to demonstrate by reason that the relevant fact have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

32.7 Insistence on reason is a requirement for both judicial accountability and transparency.

32.8. If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

32.9. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision making process.

32.10. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the Judges and decision-makers less prone to errors but also

makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor¹⁹)

32.11. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part "due process".

"34. The Latin maxim "cessante ratione legis cessat ipsa lex" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself", is also apposite."

Fundamental principle for writing a judgment or recording a finding is that the judicial authority should assign the reasons by arriving at a finding. Non recording of reasons is an arbitrary exercise of powers which could not be accepted in the law. In the present case, the Ld. DRT without recording any reasons held that the property mentioned in the notice under Section 13(2) is agricultural land and could not be put to auction. No reasons are recorded on this point. Having considered the submissions and on the basis of reasons mentioned, I am of the view that the impugned judgment cannot sustain and is liable to be set aside. It should be remanded to the DRT to decide the matter afresh in the light of observations made in the body of the judgment in accordance with law. Accordingly, Appeal deserves to be allowed.

Appeal is allowed. Order/ judgement dated 25th February, 2020 is set aside. The matter is remanded to the Ld. DRT to decide it afresh in the light of observations made in the body of judgment in accordance with law after affording an opportunity of hearing to the parties.

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 June, 2023.