IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

(Appeal No. 67 of 2018)
(Arising out of O.A. No. 89 of 2017 in DRT-III Kolkata)

THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA

CHAIRPERSON

ICICI Bank Limited
(i) Address of the Appellant:
ICICI Bank Tower, Near Chakli Circle
Old Padra Road, Vadodara, 390007, Gujarat
(ii)Address of the regional office
3A, Gurusaday Road, P.S. Karaya,
Kolkata -700019

…Appellants

-Versus-

1. Asha Memorial Trust being represented by its Chairman, Mr. Janaki Ballava Padhi, Plot No. 1, Satyanagar Bhubaneshwar -7751007.

2/1 Ms. Soumya Padhi, Village: Nayagarh, Police Station: Nayagarh, District: Nayagarh, Orissa

2/2 Ms. Snighdha Padhi, Village: Nayagarh, Police Station: Nayagarh, District: Nayagarh, Orissa:

3. Ms. Lusy Mohapatra, Plot No. 55, Basanta Bihar, Brahmeswar Patna, Bhubaneshwar, Odisha-751002.

4. Ms. Kabita Mohapatra, Plot No. 55, Basanta Bihar, Brahmeswar Patna, Bhubaneshwar, Odisha-751002.

5. Mr. Gouranga Behera, Plot No. 101, Satya Nagar, Bhubaneshwar, Orissa -751007.

6. Ms. Pratima Das, Plot No. A/37, Saheed Nagar, Bhubaneshwar, Orissa-751007

7. Mr. Basudev Patnaik, 53, Basanta Bihar, Brahmeswar Patna, Bhubaneswar, Orissa-751002.

8. Mr. Kusanath Das, Betira, PO. Mareigaon, Basantia, Keonjhar, Orissa -758083.

9. Mr. Ganeswar Padhi, Plot No. 45/3690, Cuttack Sahar, Unit-13, Chandini Chowk, Cuttack, Orissa-753002

10. Mr. Manas Ranjan Mishra, Plot No. 852, Kunja Patna Sahi, near Gosagareswar Chowk, Rath Road, Old Town, Bhubaneswar Orissa-751002.

11/A Mr. Siba Sankar Patra, Plot No. 2929/4235, Gouri Nagar, P.O. Bhubaneswar, P.S. Shree Lingaraj, Dist- Kharda, Orissa -751002

11/B Ms. Hemangiri Patra Plot No. 2929/4235, Gouri Nagar, P.O. Bhubaneswar, P.S. Shree Lingaraj, Dist- Kharda, Orissa -751002

12. Mr. Joginath Rath, Plot No. 1789, Kapila Prasad, Bhubaneswar, Orissa-751020

13/A Mr. Surya Kanti Patri, Plot No. 975, Bamkual, Bhubaneswar, Dist. Khurda;
13/B Mr. Prabin Kumar Patri, Plot No. 925, Bamkual, Bhubaneswar, Dist. Khurda;
13/C Mr. Prabir Kumar Patri, Plot No. 925, Bamkual, Bhubaneswar, Dist. Khurda;
14. Mr. Iswar Chandra Sahoo, Plot No. 697, Nayapalli, Bhubaneswar, Orissa-751012
15. Mr. Buli Sahoo, Plot No. 2E/579, Sector 11, CDA, Cuttack, Orissa-751014

... Respondent

Counsel for the parties

Mr. A. Guha, Learned Counsel for the Appellant

Mr. R. C. Prusti, Learned Counsel, Ms. Smriti Das, Learned Counsel for the Respondent No. 1,2/1, 2/2, 3 & 4.

Mr. Ranjan Kr. Rout, Learned Counsel for the Respondent No. 9

JUDGMENT : On 3rd March, 2023

THE APPELLATE TRIBUNAL :

Heard the Learned Counsel for the parties on I.A. No. 100 of 2023. Application for deletion of name of Respondent No. 7 along with objections.

Opposition filed by the Respondent No. 1,2/1, 2/2, 3 & 4. Perused the record.

2. Learned Counsel for the Appellant submits that the name of the Respondent No. 7 be deleted from the array of the parties as no surviving legal heirs are there. He has placed reliance upon the letter dated 06.09.2022 of Lusy Mahapatra who is Respondent No 3 wherein he has informed that Sarojini Jagdev. wife of Respondent No. 7, Sri Basudev Patnaik died on 31.07.2019 while Respondent No. 7 Sri Basudev Patnaik died on 07.09.2020. Hence, at the time of death of Respondent No. 7, there was no surviving legal heirs of Respondent No. 7.

3. Learned Counsel for the Respondent Nos. 1,2/1, 2/2, 3 & 4 vehemently opposed the submission and submits that in view of the opposition filed by Lusy Mahapatra, one son and daughter of Respondent No. 7 are alive. The Appellant has not made any sincere effort to find out their names or addresses. Reliance is placed upon Para No. 6 (ii) of the opposition. At the very outset, it is to be observed that this opposition could not legally be taken into consideration as the verification clause itself did not mention the paragraph numbers of the affidavit which have been verified by the Respondent.

4. As far as details of son and daughter of Respondent No. 7 are concerned, that too have not been provided by the Respondent No. 3. Further, all the statements made regarding Appellant that they have not visited the residence of Respondent No. 7 or not made any effort to find out the details of son or daughter of Respondent No. 7, could not be

accepted as to on what basis of the assertions made by the Respondent No. 3 in her affidavit are not mentioned. Hence, this ground could not be considered.

5. Learned Counsel for the Appellant has placed reliance upon Delhi Development Authority versus Diwan Chand Anand and others (2022) 10 SCC wherein the Hon'ble Apex Court held in Para 31 and 32 that:

31. Thus, as observed and held by the Court in Venigalla Koteswaramma Case (2021) 4 SCC 246

31.1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

31.2. If there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

31.3. Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. Where within the time limited by law no application is made under sub-rule (1) of Order 22 Rule 4, the suit shall abate as against the deceased defendant.

31.4. The provision of Order 22 shall also apply to the appeal proceedings also.

32. As observed and held by this Court in the aforesaid decisions while considering whether the suit/ appeal has abated due to non-bringing the legal representatives of plaintiffs/ defendants or not, the Court has to examine if the right to sue survives against the surviving respondents. Thereafter the appellant Court has to consider the question

whether non bringing the legal representatives of some of the defendants, the appeal could have proceeded against the surviving respondents. Therefore, the Appellant court has to consider the effect of abatement of the appeal against each of the Respondents in case of multiple respondents.

6. Hence, in view of the law laid down by the Hon'ble Apex Court in Delhi Development Authority (supra) as well as the fact that as per the Appellants no surviving legal heir of Respondent No. 7 is there, accordingly, I find force in the Application. It is liable to be allowed. Accordingly, I.A No. 100 of 2023 is allowed. With the consent of the Learned Counsel for the parties, the name of Respondent No. 7 be deleted from the array of the parties.

7. Heard the Learned Counsel for the parties on Appeal. Instant appeal has arisen against an order dated 19th March, 2018 passed by Ld. DRT-3 Kolkata in O.A. No. 89 of 2017 whereby it was held that the Ld. DRT-3 Kolkata has no jurisdiction to entertain the O.A. and accordingly, returned the papers to Appellant for filing the same before DRT Cuttack.

8. Feeling aggrieved, Appellant preferred the Appeal. It is an undisputed fact that the Appellant Bank sanctioned the loan to Asha Memorial Trust Respondent No. 1 wherein the Respondent No. 2 to 5 were the guarantors. In Para 3 of the O.A. under the jurisdiction clause it is stated that:

" the cause of action for institution of this application has arisen at ICICI Bank House, 3A Gurusaday Road, P.S. Karaya, Kolkata -700019, the Eastern regional Office of the Applicant, which lies within the territorial jurisdiction of this Learned Tribunal."

9. The initial objection was raised by the Respondent before the Ld. DRT regarding the jurisdiction of the Tribunal on the ground that no cause of action arose at Kolkata rather, loan was sanctioned at Bhubaneswar. Title deeds were deposited at Bhubaneswar. Secured assets are also situated at Bhubaneswar. Hence, DRT Cuttack has jurisdiction over the matter. Ld. DRT came to the conclusion that since loan was disbursed at Bhubaneswar branch and not in Kolkata, hence all the cause of actions arose at Bhubaneswar. Accordingly, DRT Kolkata has no jurisdiction over the matter.

10. Learned Counsel for the Appellant has placed reliance upon Section 19 (1) (c) of the Recovery of Debts and Bankruptcy Act 1993 and submitted that part of the cause action arose at Kolkata. Hence, Appellant filed the O.A. at DRT -3 Kolkata.

11. Per contra, Learned Counsel for the Respondent submits that no part of cause of action arose at Kolkata rather, cause of action arose at Bhubaneswar. It is further submitted that the Respondent is a widow lady. In order to harass her, proceedings are being initiated at Kolkata.

12. I have gone through the record. Learned Counsel for the Appellant has placed reliance upon loan facility agreement which was executed between borrower and ICICI Bank Ltd. wherein the address is mentioned as Corporate office at ICICI Bank Towers Bandra Kuarla Complex, Mumbai

400051/ regional office at 2B, Gorky Terrace, Kolkata - 700017.

13. Further, deed of hypothecation was executed wherein the same address is mentioned. A declaration was given by Mr. Janaki Ballava Padhi on 16th November, 2011 which was declared at Kolkata. It is specifically mentioned there below the signature Janaki Ballava Padhi " sign at Kolkata". In the memorandum of Entry Constructive Delivery it is stated that on 16th November, 2011 Sri Janaki Ballav Padhi of Asha Memorial Trust attended the Regional office of ICICI Bank Ltd. at 2B, Gorky Terrace Kolkata 700017. It supports the declaration made by him as referred above. Further, another declaration was made on 25th November, 2011 in the form of notarized affidavit which was also notarized at Kolkata.

14. Learned Counsel for the Respondents have placed reliance upon the documents of loan which were executed at Bhubaneswar but there is no denial about the documents referred to above which have been executed at Kolkata. It shows that no doubt, the property is situated at Bhubaneswar. Respondents are also residing at Bhubaneswar. Some of the documents of loan were also executed at Bhubaneswar but at the same time part of the cause of action arose at Kolkata after executing the document at Kolkata.

14. Section 19(1) (c) provides that when a Bank has to recover any debt from any person, it may make an

application to the Tribunal within the local limits of whose jurisdiction the cause of action wholly or in part arises. Words "wholly or part" is relevant, Learned DRT failed to appreciate this provision while passing the impugned order. Part of the cause of action had arisen at Kolkata. Accordingly, Appellant is well within its rights to file the O.A. at Kolkata. Impugned order suffers from material illegality and is liable to be set aside. Accordingly, Appeal deserves to be allowed.

ORDER

Appeal is allowed. The impugned order dated 9th March, 2018 passed by Ld. DRT-3 Kolkata is set aside.

DRT III Kolkata has territorial jurisdiction to entertain and try the O.A. filed by the Applicant Bank. Accordingly, DRT III Kolkata should decide the O.A. No. 89 of 2017 in accordance with Law.

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 3rd day of March, 2023.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 3rd March, 2023
7/tp