

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No.63 of 2022

(Arising out of IA 70 of 2022 in O.A. No. 1201 of 2013 – DRT-2, Kolkata)

**THE HON'BLE JUSTICE SHRI ANIL KUMAR SRIVASTAVA,
CHAIRPERSON****28.04.2023**

State Bank of India, having its corporate office at State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai – 400021 and carrying on business at Stress Assets Management Branch-I, Nagaland House, 8th floor, 11 and 13, Shakespeare Sarani, Kolkata – 700071.

... Appellant

Vs.

1. M/s. A.K. Property Pvt. Ltd. & Ors. having its office at Village Kalikakhali, PO. Math Chandipur, PS. Chandipur, Dist. Purba Medinipur, PIN – 721659.
2. Shri Ashok Kumar Bhuinya, sole proprietor of M/s. A.K.Property Pvt. Ltd.
3. Sri Ashis Bhuinya @ Ashis Kumar Bhuinya,
4. Sri Santosh Kumar Bhuinya,
5. Smt. Tanusri Bhuinya.

Respondent no. 2 to 5 at Village Kalikakhali, PO. Math Chandipur, PS. Chandipur, Dist. Purba Medinipur, PIN – 721659.

..... Respondents

For Appellant : Mr. Debasish Chakraborty, Learned Counsel with Ms. Sarmistha Pal, Learned Counsel and Mr. Snehasish Chakrabarti, Learned Counsel.

For Respondent: Mr. Joy Saha, Learned Senior Counsel with

Mr. Debasish Karmakar, Learned Counsel.
Mr. Subhojit Saha, Id. Counsel.
Mr. Arya Nandi, Id. Advocate.
Mr. Pariksit Lakhotia, Id. Advocate.

JUDGEMENT

THE APPELLATE TRIBUNAL :

Instant appeal arises against an order dated 11.04.2022 passed by learned DRT – 2, Kolkata in I.A. No. 70 of 2022 in O.A. No. 1201 of 2013 whereby learned DRT gave option to the respondents to approach appellant bank within 15 days from the date of the order for settlement as prayed for and the bank was directed to consider the proposal and to revise/modify the OTS proposal as per their terms and conditions and settle the matter. It was further held that Section 31(i) of the SARFAESI Act of 2002 (hereinafter referred to as 'Act of 2002') has no relevance in this matter. Feeling aggrieved appellant bank has preferred this appeal.

2. As far as facts of the matter are concerned, appellant bank at the request of respondent no.1, M/s A. K. Properties, sanctioned various credit facilities from the middle of 2007 till 30.12.2010 for a total amount of Rs.1595.00 Lakhs. Relevant documents were executed by respondent no.1. Respondent no. 3 and 4 namely Sri Ashis Bhuinya and Sri Santosh Kumar Bhuinya have jointly and severally agreed to become guarantor for the refund of the loan amount. They further agreed to become

principal debtors jointly and severally and they were not entitled to waive their right under the provisions of the Indian Contract Act, 1872. Equitable mortgage of 17 immovable properties was created in favour of the appellant bank by depositing title deeds, details of which are given below :

Respondent no.4 Santosh Kr. Bhuniya deposited one title deed being No. 6025 of 1970.

Respondent no. 3 Ashis Kr. Bhuniya deposited two title deeds being no. 3039 of 2009 and 3050 of 2008;

Respondent no. 2 Ashok Kr. Bhuniya deposited 14 title deeds being no. 3956 of 1998 ; 1759 of 2005 ; 1760 of 2005 ; 1762 of 2005 ; 1758 of 2005 ; 2046 of 2005 ; 2043 of 2005 ; 2045 of 2005 ; 2044 of 2005 ; 452 of 2008 ; 3038 of 2009 ; 2149 of 2005 ; 453 of 2008 and 445 of 2008.

3. Further, in order to confirm creation of equitable mortgage respondent borrower deposited aforesaid 17 title deeds keeping with the enhancement or variation of the limit of the existing credit facilities, respondent no.2, Ashis Kr. Bhuniya, for himself and on behalf of the respondent no.4 executed loan confirmation documents on different dates from 17.03.2006 to 10.01.2011. Thereafter, appellant bank allowed respondent no.1 to open various loan accounts in the name of respondent no.1 in the Tamluk Railway Station Branch in usual course of business, which are as follows :

Cash Credit	Rs.1100.00 lakhs
Term Loan (existing)	Rs. 45.00 lakhs
Term Loan (fresh)	Rs.150.00 Lakhs
Bank Guarantee	Rs.300.00 Lakhs

Term loan of Rs.45.00 lakhs was closed. On the request of respondent no.1 two term loans of Rs.91.74 lakhs and Rs.58.26

lakhs were sanctioned. Subsequent thereto accounts were operated by respondent no.1 and availed aforesaid credit facilities with adequate cooperation of the appellant bank. When the loan accounts became irregular it was classified as NPA in accordance with the directives of the Reserve Bank of India. Necessary steps under the Act of 2002 were initiated.

4. Respondents have confirmed and acknowledged their indebtedness upto Rs.13,47,60,131/- as on 31.01.2012.

5. An Original Application u/s 19 of the Recovery of Debts & Bankruptcy Act, 1993 (hereinafter referred to as 'RDB Act') was filed by the bank claiming a sum approximately Rs.14,75,37,016/- including interest compounded upto 03.09.2013 along with further interest till realization along with other consequential relief. On or about 12.10.2020 appellant bank offered a scheme of OTS of NPAs and AUCAs with outstanding of above Rs.20.00 lakhs and upto Rs.50.00 lakhs as on 31.03.2020 being SBI OTS 2020. Said scheme provides that it will be non-discretionary and non-discriminatory; the last date of receipt would be 23.11.2020 and sanction is to be accorded and conveyed within seven days from the date of receipt of application and last date of sanction under the scheme would be 30.11.2020. Offer of application has to be floated within seven days of receipt of application. The scheme stipulates that the realizable value of the securities as per the latest valuation report should be considered for calculating secured portion and

unsecured portion of outstanding in cases where latest value are not available. The valuation report should not be more than three years old as on 31.03.2020. It is further provided that the value of SARFAESI non-complaint securities namely, agricultural land will be treated as "NIL". (emphasis supplied)

6. Respondent's case is that they called upon the appellant to correctly calculate the OTS amount in terms of the scheme. Despite letter dated 02.11.2020 and 05.11.2020 appellant did not respond. On 12.11.2020 appellant bank informed the respondent that OTS amount is rightly calculated and called upon them to agree to the proposal and communicate in response to earlier letter No. SAMB 20-21/59 dated 20.10.2020. In response to it, letter dated 13.11.2020 was sent by the respondent. Respondent called upon certain information from the Bank and further communicated that they are willing to settle their dues and accept the proposal for settlement as contained in the Bank letter dated 20.10.2020 without prejudice to their reservation in respect of OTS amount as stated in response letter dated 02.11.2020, 05.11.2020 and 13.11.2020.

7. Respondent no.1 filed a Writ Petition being No. WPO 376 of 2020 alleging that despite the security given by the petitioner on mortgage being comprised agricultural land, substantially comprised of water bodies as well, the respondent bank has assessed the same for the purpose of valuation on the premise of certain Conversion Certificates obtained in the meantime. It is

submitted despite the existence of such Conversion Certificates, land in question retained its character as an agricultural land. As such, the basis of the valuation ought to be the present user of the land and its character, and not the proposed user of the same. The Writ Petition was dismissed by Hon'ble Single Judge of the Calcutta High Court on 27.11.2020.

8. Feeling aggrieved respondent preferred an appeal before the Division Bench of Calcutta High Court being APO No. 149 of 2020 which was decided on 23.11.2021 and the matter was relegated to the DRT to adjudicate the issue involved in the matter in respect of the nature of the land.

9. Pursuant to the said order, I.A. No. 72 of 2022 arising out of O.A. was filed with the prayer to declare all the properties except Dag No. 1126 as agricultural or pisciculture in nature and further direction to the bank to revise further the OTS calculation in terms of the SBI OTS 2020 scheme. Further, consequential reliefs were also sought. Opposition to the I.A. was filed. Thereafter, learned DRT passed the impugned order.

10. Respondent debtor filed an application being I.A. 70 of 2022 before the learned DRT in O.A. 1201 of 2013 for declaration that all the mortgage property of the debtor except DAG No. 1126 are either agriculture and pisciculture in nature. Further stated that Bank be directed to revise the OTS amount in accordance with terms and conditions of SBI OTS 2020 and direction upon the bank to refund the amount of Rs.2,78,01,616/-.

11. Application was moved inter alia on the ground that OTS was launched by the Bank. O.A. 1201 of 2013 was filed by the respondent debtor wherein it is stated that on different dates an amount of Rs.96.00 lakhs was paid by the bank. Under the said scheme of OTS it was non-discretionary and non-discriminatory wherein it is stated that security of agricultural land would be treated as 'nil'. Bank informed the respondent vide letter dated 20.10.2020 that OTS amount to be deposited was Rs.3,80,38,394.80. The respondent was ready and willing to accept the OTS amount subject to correct calculation of the amount on the ground that all the properties mortgaged with the bank situated on agricultural land save and except the land contained in Dag No. 1126 measuring about 7.5 decimal. OTS amount should have been Rs.1,27,25,745/- and not Rs. 3,80,38,394.80.

12. Letter dated 22.11.2020 followed by letter dated 06.11.2020 was sent by the respondent to the bank for correction of the amount, but no positive response was received from the bank. On 12.11.2021 it was replied by the bank that amount was correctly calculated. Again respondent debtor vide letter dated 13.11.2020 requested the bank to correctly calculate the amount. It is further stated that in the letter dated 20.10.2020 it is provided that S.A. applicant would be required to deposit a minimum of 5% / 15% of the OTS amount. The deposit of 15% is with regard to the willful defaulter only. Respondent borrower

never received any notice or intimation that they are willful defaulter in terms of Master Circular issued by RBI dated 01.07.2015. However, when the respondent borrower visited the bank to deposit the OTS amount they were told that they being willful defaulter has to deposit 15% of the OTS amount. Letter dated 13.11.2020 was sent to the bank to call for certain information regarding willful defaulter. Despite repeated request bank failed to disclose the OTS amount which was assessed without keeping in view that mortgaged land being agricultural and pisciculture in nature which is exempted u/s 31(i) of the SARFAESI Act, 2002.

13. It is represented by the respondent borrower that the appellant bank should be directed to reimburse to the petitioner an amount Rs. Rs.2,78,01,616/- and no due certificate confirming complete settlement of the dispute between the parties be issued. Further a declaration be made that all the mortgage properties are either agricultural or pisciculture in nature except Dag No. 1126.

14. Objection against the I.A. 70 of 2022 filed by the bank *inter alia* on the ground that I.A. filed in O.A. 1201 of 2013 is not maintainable. The ground regarding the land being agricultural or pisciculture in nature was taken by the borrower in S.A. 775 of 2013 which was dismissed as the I.A. was dismissed on 06.08.2014 being not maintainable. No reliance can be placed on the report of the Special Officer, Shri Kamal Chakraborty, filed in

S.A. 775 of 2013 as the said S.A. was dismissed without going into the correctness of the report. Objection being Exception Report dated 12.04.2021 against the report of the Special Officer appointed by the Hon'ble Division Bench of Calcutta High Court was filed was pending, as such, no reliance could be placed upon the report of the Special Officer without disposing of the objection.

15. Another S.A. being no. 1160 of 2014 is pending before DRT-2 Kolkata wherein same question as to whether the land is agricultural or pisciculture was involved. This issue is not to be decided in the O.A. 1201 of 2013.

16. In the conversion order passed by the Land & Land Reform Officer about conversion of the land from agricultural to non-agriculture it was specifically stated that the land would not be used for any purpose other than it is allowed. Borrower gave intimation to the bank that land would be used for commercial purpose, but on enquiry on report it was found that lands are only agricultural or "Jal", but would be converted as non-agricultural land or 'Bastu' or Commercial. Now respondent borrower is estopped from taking the plea that land continued to be agricultural land. In that case it is miss-representation and fraud on the part of the borrower.

17. OTS amount of the borrower was calculated by the bank. Borrower has unconditionally accepted the offer vide letter dated 21.11.2020 and deposited the amount of Rs.60,01,000/- as token

of acceptance, so the contract was entered upon between the parties. Both the parties are bound by the terms and conditions of the sanction letter. Hon'ble Calcutta High Court has not recorded any finding regarding the matter in issue rather relegated the matter to DRT with direction to make an appropriate application which should have been filed in the form of S.A. which is pending on the same ground.

18. Conversion certificate was filed by the borrower. No reliance can be made upon the certificate issued by the local Panchayet regarding nature of land in dispute.

19. On the backdrop of this set of evidence now the core question to be decided is as to whether the secured asset falls within the definition of "agricultural land" where Section 31(i) of the Act of 2002 would be applicable or not ?

20. At the very outset it would be pertinent to mention that learned DRT had recorded a wrong finding that Section 31(i) of the Act is not applicable in the matter, although learned DRT has discussed on merit on the point as to whether secured asset falls within the definition of agricultural land or not? Learned DRT has also recorded finding that the secured assets, except plot no. 1126 and 1137 are agricultural land and accordingly passed impugned order. Now it is to be looked into as to whether finding of the learned DRT requires any intervention of this Tribunal?

21. Writ Petition WPO 376 of 2020 was filed by the respondent praying for reliefs in order to revise further the OTS amount

made earlier which was dismissed by the Hon'ble Single Judge of Calcutta High Court on 27.11.2020. Order of Single Judge was challenged before the Division Bench of the Hon'ble Calcutta High Court wherein Hon'ble Division Bench was pleased to pass an order directing the respondent (borrower) to continue to make payment in terms of the OTS scheme without prejudice to the right of the bank authority and directed to maintain a separate account of such payment. Mr. Gourav Das, Advocate, was appointed as Special Officer by the Hon'ble Division Bench to visit the location of the property in question and to submit report about the nature of land as well as activities being carried out in the said land. Learned Special Officer submitted his report on 04.03.2021. Appellant bank filed an exception to the said report. In the judgement of the Division Bench of the Calcutta High Court matter was relegated to learned DRT to decide the nature of land.

22. As far as facts are concerned it is admitted position that O.A. No. 1201 of 2013 was filed by the bank before the DRT. It is also not in dispute that appellant bank has issued letter dated 20.10.2020 wherein bank admitted a sum of Rs.3,80,38,394.88 under OTS scheme against the outstanding dues of Rs.14,75,37,016/-. Prior to it, borrower respondent filed S.A. No. 775 of 2013 challenging the SARFAESI action initiated by the bank wherein a Special Officer was appointed for spot visit to ascertain the nature of the land. Report was submitted by the Special Officer, Sri Kamol Chakraborty, before the DRT wherein

no objection against the report was filed by the parties. Subsequently, S.A. 775 of 2013 was disposed of on a technical ground of maintainability. It is also not in dispute that S.A. 1260 of 2014 was also filed by the respondent which is still pending.

23. As far as legal propositions are concerned in the case of **ITC Ltd. Vs. Blue Coast Hotels Ltd & Ors.** [(2018) 15 SCC 99] it was held by the Hon'ble Apex Court considering the provision of Section 31(i) of the Act in Para 36 of the judgement that :

"The purpose of enacting Section 31(i) and the meaning of the term "agricultural land" assume significance. This provision, like many others is intended to protect agricultural land held for agricultural purposes by agriculturists from the extraordinary provisions of this Act, which provides for enforcement of security interest without intervention of the Court. The plain intention of the provision is to exempt agricultural land from the provisions of the Act. In other words, the creditor cannot enforce any security interest created in his favour without intervention of the Court or Tribunal, if such security interest is in respect of agricultural land. The exemption thus protects agriculturists from losing their source of livelihood and income i.e. the agricultural land, under the drastic provision of the Act. It is also intended to deter the creation of security interest over agricultural land as defined in Section 2(zf) 36. Thus, security interest cannot be created in respect of property specified in Section 31."

It was further held by the Hon'ble Apex Court in para 38 that :

"Obviously, since no security interest can be created in respect of agricultural lands and yet it was so created, goes to show that the parties did not treat the land as agricultural land and that the debtor offered the land as security on this basis."

24. In **Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer in Charge (Court of Wards), Paigah** [(1976) 3 SCC 864] Hon'ble Apex Court has held that :

"determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case. What is really required to be shewn is the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It is not the mere potentiality, which will only affect its valuation as part of "assets", but its actual condition and intended user which has to be seen for purposes of exemption from wealth Tax. One of the

objects of the exemption seemed to be to encourage cultivation or accrual utilization of land for agricultural purposes. If there is neither anything in its condition, nor anything in evidence it with an agricultural purpose, the land could not be agricultural land for the purpose of earning an exemption under the Act. Entries in revenue records are, however, good prima facie evidence."

25. In **Indian Bank & Anr. Vs. K. Pappireddiyar & Anr.**

[(2018) 18 SCC 252] Hon'ble Apex Court has placed reliance upon the case of Blue Cost Hotel (supra). It was held that "the question as to whether the land is agricultural has to be determined on the basis of the totality of facts and circumstances including the nature and character of the land, the use to which it was put and the purpose and intent of the parties **on the date** on which the security interest was created." (emphasis supplied)

26. In a recent judgement in **K. Sreedhar Vs. M/s. Raus**

Construction Pvt. Ltd. & Ors. [Civil Appeal No. 7402 of 2022 – SLP (Civil) No. 14695 of 2020] decided on 5th January, 2023 Hon'ble Apex Court has placed reliance of the judgement of Blue Cost Hotel and K. Pappireddiyar (supra). It was held that :

"Thus, as per the law laid down by this Court in the aforesaid two decisions, only in a case where the secured property is actually put to use as agricultural land and solely on the basis of the revenue records / Pattadar and once the secured property is put as a security by way of mortgage etc. meaning thereby the same was not treated as agricultural land, such properties cannot be said to be exempted from the provisions of the SARFAESI Act under Section 31(i)."

27. As far as burden of proof is concerned in Para 7.3 of the aforesaid judgement it was held that :

"It was the case on behalf of the borrowers that in view of Section 31(i) of the SARFAESI Act, the properties were agricultural lands, the same were being exempted from the provisions of the SARFAESI Act, the burden was upon the borrower to prove that the secured properties were agricultural lands and actually being used as agricultural lands and/or agricultural activities were going on."

Both the learned counsel for the appellant as well as respondents have placed reliance upon the judgement in the case of K. Sreedhar (supra).

28. In the backdrop of settled proposition of law now it is to be seen as to whether respondents are entitled for taking the benefit of Section 31(i) of the Act.?

29. A scheme for One Time Settlement (OTS) of NPAs and AUCAs with outstanding of above Rs.20.00 lakhs and upto Rs.50.00 crores as on 31.03.2020 (SBI OTS 2020) was launched by the State Bank of India on 12.10.2020. As per content of the scheme it was a non-discretionary and non-discriminatory scheme wherein under the clause 'Valuation of properties' it was especially provided that the value of SARFAESI non-compliant securities, namely, Agricultural land will be treated as Nil. Dispute arose regarding this scheme between the parties.

30. A Writ Petition being No. 376 of 2020 was filed by the respondent before the Hon'ble Calcutta High Court with the relief that a writ of mandamus commanding the respondents to revise the offer of OTS made to the petitioner in accordance with the terms of the SBI OTS 2020 scheme upon valuing the secured assets as nil except Dag No. 1126. Consequential reliefs were also sought. In paragraphs 12, 13 and 14 of the writ petition it is stated that the S.A. No. 775 of 2013 was dismissed as not maintainable by the order dated 06.08.2014. Thereafter S.A. No. 1260 of 2014 was filed for declaring the steps taken under the

SARFAESI Act without jurisdiction and bad in law and for quashing the notices u/s 13(2) and 13(4) and other consequential reliefs. Pending S.A. OTS scheme was launched wherein the proposal was submitted by the respondent and controversy arose. A writ petition was filed and it was decided by the Hon'ble Single Judge of the Calcutta High Court vide order dated 27.11.2020. Against this order appeal was filed before the Hon'ble Division Bench of Calcutta High Court on 23.11.2021 wherein it is observed by the Division Bench as follows:

"The dispute essentially between the parties is in respect of the nature of land. Counsel for both the parties have jointly submitted that the remedy in respect of the dispute raised by the applicant lies before the DRT. Therefore, the appellant should file an appropriate application before the DRT raising the said grievance.

Learned counsel for the appellant has also fairly stated that he is willing to go to the DRT but the observations made by the learned Single Judge will come in his way before the DRT.

Undisputedly, DRT is required to adjudicate the issue involved in the matter in respect of the nature of land on which the OTS will depend. Hence, we dispose of the present appeal granting liberty to the appellant to approach the DRT.

We make it clear that any observation made by the learned Single Judge as also any order passed by this Court during the pendency of the appeal will not come in the way either of the parties in the adjudication by the DRT and the amount which has been deposited by the appellant will continue to be in deposit subject to further orders and adjudication by the DRT. If an application is filed before the DRT, the same will be considered and decided by the DRT as expeditiously as possible preferably within a period of three months from the date of the application."

31. Thereafter, in compliance of the order of the Hon'ble Division Bench of Calcutta High Court I.A. No. 70 of 2022 was filed by the respondent in O.A. 1201 of 2013 with the following prayers :

"Declaration that all the mortgaged properties of the petitioners except Dag NO. 1126 are either Agricultural or Piscicultural in nature ;
The respondents and each of them be directed to correctly calculate and to revise the offer of onetime settlement made to the petitioners in accordance with the terms of the SBI OTS 2020 scheme, upon valuing the secured assets as NIL except Dag No. 1126.

Declaration that the OTS amount under the said scheme cannot exceed a sum of Rs.1,27,25,745/-;

The respondents be restrained by an order of injunction from demanding or accepting from the petitioners any amount in excess of the OTS amount of Rs.1,27,25,745/-;

The respondents be restrained by an order of injunction from proceeding with and/or taking any steps against the petitioners in the recovery proceedings instituted and/or taken by the respondents under the RDDBFI Act and/or under the SARFAESI Act.

Injunction restraining the respondents and each of them and their men servants and/or agents from withdrawing the proposed settlement under the said OTS scheme insofar as the petitioners are concerned.

The respondents be directed to forthwith return and or reimburse the petitioners to the sum of Rs.2,78,01,616/-.

The respondents be directed to forthwith issue too the petitioners the no Dues Certificate confirming the complete settlement of the issues and disputes between the parties.

The respondents be directed to forthwith return all original title deeds and documents of the mortgaged properties to the petitioners.

O.A. No. 1201 of 2013 be disposed of and/or dismissed recording payment of the entire claim of the bank

Declaration that the SBI has no other or further claim against the defendants or any of them.

Ad interim orders in terms of prayers above.

Pas such other or further order or orders direction or directons as Your Lordship may deem fit and proper. "

I.A. was disposed of by the learned DRT by the impugned order.

32. An objection was raised by the learned counsel for the appellant that the application being I.A. 70 of 2022 could not have been filed in the O.A. proceeding. O.A. was filed under the Recovery of Debts & Bankruptcy Act, 1993 under Section 19 for issuing of the Certificate u/s 19(1). Learned counsel further submits that a wrong forum has been chosen by the respondent wherein no declaration as sought by the respondent could be made. It is further submitted that Section 31(i) of the SARFAESI Act deals with the agricultural land. S.A. 1260 of 2014 is pending and application should have been moved in the SA proceeding.

33. Learned Senior counsel for the respondent vehemently argued that the application was moved in compliance of the order

of the Division Bench of Hon'ble Calcutta High Court in O.A. proceeding which was pending. Application was maintainable in the O.A. proceeding.

34. Section 19(1) of the The Recovery of Debts and Bankruptcy Act, 1993 reads as under :

“(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—

(a) The branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being, or

(aa) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises;”

Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.”

35. Section 31(i) of the SARFAESI Act, 2002 reads as under :

“31. Provisions of this Act not to apply in certain cases.-

The provisions of this Act shall not apply to-

(i) any security interest created in agricultural land;”

36. There are no provisions under the Recovery of Debts and Bankruptcy Act, 1993 that agricultural land could not be subjected to the mortgage or Certificate could not be issued in respect of agricultural land. But there is a specific bar u/s 31(i) of the SARFAESI Act, 2002 that provisions of the Act will not be applicable to any secured interest created on agricultural land. Further, under the SBI OTS scheme 2020 it was specifically provided that the value of SARFAESI non-compliant securities namely, agricultural land will be treated as NIL. Hon'ble Division Bench in the judgement has also held that DRT is required to adjudicate the issue involved in the matter in respect of the nature of the land on which the OTS will depend. Accordingly, even Hon'ble Division Bench has not held that the application should have been filed in the O.A. proceeding. When there is no provision for exemption of agricultural land in the Recovery of Debts and Bankruptcy Act, 1993 then definitely the application in compliance of the order of Hon'ble Division Bench of Calcutta High Court should have been filed in the SARFAESI proceeding. The contents of the I.A. 70 of 2022 also shows that the whole exercise relates to the SARFAESI proceeding. Even in Para Y at Page 18 of the I.A. it is stated that a sum of Rs.3,80,38,394.80 was arrived at without considering that the said properties are either agricultural or Piscicultural lands and thereby exempt from the purview of the SARFAESI Act u/s 31(i). Hence, the

application moved by the respondent in the O.A. proceeding was not at all maintainable.

37. In compliance of the order of the Hon'ble Division Bench Special Officer, Mr. Gourav Das, was appointed. Special Officer has submitted his report. Objection in respect of the said Report was filed by the appellant bank before learned DRT. Report of the Special Officer is a piece of evidence subject to confirmation by the learned DRT. The Report should have been confirmed after disposal of the objection filed by the appellant bank. But learned DRT had not dealt with the objection filed by the appellant bank and placed reliance upon the Report without disposing of the objection. The approach is against law. Learned DRT should have disposed of the objection in accordance with the law, thereafter should have placed reliance upon the Report of the Special Officer.

38. A plea is raised that the respondents are willful defaulter, hence, they cannot take advantage of the OTS scheme. This is a relevant issue. It should have been dealt with by the learned DRT, but no finding is recorded on the issue as to whether the respondents are willful defaulter or not. Learned DRT has issued direction for settlement which is against the law.

39. In **State Bank of India Vs Arvindra Electronics Pvt. Ltd.** reported in 2022 LiveLaw SC 908 Hon'ble Apex Court has placed reliance upon the judgement in **Bijnor Urban Cooperative Bank Limited, Bijnor and Others vs. Meenal Agarwal and**

Others reported in (2021) SCC Online SC 1255. Learned DRT has exceeded its jurisdiction by issuing the direction for arriving at the settlement and extending the time for settlement. Such direction should not have been issued by the learned DRT.

40. On the basis of the discussion made above I am of the view that the order under challenge is passed without jurisdiction and the appeal is liable to be allowed.

O R D E R

41. Appeal is allowed. Impugned order dated 11.04.2022 is set aside. However, if the respondents, if so advised, moves an application in compliance of the order of the Hon'ble Division Bench of Calcutta High Court in pending S.A. proceeding, then learned DRT should disposed of the same keeping in view the observations made in the body of the judgement after affording opportunity of hearing to the parties. No order as to costs.

File be consigned to record room.

Copy of the order be supplied to the appellant and the respondents and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 28th day of April, 2023.

(Anil Kumar Srivastava, J)
Chairperson

Dated : 28.04.2023
pkb