IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 113 of 2014

(Arising out of RA No. 01 of 2014 and MA No. 19 of 2014 in DRT-1, Kolkata)

THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

Calcutta Infrastructure Infotech Projects Limited, a Company incorporated under the Companies Act, 1956 having its registered office at 5, Gorky Terrace, Kolkata 700017.

…Appellants

-Versus-

1. ARS Enterprises Pvt. Ltd. a company incorporated under the Companies Act, 1956 having its registered office at 5, Raj Block, Navin Sahadara, Delhi: 110032

2. India Capacitors Limited (now in liquidation), represented by the Official Liquidator, High Court at Delhi having its office at No. A-2, W-2, Curzon Road Barracks, Kasturba Gandhi Marg, New Delhi: 110001.

3. Punjab National Bank, a banking companies (Acquisition & Transferring of Undertaking) Act, 1970 having its branch office at No. 18A, Brabourne Road, Kolkata - 700001

… Respondents

Counsel for the Appellants	Mr. Joy Saha, Learned Senior Counsel with Mr. Debabrata Basu Ray, Mr. Bhaskar Mukherjee and Mr. Srijit Bose, Learned Advocate
Counsel for the Respondent No. 1	Mr. Malay Kumar Ghosh, Learned Senior Counsel with Mr. Nemani Srinivas, Mr. Rajeev Maity and Ms. Kuheli Deb.

JUDGMENT : On 19th October, 2023

THE APPELLATE TRIBUNAL

Instant appeal has arisen against the order passed by learned DRT-1 Kolkata in case No. R.A. 01 of 2014 and M.A. No. 19 of 2014 in T.A. No. 17 of 1994 [ARS Enterprise Pvt. Ltd. Vs. Calcutta Infrastructure Infotech Pvt. Ltd.] whereby learned DRT has allowed the condonation of delay application being I.A. No. 336 of 2014 in filing R.A. No. 01 of 2014. Further, the appellant herein Calcutta Infrastructure InfoTech Project Ltd. was restrained from making any construction on the basis of sanction plan using 2.74 acres of the disputed property as an integral part for availing floor area etc. It was further directed that no ad interim order can be passed in M.A. No. 19 of 2014 unless delay is condoned by the learned Tribunal in filing the MA No. 19 of 2014. Feeling aggrieved by the impugned order, appellant preferred the appeal.

2. As per pleadings of the parties, appellant namely Calcutta Infrastructure InfoTech Projects Ltd. (CIIPL) is neither a borrower nor guarantor nor have any debtor or creditor relationship with the Respondent No. 3, Punjab National Bank, rather he is a purchaser of land measuring 16.46 acres of land in a proceeding arising out of T.A. 14 of 1994.

3. Electric Industries Corporation (EIC), a partnership firm, who purchased the land containing area of 14.86 acres in Mouja Sayedpur, JL No. 12, PS. Behala in the then District

of 24 Parganas. EIC was the borrower of the Punjab National Bank. EIC mortgaged about 22.13 acres of land together with structure thereon and all movables lying at the said premises previously known as 99, Motilal Gupta Road, presently 591A, Motilal Gupta Road, Kolkata as a security for borrowing money. 22.13 acres of land includes 14.86 acres of land. EIC committed default in paying loan amount.

4. Bank filed a Mortgage Suit being Title Suit No. 12 of 1984 against EIC and other guarantors before the 7th subordinate Judge, Alipore. Suit was transferred to 10th Assistant District Judge at Alipur being Suit No. 96 of 1989 for recovery of a sum of Rs.99,82,327.45 where an Officer of the Bank was appointed as Receiver to take possession of movable and immovable property of EIC mortgaged in favour of the Bank.

5. Vide order dated 19.06.2087 passed in the Suit Movable assets of EIC were sold in public auction to one Jaswant Singh who compromised with the Bank and also agreed to pay for the immovable property of EIC for the said 22.13 acres of land. Jaswant Singh was added as defendant in the Suit. Suit was decided on 07.12.2089. Jaswant Singh was directed to pay an amount of Rs.68,76,100/- to the bank. On payment of the amount immovable property of 22.13 acres of land was directed to be transferred in favour of Jaswant Singh.

6. An area of 05.67 acres within 23.13 acres of land was acquired by the State of West Bengal in 1992. Accordingly,

a dispute arose between Jaswant Singh and Bank on the question of executability of the decree. Ultimately, Bank filed an Execution petition being number 01 of 1993.

7. Recovery of Debts Due to Banks and Financial Institutions Act, 1993 came into force in 28.07.1993. Debts Recovery Tribunal was constituted at Kolkata. Hence, the Execution petition was transferred to DRT-1 Kolkata being No. TA 17 of 1994.

8. T.A. 17 of 1994 was originally decided on 29.01.2004. Recovery Certificate was issued. Bank Officer was appointed as a Receiver and was directed to sell the immovable property of EIC i.e. 16.46 acres of land. Appeal No. 12 of 2004 was filed against the order dated 29.01.2004 before the DRAT, Kolkata which was dismissed on 13.02.2004.

9. An application under Article 227 of the Constitution of India was filed by Jaswant Singh before the Hon'ble Calcutta High Court being CO No. 2699 of 2004.

10. Recovery proceedings being RP No. 05 of 2004 were initiated before the Recovery Officer. An amount of Rs. 2.45 crore was deposited by EIC with the Bank and Recovery Application was disposed of. Revisional Application was disposed of on the basis of compromise vide order dated 13.09.2006.

11. Receiver appointed by the Recovery Officer was changed and Sri Jayabrata Basu Ray Advocate was appointed as a Receiver who executed the deed of conveyance in respect of entire 16.46 acres of land in favour

of the appellant on 19.11.2010. Mutation was accordingly done. Appellant is bona fide purchaser of land duly valued. Symbolic and physical possession of 16.46 acres land was handed over to Appellant by the Receiver on 07.11.2009.

12. On 25.10.2013 appellant filed an application before the Recovery Officer for handing over physical possession of the land. On 31.12.2013 pursuant to the order of the Recovery Officer, Receiver made over physical possession of an area of 2.7 acres of land to the Appellant.

13. On 03.01.2014 appellant came to know about the order of Hon'ble Delhi High Court in CA No. 03 of 2014 and CP No. 238 of 1997 dated 02.01.2014 wherein it was ordered that status quo regarding possession to be maintained in respect of 4.74 acres of land which includes 2.74 acres of land.

14. Copy of CA No. 03 of 2014 was served upon the appellant wherein Respondent No. 1 has contended that on 29.08.1961 EIC sold 2.74 acres of land to one India Capacitors Pvt. Ltd. At the relevant time EIC as well as India Capacitors Pvt. Ltd. were under the management of Bharat Ram Charat Ram group. India Capacitors Pvt. Ltd. who was the owner of total land of 2.74 acres in the Mouza Sayedpur, P.S. Behala became a sick industrial undertaking. BIFR vide order dated 23.10.1997 referred to Hon'ble High Court at Delhi for winding up and was wound up by the Hon'ble Delhi High Court on 23.10.1997. Official liquidator Delhi High Court took over the possession of the property on 27th November, 1998. Thereafter, 4.74 acres at premises No.

99, Motilal Gupta Road was sold to one Balaji High Rise Pvt. Ltd for Rs. 7 crore by the official liquidator vide order dated 25.05.2006. Possession was delivered on 27.09.2006. Respondent No. 1 claims to be the nominee of Balaji High Rise Pvt. Ltd. although no Conveyance in respect of the property was executed. Respondent No. 1 was in possession till 31st August, 2013. Company petition was disposed of by the Hon'ble Delhi High Court vide order dated 07.02.2014.

15. Appellant herein is a bona fide purchaser for value without notice of entire 16.46 acres of land including 2.74 acres of land. Appellant had no knowledge or notice of any proceeding pending before the Hon'ble Delhi High Court. Valuable right title interest has been created in his favour. Respondent No. 1 has no right title over the said land.

16. Hon'ble Delhi High Court in CA No. 03 of 2014 and CP No. 238 of 1997 vide order dated 07.02.2014 give liberty to the appellant to approach DRT for any further order that the party may require in respect of clarification of title of the portion of the property which contended to be in dispute. It is further stated that in compliance of the order the Tribunal is fully competent to adjudicate upon all the questions relating to the said 2.74 acres of land. In compliance of the order dated 07.02.2014, appellant has restored the possession of the subject land in favour of the Respondent No. 1.

17. An application was filed by the appellant on 24.03.2014 before the Recovery Officer for adjudication of the questions

relating to the land of which the Appellant is the sole and absolute owner which was dismissed on 24.03.2014. Application was filed before the Learned DRT. Subsequently, an application for amendment in M.A. No. 19 of 2014 was filed for amendment to the effect that DRT has no jurisdiction to try the title of the property.

18. Respondent No. 1 also filed a Review Application being R.A. No. 01 of 2014 for review and/ or recall and/ or set aside the order dated 07.12.1989. An Application u/s 5 of the Limitation Act for condonation of delay was also filed which was decided by the learned DRT by the common impugned order thereby I.A. No. 366 of 2014 for condonation of delay filed by Respondent No. 1 was allowed and no ad interim order was also passed in favour of Appellant in M.A. No. 19 of 2014 which was kept pending.

19. Feeling aggrieved by the impugned order, appellant preferred the appeal to quash the order dated 13th May, 2014.

20. I have heard Mr. Joy Saha, Learned Senior Advocate for the Appellant. Mr. Malay Kumar. Ghosh, Learned Senior Advocate on behalf of Respondent No. 1 and the Official Liquidator and perused the record.

21. Whole controversy in the matter revolves on the issue as to whether DRT Kolkata has jurisdiction to decide the title of the property? whether the orders of the Hon'ble Delhi High Court passed in Company petition are binding upon the DRT Kolkata? whether the Hon'ble Delhi High Court can

empower the DRT Kolkata to exercise the jurisdiction to decide the title which is not vested in the DRT Kolkata? whether the DRT Kolkata has rightly condoned the delay in filing the Review petition by the Respondent No. 1? whether the Application of the Appellant being MA No. 19 of 2014 can be kept pending for want of an Application under Section 5 of the Limitation Act?

22. Learned Counsel for the Appellant submits that the Respondent No. 1 namely ARS Enterprise Pvt. Ltd. is a third party to the proceedings who has no locus standi before the DRT. It is further submitted that ARS claims that he is the nominee of Balaji High Rise Pvt. Ltd. Balaji High Rise Pvt. Ltd. was the highest bidder in the auction conducted by the Official Liquidator who made a request for deposit of balance 75% sale consideration on 25.05.2006. Whether the amount was deposited by Balaji High Rise Pvt. Ltd. or not could not be established by Respondent No. 1. No sale Certificate was issued in favour of either Balaji High Rise Pvt. Ltd. or Respondent No. 1, ARS Enterprises. Hence, Respondent No. 1 cannot be the owner of disputed 2.74 acres of land as Respondent No. 1 has no right or locus standi to move the Application for review of the judgment and order dated 07.12.1989.

23. It is further argued that the DRT has no jurisdiction to review the judgment and decree dated 07.12.1989 which was subsequently amended on 12.03.1991. Jurisdiction of the DRT can only be invoked by ‘any person’ under Section

17 of the SARFAESI Act 2002 (hereinafter referred to as the Act). Section 17 does not empower DRT to decide the title as DRT has the jurisdiction regarding 'Debt' as has been defined in Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993. Reliance is placed upon the judgment of the Hon'ble Apex Court in Nahar Industrial Enterprises Limited Vs. Hong Kong and Sanghai Banking Corporation (2009) 8 SCC 646.

24. It is further vehemently argued that the Hon'ble Delhi High Court has no jurisdiction to empower the DRT Kolkata to decide the title under Section 17 of the SARFAESI Act. Hon'ble Delhi High Court passed the order in a Company petition matter exercising original jurisdiction which order, in no way, is binding upon the DRT Kolkata under Article 227 of the Constitution. Delhi High Court does not exercise power of superintendence over the DRT Kolkata under Article 227 of the Constitution. Hence, the DRT Kolkata cannot have jurisdiction to decide the title on the basis of orders of the Hon'ble Delhi High Court.

25. It is further argued by the Learned Senior Advocate that a prayer is made for review of the order which is not permissible under law. Review of an order can be made under Section 114 of the Civil Procedure Code which provides as under:

Subject as aforesaid, any person considering himselt aggrieved—
(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

26. It is further submitted that the review petition can only be filed in the same Court which has passed the decree. Decree dated 07.12.1989 was passed by the Court of additional District Judge Alipore and not by the DRT. Accordingly, Application for review would not be maintainable in the DRT.

27. It is further submitted by the Learned Senior Advocate that the matter had already been disposed of by the Hon'ble Calcutta High Court in C.O. No. 2699 of 2004 dated 13.09.2006 wherein it was held that-

"Mortgage and / or charge created in respect of premises No. 99 Motilal Gupta Road, Kolkata will be released and/ discharged. The Receiver appointed by the DRT is directed to make over possession of the premises No. 99 Motilal Gupta Road to the Applicant upon being upon being informed by the Bank with regard to the appropriation of the amount in terms of the direction given hereinabove.

The Receiver appointed by the DRT is also directed to execute necessary documents to enable transfer of the land in favour of the Appellant No. 2 at a consideration of Rs.2,44,46,015.00 (Rupees two crore forty four lacs forty six thousand and fifteen) in terms of the decree dated 7th July, 1989 as modified on 12th March 1991 and 10th June, 1991 passed in title suit NO. 96/1989 by the Learned 10th Assistant District Judge at Alipore.

The Recovery officer of the DRT is also directed to prepare Sale Certificate in respect of the land in question being 16.56 acres of land in favour of Applicant No 2."

28. It is submitted that since the matter has already been finally disposed of by the Hon'ble Calcutta High Court, now the DRT Kolkata has no jurisdiction to review the said order. It is further submitted that during the hearing Learned Counsel for the Respondent No. 1 has fairly conceded that the Application by the Respondent No. 1 was not an application for review rather, same may be treated as an application under Section 19(25) of the Recovery of Debts and Bankruptcy Act as prayer for review, recall or any other order was made in the Application.

29. Learned Counsel for the Appellant vehemently argued that application cannot be treated as an application under Section 19(25) of Recovery of Debts and Bankruptcy Act, 1993 because a specific prayer for review of the order was made by the Review Applicant, Respondent No.1.

30. It is further argued that the Appellant is well within his right to protect his interest in the 2.74 acres of land. It is submitted that the said land was conveyed in favour of CIIPL of 19th November, 2010. Further cause of action arose on 31st December, 2013 when the Receiver handed over possession of the said land to CIIPL i.e. the Appellant. Further, on 7th February, 2014 when the Hon'ble Delhi High Court issued a direction for restoration of the possession of the land in favour of Respondent No. 1, MA No. 19 of 2014 was filed by the Appellant on 2nd April, 2014 well within the period of limitation. Hence, there is no requirement for filing an application for condonation of delay.

31. Per contra, Learned Senior Advocate Mr. Malay Kumar Ghosh made submission on behalf of the Respondent No. 1 that the Learned DRT has rightly arrived at a conclusion that delay in filing the Application for review/ recall of the order was filed by the Respondent No. 1 with the delay which is condonable and accordingly delay was condoned. Initially, the decree was passed by the Court of Assistant District Judge Alipore. On creation of the Debts Recovery Tribunal, execution case was transferred to the Debts Recovery Tribunal Kolkata for adjudication and execution of the decree in accordance with law. Cause of action arose to the Respondent No. 1 when the orders were passed by the Hon'ble Delhi High Court and possession was taken from the Respondent No. 1 then Review Application 01 of 2014 was filed, apart from other reliefs, for the relief that the judgment and decree dated 07.12.1989 amended by a decree dated 12.03.1991 passed by the 10th Assistant district Judge Alipore 24 Pargana South in Title Suit No. 96 of 1989 (Old No. 12 of 1984) and the judgment and certificate dated 29th January, 2004 passed by Presiding Officer DRT-1 Kolkata in TA No. 17 of 1994 be reviewed, recalled and / or set aside. It is submitted that the relief for review and recall were made which is permissible under Section 19 (25) of the Recovery of Debts and Bankruptcy Act, 1993.

32. It is further submitted by the Learned Senior Advocate that the Appellant himself has conceded and accepted the

jurisdiction of the DRT Kolkata in MA No. 19 of 2014 wherein he moved an application before the DRT-1 Kolkata for a relief "necessary adjudications and / or clarifications be made by this Learned Tribunal on the ground the security and mortgage of the said 2.74 acres of land which is more fully and particularly described in the Annexure "X" herein and the transfer thereof by this Learned Tribunal in favour of the Applicant." In the said application it is stated by the Appellant that the instant application is being filed by the Applicant/ purchaser for seeking necessary declaration and / or clarifications from this Learned Tribunal in respect of the sale of the mortgaged property comprising of a land measuring about 2.74 acres out of 16.46 acres of land being part of and portion of premises No. 591 A Motilal Gupta Road (holding No. 99 Kolkata)". Hence, Appellant himself has accepted the jurisdiction of the DRT to adjudicate the dispute between the parties. It is further submitted that vide order dated 29.01.2004 Learned DRT has held that the Bank has charge over the mortgage/ secured property being premises No. 99 Motilal Gupta Road Kolkata except the portion 5.57 acres of land already acquired by the Government of West Bengal. The question of acquisition of 2.74 acres of land or creating an equitable mortgage of 2.74 acres of land was not adjudicated in the said order. But the Receiver appointed by the Recovery Officer of the DRT-1 Kolkata took possession of the whole land including 2.74 acres of the land which gave a cause of action in favour of

the Respondent No. 1 for filing the application being R.A. No. 01 of 2014 under Section 22 (2) (e) of Recovery of Debts and Bankruptcy Act,1993 read with Rule 5A of the Debts Recovery Tribunal (Procedure) Rules 1993.

33. Respondent No. 1 has no other forum except the DRT to raise the issue as the same was taken possession by the Receiver under the orders of the Recovery Officer of the DRT which were passed in the execution matters.

34. Learned Senior Advocate further submits that the cause of action for filing the application arose on 31.12.2013 when the possession was taken by the Receiver. Respondent No. 1 moved the High Court of Delhi to protect his interest on 07.02.2014. Hon'ble High Court of Delhi passed the following order:

"The Learned Counsel for the parties agreed that status quo as on 30.12.2013 will be restored. This will imply that the possession of the said property measuring 4.74 acres vested with the Applicant in the same condition as it was on 30.12.2013. The parties are at liberty to approach the DRT or Calcutta High Court for any further order that the parties may require in respect of determining the title and portion of the property, which is contended to be in dispute. The applicant should also maintain status quo as obtained on 30.12.2013 for a period of two months from today and thus would be subject to any further order which may be passed in any proceeding before DRT/Calcutta High Court……."

35. Respondent No, 1 filed the application on 28.03.2014. It is submitted that the Respondent No. 1 was not a party in the original proceedings T.A. No. 17 of 2004 and the order passed in those proceedings cannot be having a binding effect upon the Respondent No. 1. Accordingly, he has a

right to move the application under Section 19 (25) of the Recovery of Debts and Bankruptcy Act,1993. It is further submitted that mere mentioning of provisions of nomenclature of the Applicant could not and should not be a determining factor rather, the pith and substance of the nature of the allegations have to be looked into by the Court. Reliance is placed upon Malabika Maity Vs. Target Construction 2015 SCC OnLine Cal 7029. Since the rights of the Respondent No. 1 are also affected by the impugned order, hence being a third party to the proceedings he has a right to move to the Court.

36. Learned Counsel for the Respondent No. 1 also made a submission regarding ownership of the land of 2.74 acres upon Respondent No. 1 which are not relevant at this stage as the application for review/ recall is still pending, only Application for condonation of delay I.A. No. 366 of 2014 has been allowed by the Learned DRT, that question is still open before the Learned DRT as to whether the Respondent No. 1 has any right over the piece of land of 2.74 acres of land. Hence, I am of the view that no finding regarding ownership over the land should be recorded in this Appeal as it may affect the rights of the parties before the Learned DRT.

37. Learned Counsel for the Appellant has placed reliance upon the judgement of the Hon'ble Apex Court in Nahar Industrial Enterprises Limited (supra). Learned Counsel for

the Respondent No. 1 has also placed reliance upon the judgment.

38. The matter before the Hon'ble Apex Court in Nahar Industrial Enterprises Limited (supra) was referred in Para 2 of the judgment wherein it was an issue as to whether the High court or this Court has the power to transfer a suit pending in a Civil Court situated in one state to a Debts Recovery Tribunal situated in another State? The Hon'ble Apex Court finally decided that even Section 24 of the Code of Civil Procedure cannot be taken recourse to and the suit from the Civil Court to the DRT cannot be transferred. In the body of the judgement Hon'ble Apex Court in Para 33 held that –

"33. The Debts Recovery Tribunal has been constituted for determining a specific category of cases, namely-recovery of debts due to banks and financial institutions. It has wide powers. It may determine all the issues relating to or connected with the recovery of debts due to banks and financial institutions. A fortiori all defences which can ultimately be raised before it by the borrowers for contesting a claim of the Bank or the financial institution can also be determined by it. Indisputably prior to amendments of the Act before 2000 and 2004, a plea of set-off or counterclaim was not available to a debtor."

39. Learned Counsel for the Appellant has placed reliance upon the judgment and argued that DRT has no jurisdiction to decide the title in the Proceedings under Section 17 of the SARFAESI Act. The Hon'ble High Court of Delhi had given a liberty to the parties to approach the Debt Recovery Tribunal or the Calcutta High Court for any further orders that the

parties may require in respect of determining the title of the portion of the property which is contended to be in dispute. On this ground Respondent No. 1 moved the DRT by filing the application for review/ recall or any other order and the Appellant herein also filed an application for the following relief:

(a) Necessary adjudications and/or clarifications be made by this learned Tribunal with regard to the security and mortgage of the said 2.74 acres of land, which is more fully and particularly described in the Annexure "X" herein and the transfer thereof by this Learned Tribunal in favour of the applicant;

(b) Upon necessary adjudication being made the Respondent No. 1 be directed to make over possession of the said 2.74 acres of land, which is more fully and particularly described in the Annexure "X' herein to and in favour of the applicant herein forthwith;

(c) Injunction restraining the respondent No. 1 and/ or its men, agents, servants and assigns from dealing with and/or disposing of and/ or encumbering and/ or creating any third party right, title and interest and/ or changing the nature and character of the said 2.74 acres of land as more fully and particularly described in the Annexure 'X' herein in any manner whatsoever until the instant application is disposed of.

(d) Ad-interim orders in terms of prayers above;

(e) Costs of and/ or incidental to this application directed to be paid by the respondent No.1;
(g) Such further and/ or other order or orders be made and/ or direction or directions be given as this Hon'ble Board may deem fit and proper."

40. In the body of Application in Para 50 it is stated that pursuant to and in terms of the direction of the Hon'ble Delhi High Court mentioned in order dated 7th February, 2014, this Learned Tribunal is free to decide and adjudicate upon all questions relating to the said 2.74 acres of land of which the applicant is the sole and absolute lawful and bonafide owner pursuant to the sale certificate dated July, 28, 2009 issued by the learned Tribunal and the Deed of Conveyance executed and registered by the Learned Receiver on 19th November, 2010. It is pertinent to note at this stage that an application for amendment being MA No. 19 of 2014 filed by the Appellant is still pending wherein also the Appellant conceded the jurisdiction of the Tribunal. In Para 13 of the Application wherein it is submitted that the DRT is a just and proper forum who has jurisdiction to secure the right, title, interest and possession of the said 2.74 acres of land in favour of the Applicant. In the proposed amendments in proposed Para No. 48 (C) also it is stated that -

"48.C The Applicant therefore states and submits tht this Learned Tribunal is the only Forum which can protect the valuable right, title and interest of the applicant over and in respect of the said 2.74 acres of land and thereby to secure the possession of the same in favour of the Applicant."

41. It is an admission by the appellant in the amendment application that Tribunal is the only forum which can protect the value, right, title and interest of the Application for and in respect of the said 2.74 acres of land. Again, in Para No. 48.F it is proposed to be amended that –

48F. "It is humbly stated and submitted that this Learned Tribunal has conferred title upon necessary adjudication in respect of the said 2.74 Acres of land in favour of the applicant and therefore this Learned Tribunal is the just and proper Forum who has jurisdiction to secure the right, title and interest and possession of the said 2.74 Acres of land in favour of the applicant."

42. It is an admission that this Tribunal is a just and proper forum who has jurisdiction to secure the right, title and interest and possession of the said 2.74 acres of land in favour of the Applicant. Further, in the amendment Application relief was sought for necessary direction to protect the valid lawful and bona fide right title and interest of the Application over the 2.74 acres of land. These admissions of the Appellant themselves are sufficient to hold that Appellant had submitted himself to the jurisdiction of the DRT.

43. No doubt, it is trite law that jurisdiction to a Court cannot be conferred by consent of the parties. Herein jurisdiction is not being conferred by the consent of the parties. A direction was issued by the Hon'ble Delhi High Court although in a Company petition on 07.02.2014 that "the parties may approach the Debts Recovery Tribunal or

Calcutta High Court for any further orders that the parties may require in respect of determining the title of the portion of this property which is contended to be in dispute." This order was not challenged by the either party and attained finality. It is held in Kiran Devi vs Bihar State Sunni Wakf Board on (2021) 15 SCC 15 that a party cannot be permitted to approbate and reprobate in the same breath. When parties have accepted the jurisdiction of DRT and moved application before the DRT for adjudication then now they cannot be permitted to challenge the jurisdiction of the DRT more particularly when the orders of the Hon'ble Delhi High Court were not challenged.

44. Rather, a Lis is to be decided by a competent Tribunal on the issue of 2.74 acres of land wherein it is to be decided as to whether this portion of the land was a part and parcel of the mortgaged property or not? No doubt, as has been held by the Hon'ble Supreme Court in Nahar Industrial Enterprises Limited (Supra) case that the DRT cannot decide the title but at the same time, in the present case in the case at hand both the parties are seeking clarification and the protection over 2.74 acres of land. In TA No. 17 of 1994 order dated 29.01.2004 it was held by the DRT that the Babk has charge over the equitably mortgaged secured property being Premises No. 99 Motilal Gupta Road Kolkata except the portion 5.57 acres of land already acquired by the Government of West Bengal. The Bank is also entitled to sell the aforesaid security-property for realization of its

aforesaid dues. A certificate for Rs.2,33,50,000/- was issued in favour of Punjab National Bank and Bank was entitled to recover it from the sale of the property as above. This order attained finality as it was not challenged. Accordingly, it cannot be held that the DRT had no jurisdiction to decide the matter.

45. In the impugned order Learned DRT has condoned the delay in filing the I.A. No. 01 of 2014 which was filed by the Respondent No. 1 for review/ recall of the order dated 07.12.1989. Learned DRT has further kept the MA No. 19 of 2014 filed by the Appellant herein pending which was for necessary adjudication and/ or clarification regarding mortgage of the 2.74 acres of land and for ad interim injunction for maintaining the status quo. An amendment was also sought in the application. As far as these applications are concerned, the amendment application was not allowed but MA No. 19 of 2014 was kept pending unless the delay is condoned by the Tribunal.

46. It means that both the applications i.e. R.A. No. 01 of 2014 as well as MA No. 19 of 2014 were kept pending by the Learned DRT. Only the prayer for amendment in MA No. 19 of 2014 was declined.

47. As far as merits of R.A. No. 01 of 2014 and MA No. 19 of 2014 are concerned, they have yet to be adjudicated by the Learned DRT. Much emphasis has been laid by the Learned Counsel for the parties on the merit of these two applications. Right to challenge by the Respondent No. 1 or

whether the applications R.A. No. 01 of 2014 is legally maintainable or not are the issues which have to be decided by the Learned DRT. Further, what will be the effect of the orders of the Hon'ble Calcutta High Court dated 13.09.2006 passed in C.O. No. 1909 of 2004 is also to be decided by the Learned DRT at the time of adjudication. Any finding on these issues or any issue touching the merits of the R.A. No. 01 of 2014 or MA No. 19 of 2014 by this Appellate Tribunal would prejudice the rights of the parties.

48. As far as question of allowing I.A. No. 366 of 2014 is concerned, Respondent No. 1 was not a party to the proceedings of TA No. 17 of 2004. He came to know about the proceedings when the possession was taken over by the Learned Commissioner on 31.12.2013 and he moved the application for review/ recall Application No. 01 of 2014 in compliance of the orders of the Hon'ble Delhi High Court dated 07.02.2014. Accordingly, it cannot be accepted that the impugned order as regards condoning the delay and allowing the I.A. No. 366 of 2014 is concerned, I do not find any illegality or infirmity in the order.

49. There is another aspect of the matter. Learned DRT refused the application for amendment filed by the Appellant herein on the ground that the Appellant has approached the Tribunal in compliance of the orders of the Delhi High Court dated 07.02.2014 to determine the title of the portion of the property in dispute. Accordingly, amendment was refused. Perusal of the amendment application would show that a

new para ‘48A’ to ‘48F’ along with two reliefs ‘aa’ and ‘bb’ are to added.

50. It is settled legal proposition that the amendment may be refused if any admission is being withdrawn by way of amendment or the nature of the relief sought for are being entirely changed by the amendment. If the amendment is necessary for the final adjudication of the dispute between the parties, it should be allowed. All the proposed amendment from Para 48A to Para 48F are such which are not withdrawing any admission by the Appellant. Rather, the proposed amendments are explanatory in nature which are necessary for final adjudication of the dispute between the parties. Further, the relief sought for also does not change the nature of the application being MA. No. 19 of 2014. In MA No. 19 of 2014, relief was sought for regarding security and mortgage of 2.74 acres of land with an injunction to the Respondent No.1 restraining him from making construction over it or to create third party interest. Proposed relief clause also does not change the relief or withdrawal of any admission made by the Appellant in the original application MA No. 19 of 2014. Learned DRT refused the amendment merely on the ground that the proposed amendment will change the nature of the application and the relief. I am of the opinion that Learned DRT erred in refusing the proposed amendment. Accordingly, proposed amendments are liable to be allowed and are allowed.

51. Learned DRT Kept the MA No. 19 of 2014 is pending till the delay is condoned by the Tribunal. As far as delay is concerned, Respondent No. 1 also moved the application on the basis of an order passed by the Hon'ble Delhi High Court. Respondent No. 1 filed the R.A. No. 01 of 2014 with an application for condonation of delay for recall or review of the order dated 07.12.1989 on the ground that he came to know about this order of 31.12.2013 when possession was taken from him. The Appellant herein also moved the application being MA No. 19 of 2014 on the basis of the orders of the Hon'ble Delhi High Court dated 07.02.2014. Accordingly, I do not find any ground to keep the MA No. 19 of 2014 pending for want of any application for condonation of delay or delay is condoned. Although the original proceedings were decided vide order dated 29.01.2004 but thereafter, the orders of the Hon'ble Delhi High Court were passed on 07.02.2014 and a new round of litigation begin between the parties. Accordingly, MA No. 19 of 2014 was filed which could not and should not be treated as a time barred application, rather the cause of action in favour of the Appellant arose when the Hon'ble Delhi High Court passed the orders and possession of 2.74 acres of land was taken from the appellant. Accordingly, Learned DRT has erred in passing an order to keep the MA No.19 of 2014 pending unless the delay is condoned. Rather, the Learned DRT should decide the application MA No. 19 of 2014 in accordance with law.

52. On the basis of the discussion made above, I am of the view that the Appeal filed by the Appellant deserves to be partly allowed with the direction to the Learned DRT to decide the R.A. No. 01 of 2014 and MA No. 19 of 2014 in accordance with law expeditiously without being influenced by any observations made in the body of judgment.

ORDER

Appeal is partly allowed. Impugned order allowing I.A. No. 366 of 2014 is affirmed. Amendment application for amendment in MA No. 19 of 2014 is allowed. Amendment be carried out in MA 19 of 2014 by 22.11.2023. Learned DRT-1 Kolkata is directed to dispose of R.A. No. 01 of 2014 and MA No. 19 of 2014 in accordance with law expeditiously. Till disposal of RA No. 01 of 2014 and MA No. 19 of 2014, a status quo shall be maintained by the parties. Parties are directed to appear before the Learned DRT-1 Kolkata on 1st December, 2023 for hearing.

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 19th day of October, 2023.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 19th October, 2023
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