

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

(Appeal No. 33 of 2018)
(Arising out of S.A. No. 104 of 2014 in DRT -3 Kolkata)

**THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

1. IDBI Bank Limited, having its offices at 44 Shakespeare Sarani, Kolkata 700017, Videocon Tower, 1st Floor, E.1. Jhandewalan Extension, New Delhi-110055 and IDBI Tower, WTC Complex, Cuffe Parade, Mumbai-400005.
2. The Authorised Officer, IDBI Bank Limited, having his offices at 44 Shakespeare Sarani, Kolkata 700017.

...Appellants

-Versus-

1. Bangla Bijuli Power Technologies Private Limited, represented by its Managing Director Sri Ashit Kumar Baisya, 4/1A, Ambica Mukherjee Road, Belgharia, Kolkata -700056

... Respondent

Counsel for the Appellants

Mr. A.K. Dhandhanian,
Learned Senior Counsel
with Mr. Debasish
Chakrabarty, Ms.
Sharmiha Pal, Learned
Counsel for the Appellant.

Counsel for Respondent

Mr. Nimish Mishra
Learned Counsel with Mr.
Abir Mondal, Learned
Counsel for the
Respondent

JUDGMENT : On 22nd March, 2023

THE APPELLATE TRIBUNAL :

Instant Appeal has arisen against an order dated 07.02.2018 passed by Ld. DRT -3 Kolkata in S.A. No. 104 of 2014 IDBI Bank Limited

and ors Versus Bangla Bijuli Power Technologies Private Limited whereby the Ld. DRT allowed the SARFAESI Application and quashed the Demand Notice dated 29.08.2012. Hence, Appellant Bank has preferred this Appeal.

2. As per the pleadings of the parties, Respondent filed SARFAESI Application under Section 17 of the SARFAESI Act (hereinafter referred to as the Act) before the Ld. DRT with the assertions that the Respondent being an SSI and falling under SME applied for availing two financial accommodations from the Appellant Bank duly creating mortgage of the house situated at 4/1A Ambica Mukherjee Road, Belgharia, Kolkata - 700056. Total financial accommodation was Rs. 210.00 lacs being Term Loan of Rs. 70 lacs and Cash Credit Loan of Rs. 140.00 lacs which was sanctioned by the Appellant Bank on 01.06.2009. But the disbursement was delayed. A sum of Rs. 28,01,223/- was disbursed as Term Loan on 23.12.2009 and Cash Credit Limit for Rs. 140 lakhs was allowed from 06.10.2009. Due to sanction of less amount, Respondent could not start his business. Despite his repeated request, full amount was not disbursed, even the EMI was not reduced in accordance with the disbursed amount. Moratorium of nine month was mentioned in sanction letter dated 01.06.2009 but Bank started deduction of quarterly EMI of Rs. 4.12 lakhs from 01.04.2010 i.e. just after three months of disbursement of the part Term Loan of Rs. 28 lakhs. Even, the Cash Credit Account was not renewed despite request by the Respondent. Appellant Bank had frozen the Cash Credit Account without giving any information to the Respondent. On repeated enquiry by the Respondent, Appellant Bank informed vide e-mail dated 01.01.2011 that Account shall slip to NPA. It was informed that Cash Credit Account has become NPA on 31.12.2010 which was wrongly done. Account was never an NPA account. A cheque dated 05.06.2012 for Rs.1,25,000/-was deposited with the Appellant Bank on 05.06.2012 which was credited on 14.06.2012 but it was not adjusted.

3. Appellant Bank had issued Demand Notice u/s 13(2) of the Act dated 29.08.2012 demanding Rs. 1,67,58,707/- towards CC Account and Rs.12,95,266/- towards Term Loan Account as on 31.07.2012. A representation under Section 13(3-A) of the SARFAESI Act was made by the Respondent which was never replied. Possession notice was published in The Times of India on 20th September, 2014 which was not in accordance with Rules. Despite repeated demands by the Respondents, full amount of loan was not disbursed due to which Respondent could not arrange workforce and other facilities resulting in investment of valuable time and money. Respondent could also not participate in various tenders floated during the period by different agencies due to shortage of money.

4. Bank being in a dominant position misused its position and arbitrarily deviated from the terms and conditions of the sanction letter as well as RBI guidelines. In the Demand Notice the date as to when the account became NPA is not mentioned. Possession notice dated 20th September, 2014 was manipulated by the Bank. The Respondent is entitled for the compensation.

5. Affidavit in opposition was filed by the Appellant Bank (Respondent before Learned DRT) before the Ld. DRT inter alia, stating that the Application u/s 17 of the SARFAESI Act is not maintainable. Admittedly, Term Loan and Cash Credit Limit was sanctioned to the Respondent Bangla Bijuli Power Technologies Private Limited where Cash Credit Limit is sanctioned. It is for the borrower to avail the said loan by drawing cheques against the said account or otherwise withdrawing the money on one hand and repaying principal with interest on the other hand, so as to keep the quantum of transaction within the sanction limit, Respondent has enjoyed the limit of Cash Credit.

6. Term Loan account was fully utilized by the Respondent. No prejudice was ever caused to him, moratorium was started on and from 01.06.2009 and there was no illegality in deducting the amount for loan

recovery in the said Term Loan. Notice under Section 13(2) of SARFAESI Act was issued in accordance with law. Representation u/s 13 (3-A) of the SARFAESI Act was properly dealt with by the Bank. Enormous opportunity was provided by the Bank to the Respondent to pay the loan amount. Procedure provided under Rule 8(1) and Rule 8(2) of the Security Interest (Enforcement) Rules, 2002 were duly complied with. Charge was created in favour of the Bank over immovable properties, movable property, book debts etc. of the Respondent to secure the loan which was duly registered with the Registrar of Companies. It was the duty of the borrower to operate the Cash Credit Account within the sanction limit and once the advance limit is crossed, it is the responsibility of the borrower to ensure that the entire outstanding is repaid. Account was classified as NPA in accordance with law.

7. Before issuing the possession notice on 20th September, 2014, sufficient opportunity was given by the Bank to the Respondent to arrange for funds to liquidate its dues. Failure on the part of the Respondent to make proper repayments is attributable to its own laches and inaction. Bank in no manner can be held responsible for the same. Respondents have illegally encumbered the secured assets of the Bank by creating alleged tenancy. SARFAESI Application is liable to be dismissed.

8. A bare perusal of the judgment passed by the Ld. DRT will show that Ld. DRT recorded a finding that reasons for non disbursement of full Term Loan, non revision of repayment of instalments etc. are not mentioned in the notice which suggests that Bank did not issue the Demand Notice correctly.

9. It was further held that despite various loans and documents, Bank did not restructure the loan account. Further it was held that physical possession was taken by the Bank on 11.02.2016 while the Demand Notice was issued on 29.08. 2012, hence, the Respondent i.e. SARFAESI Applicant could not run the business. Classification of loan as NPA was also erroneous.

Accordingly, Demand Notice dated 29.08.2012 was quashed with consequential orders.

10. I have heard the Learned Counsel for the parties and perused the record. At the very outset, I am constrained to observe that the Ld. DRT had passed a judgment without perusing the pleadings and the materials available on record filed by the parties.

11. Bare perusal of the judgment will show that the Ld. DRT has not even recorded the pleadings of the parties. Rather, recorded the submissions made by the Learned Counsel for the SARFAESI Applicant as well as Respondent Bank. Thereafter recorded its finding without assigning any reasons. It should also be pertinent to mention that the evidences filed by the parties were also neither referred to nor discussed in the judgment.

12. At this stage, I would like to observe that a Court or Tribunal is expected to record its finding on all the issues raised by the parties before it. It may be that the judgment is based upon a single issue only but it is imperative that all the issues, raised by the parties, should be dealt with by the Tribunal. Judgment writing shall be governed by the provisions under Order XX Rules 4 and 5 C.P.C., which reads as under:

"Rule 4 - Judgments of Small Cause Courts

(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts - Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

Rule 5 - Court to state its decision on each issue -

In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."

The above provisions are specifically applicable in the present case wherein the Learned DRT was required to record its finding on all the issues raised

by the parties; which was not done. A plea which is taken by a party and is not decided by the trial Court/Tribunal, requires reconsideration by the trial Court/Tribunal itself.

13. Further in *Brijmani Devi -vs- Pappu Kumar and Another*, reported in (2022) 4 SCC 497, The Hon'ble Apex Court held as under:

"22. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial authority, it would be useful to refer to a judgment of this Court in Kranti Associates (P) Ltd., v. Masood Ahmed Khan, (2010) 9 SCC 496 wherein after referring to a 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:

(a) 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.

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

(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

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

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

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

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) 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.

(i) 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.

(j). 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.

(k) 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 of "due process".

"24. The Latin maxim "cessante ratione legis cessat 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."

14. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it but must also appear to be done as well. Insistence of reasons is a requirement for both judicial accountability and transparency. Transparency in decision making not only makes the Judges and decision makers less prone to errors but also makes them subject to broader scrutiny.

15. Learned DRT is performing its judicial function, principles of natural justice has to be followed by the DRTs, as provided under the SARFAESI Act 2002 as well as Recovery of Debts Due to Banks and Financial Institutions Act, 1993. One of the basic cardinal principles of natural justice that an opportunity of hearing should be given to the parties. Further, the findings recorded by the Tribunal must be supported with the reasoning to arrive at a particular finding. Merely recording the submission of the Learned Counsel of the parties and thereafter not recording its own view is nothing but arbitrary exercise of powers which could not be permissible under the law. It is more important when we consider this with a different perspective.

16. As would be apparent from the judgment that Learned DRT has given a judgment based on conjecture and surmises. Main issues in the matter were not discussed. No evidence was discussed, simply on the basis of the submissions made by the Learned Counsel for the parties, finding is recorded that the Demand Notice was not issued by the Bank correctly. Further, it is recorded that it was the responsibility of the Bank to reduce the sanction limit and revise the repayment instalment after a reasonable time. A finding is recorded that the Bank has acted arbitrarily by not reducing the instalment in Term Loan Account and by debiting the instalment amount in Cash Credit account. Ld. DRT recorded that there are sufficient documents to show that SARFAESI Applicant prays for restructuring of the account, but Bank did not allow the same. But no such evidence or letters are discussed by the Ld. DRT. A finding is also recorded that the account was erroneously classified as NPA. All such findings have been recorded without discussing the material available on record and without assigning any reason. Such exercise of jurisdiction and power by the Ld. DRT is an arbitrary exercise of powers which could not be appreciated and such findings without recording any reasons could not be confirmed. Ld. Presiding Officer was expected to write the judgment in accordance with the legal provisions but it appears that the Ld. Presiding Officer either has no knowledge of law or gave a goodbye to the legal provisions for the reasons best known to him. In any case, the judgment without reasons could not be said to be a judgment in the eyes of law. Accordingly, judgment is liable to be set aside.

17. Learned Counsel for the parties have made extensive arguments before this Appellate Tribunal touching all the issues involved in the case.

18. At this stage, it is noteworthy that no doubt, appeal is continuation of original proceedings. But if findings are recorded by the Appellate Court for the first time, it would cause prejudice to the parties as their valuable right of

appeal will extinguish. They would have no opportunity to file the appeal before Appellate forum. In such circumstances, I am left with no option but to remand the case to DRT for decision afresh in accordance with law.

Matter is to be remanded back to the Ld. DRT to decide afresh in accordance with law.

ORDER

Appeal is allowed. Judgment dated 7th February, 2018 passed by Ld. DRT-3 Kolkata is set aside. The matter is remanded back to Ld. DRT-3 Kolkata to decide it afresh in accordance with law after affording an opportunity of hearing to the parties keeping in view the observations made in the body of the judgment.

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 22nd day of March, 2023.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 22nd March, 2023
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