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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 210 OF 2007

STATE BANK OF PATIALA â- | APPELLANT

VERSUS

MUKESH JAIN & ANR. â- | RESPONDENTS

J U D G M E N T

ANIL R. DAVE, J.

1. Being aggrieved by the judgment dated 8 th
April, 2005 delivered

in Civil Revision Petition No.242 of 2004 by the High Court of Delhi,
this appeal has been filed by the appellant, whose application filed
under Order VII Rule 11 of the Code of Civil Procedure, 1908 had
been rejected by the trial Court and being aggrieved by the order of
rejection dated 9 th

February, 2004, the aforestated Civil Revision
Petition was filed before the High Court, but the said Civil Revision
Petition was also rejected by the impugned order and therefore, this
appeal has been filed.

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2. The facts giving rise to the present litigation, in a nutshell, are
as under:

The appellant is a nationalized bank which had lent
Rs.8,00,000/- (Rupees eight lakh) to respondent no.1 by way of a
term loan on certain conditions and so as to secure the said debt,
respondent no.1 debtor had mortgaged his immovable property
forming part of premises bearing no.C-8/298, Yamuna Vihar, Delhi.

As respondent no.1 committed default in re-payment of the said
loan, the appellant initiated proceedings under the provisions of the
Securitisation and Reconstruction of Financial Assets and
Enforcement of Security Interest Act, 2002 (hereinafter referred to
as â- Ÿthe Actâ- "). When notice under Section 13(2) of the Act had been
issued and further proceedings were sought to be initiated by the
appellant against respondent no.1, the said proceedings had been
challenged by respondent no.1 by filing Civil Suit No.4 of 2003 in
the Court of Civil Judge, Delhi.

3. In the said suit, the appellant filed an application under Order
VII Rule 11 of the CPC contending that the Court had no
jurisdiction to entertain the suit in view of the provisions of Section
34 read with Section 13(2) of the Act, which prohibits a Civil Court
from dealing with the matters arising under the provisions of the
Act. After considering the averments made in the application as well

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as the reply given by respondent no.1 and upon hearing the
concerned counsel, the said application had been rejected by the
trial Court by an order dated 9 th
February, 2004.

4. Being aggrieved by the rejection of the said application, the
appellant filed Civil Revision Petition No.242 of 2004 in the High
Court of Delhi. The said petition was also rejected by the impugned
judgment dated 8 th

April, 2005 and being aggrieved by the said
judgment, the present appeal has been filed by the appellant.

5. The reason for which the application filed under Order VII Rule
11 of the CPC had been rejected by the trial Court was that the suit
was maintainable in view of the fact that the subject matter of the
suit i.e. the amount which was sought to be recovered by the
appellant from respondent no.1 (original plaintiff) was less than
Rs.10,00,000/- (Rupees Ten lakh) and according to the provisions of
Section 1(4) of the Recovery of Debts due to Banks and Financial
Institutions Act, 1993 (hereinafter referred to as â- Ÿthe DRT Actâ- "), the
provisions of the DRT Act would not apply, where the amount of
debt due to any bank or financial institution is less than Rs.10 lakh
and therefore, it was not open to the Debt Recovery Tribunal
(hereinafter referred to as â- Ÿthe Tribunalâ- \235) to entertain the matter as
the amount claimed in the suit was less than Rs.10 lakh.

Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).â \235

Section 1(4) of the DRT Act reads as under:

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â S 1. Short title, extent, commencement and application. -

(1) â |â |â |â |â |...

(2) â |â |â |â |â |...

(3) â |â |â |â |â |...

(4) The provisions of this Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify.â \235

15. Upon perusal of Section 34 of the Act, it is very clear that no Civil Court is having jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the appellate Tribunal is empowered by or under the Act to determine the dispute. Further, the Civil Court has no right to issue any injunction in pursuance of any action taken under the Act or under the provisions of the DRT Act.

16. In view of a specific bar, no Civil Court can entertain any suit wherein the proceedings initiated under Section 13 of the Act are challenged. The Act had been enacted in 2002, whereas the DRT Act had been enacted in 1993. The legislature is presumed to be aware of the fact that the Tribunal constituted under the DRT Act would not have any jurisdiction to entertain any matter, wherein the subject matter of the suit is less than Rs.10 lakh.

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17. In the aforesaid circumstances, one will have to make an effort to harmonize both the statutory provisions. According to Section 17 of the Act, any person who is aggrieved by any of the actions taken under Section 13 of the Act can approach the Tribunal under the provisions of the DRT Act.

18. In normal circumstances, there cannot be any action of any authority which cannot be challenged before a Civil Court unless there is a statutory bar with regard to challenging such an action. Section 34 specifically provides the bar of jurisdiction and therefore, the order passed under Section 13 of the Act could not have been challenged by respondent no.1 debtor before any Civil Court.

19. In the aforesaid circumstances, the only remedy available to respondent no.1 debtor can be to approach the Tribunal under the provisions of the DRT Act read with the provisions of the Act. But, one would feel that as per Section 1(4) of the DRT Act, provisions of the DRT Act would not apply where the amount of debt is less than Rs.10 lakh.

20. The aforesaid provision of Section 1(4) of the DRT Act must be read in a manner which would not adversely affect a debtor, who wants to have some remedy against an action initiated under the provisions of Section 13 of the Act.

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21. The DRT Act mainly pertains to institution of proceedings by a bank for recovery of its debt when the debt is not less than Rs.10 lakh. If the debt is less than Rs.10 lakh, no suit can be filed by the creditor bank in the Tribunal under the provisions of the DRT Act. So, when the jurisdiction of the Tribunal has been referred to in

Section 1(4) of the DRT Act, which limits the jurisdiction of the Tribunal to Rs.10 lakh, prima facie, the intention of the legislature is to limit the original jurisdiction of the Tribunal. If any claim is to be made before the Tribunal, the amount must be more than Rs.10 lakh and if the amount is less than Rs.10 lakh, the creditor bank will have to file a suit in a Civil Court. So, one can safely interpret the provisions of Section 1(4) of the DRT Act to the effect that it deals with original jurisdiction of the Tribunal under the provisions of the DRT Act.

22. In the instant case, we are concerned with the challenge to the proceedings initiated under Section 13 of the Act. There is a specific provision in the Act to the effect that the proceedings initiated under the Act cannot be challenged before a Civil Court because the Civil Court has no jurisdiction to entertain any matter arising under the Act and in that event, the concerned debtor has to approach the Tribunal under the provisions of Section 17 of the Act.

23. Thus, the Tribunal would be exercising its appellate

jurisdiction when the action initiated under the provisions of Section 13 of the Act is challenged before the Tribunal. There is a difference between the Tribunal's original jurisdiction under the provisions of the DRT Act and the appellate jurisdiction under the Act.

24. The issue with regard to availability of a forum for challenging the action under the provisions of the Act had been dealt with by this Court in the case of Mardia Chemicals Ltd. (supra). This Court, in the said case, unequivocally held that the aggrieved debtor can never be without any remedy and we firmly believe that the legislature would normally not leave a person without any remedy when a harsh action against him is initiated under the provisions of the Act.

25. So as to know the appellate jurisdiction of the Tribunal, one has to look at the provisions of the Act as Section 17 of the Act specifically provides a right to the aggrieved debtor to challenge the validity of an action initiated under Section 13(4) of the Act before the Tribunal. Moreover, the Act was enacted in 2002 and the legislature is presumed to have knowledge about the provisions of Section 1(4) of the DRT Act. So harmonious reading of both the aforesaid Sections would not be contrary to any of the legal provisions.

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26. For the aforesaid reasons, we are of the view that the application submitted by the appellant bank under Order VII Rule 11 of the CPC should have been granted by the trial Court as, according to Section 34 of the Act, a Civil Court has no jurisdiction to entertain any appeal arising under the Act.

27. Thus, we hold that the Debt Recovery Tribunal constituted under the DRT Act has jurisdiction to entertain an appeal as per Section 17 of the Act even if the amount involved is less than Rs.10 lakh. But, the said appellate jurisdiction need not be misunderstood with the original jurisdiction of the Tribunal.

28. For the aforesaid reasons, the impugned judgment as well as the order rejecting the application filed under Order VII Rule 11 are set aside. The appeal is allowed with no order as to costs.

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(ANIL R. DAVE)

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(L. NAGESWARA RAO)

NEW DELHI

NOVEMBER 8, 2016.

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ITEM NO.1B
(For Judgment)

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).210/2007

STATE BANK OF PATIALA

Appellant(s)

VERSUS

MUKESH JAIN & ANR.

Respondent(s)

Date : 08/11/2016 This appeal was called on for pronouncement
of Judgment today.

For Appellant(s) Mr. B.K. Satija, Adv.

For Respondent(s)

Honble Mr. Justice Anil R. Dave pronounced the
Reportable judgment of the Bench comprising His Lordship
and Honble Mr. Justice L. Nageswara Rao.

The appeal is allowed with no order as to costs in
terms of the signed Reportable judgment.

Pending application, if any, stands disposed of.

(Sarita Purohit)

(Sneh Bala Mehra)

Court Master

Assistant Registrar

(Signed Reportable judgment is placed on the file)