IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8486 OF 2013
(Arising out of S.L.P. (C) No. 12292 of 2012)

Standard Chartered Bank ... Appellant

Versus

Dharminder Bhohi and others ...Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The present appeal depicts a factual score where this Court is constrained to say that delay in disposal of the application by the Debts Recovery Tribunal and the appeal by Debt Recovery Appellate Tribunal have the effect potentiality of

creating a corrosion in the economic spine of the country. It exposits a factual expose' which is not only perplexing but usher in a sense of puzzlement which in the ultimate eventuate compels one to ask: "How long can the financial institutions would suffer such procrastination? How far the public interest be put to hazard because of small, and sometimes contrived individual interest? To what extent the defaulters be given protection in the name of balancing the stringent powers vested on the banks and the statutory safegurards prescribed in favour of loanees? Even assuming there are legal lapses and abuses, how long the statutory tribunals take to put the controversy to rest being oblivious of the fact that the concept of flexibility is insegragably associated with valuation of any asset? One is bound to give a wake up call and we so do by saying "Tasmat Uttistha Kaunteya"; "Awake, Arise, 'O' Partha".

3. The present appeal, by special leave, is directed against the judgment and order dated 16.7.2010 passed by the High Court of Delhi in Writ Petition (C) No. 4694 of 2010.

4. The facts which are essential to be stated are that the appellant-bank sanctioned home loan of Rs.12.00 lacs to the respondent No. 1 on 17.5.1999 payable in equal monthly instalments and in lieu of that the borrower mortgaged the property which was purchased from the developer, the respondent No. 2 herein. Since the respondent No. 1 failed to pay the instalments, the loan account was declared as "non performing asset" in terms of the NPA guidelines issued by the Reserve Bank of India. On 28.12.20012 the appellant-bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act) to the respondent No. 1 directing him to pay the amount due as on

27.12.2002. Since the respondent No. 1 did not make any payment till 27.11.2004, the Tehsildar, Gurgaon took possession of the mortgaged property as per the order of the District Magistrate and handed over the same to the appellant-bank. On 10.3.2005 the appellant-bank in order to sell the said property published possession-cum-sale notice in the leading newspapers stating the terms and conditions of the public auction. In response to the said notice the respondent No. 3 submitted its bid form dated 10.3.2005 for purchasing the said property by way of auction. The said action was challenged by filing an application under Section 17(1) read with Section 19 of the SARFAESI Act before the Debt Recovery Tribunal (DRT). The application was presented on 15.3.2005 before the DRT II, Delhi and the concerned Presiding Officer declined to pass any order and sought appropriate directions from the Debt Recovery Appellate Tribunal (DRAT) for transfer of the said application

to some other DRT. As no order was passed by the DRAT, the matter was again placed before the DRT II on 25.10.2005 and on that day the DRT was informed that the bank had already taken over possession of the property in question and put the same into auction for sale. The borrower preferred a writ petition before the High Court on 17.5.2005 and the High Court directed the borrower to deposit certain amount with the bank and further directed status quo, as regards the property, to be maintained. Eventually, the High Court vide order dated 25.7.2005 only directed the DRT to dispose of the appeal within two months. While finally disposing of the writ petition the High Court opined that though no order was passed by the DRT as the Presiding Officer was awaiting orders from the appellate forum, the bank ought not have decided to sell the property to render the appeal of the borrower to become infructuous and tried to non-suit him.

5. Be it noted, the DRAT vide its order dated 3.6.2005 transferred the case to another Debt Recovery Tribunal. As the property was sold in auction, the auction purchaser, the third respondent herein, filed an application for impleadment which was allowed. Before the DRT her stand was that she had deposited the entire amount of Rs.25.60 lacs with the bank and if the borrower was still interested to retain his property, he had to purchase it from her. The DRT by its order dated 25.10.2005 adverted to the facts, assertions made in the application filed by the borrower, reply filed by the bank and appreciating the evidence on record came to hold that there was no infirmity in the Statement of Accounts of the bank and thereafter taking into consideration the facts and circumstances granted 15 days time to the borrower to pay the entire amount to the bank and the developer, M/s. Unitech, and Rs.1.00 lac as

compensation to the auction purchaser. Thereafter, the DRT directed as follows: -

"In case the applicant/appellant fails to deposit this amount within 15 days, the appeal/application be treated as dismissed and respondent No. 1 is free to confirm the sale in favour of the auction purchaser. The amount deposited by the applicant herein during the pendency of present proceedings as per the order of Hon'ble High Court of Delhi be given due adjustment."

6. The borrower instead of complying with the said order, preferred appeal No. 267 of 2005 before the DRAT which, on 14.11.2005, admitted the appeal and passed the following interim order: -

"Pending passing further orders, the appellant shall deposit a sum of Rs.7.55 lakhs directly to the 1st respondent-bank. However, there shall be stay of implementation of the order in favour of the 2nd and 3rd respondent."

7. It is apt to state here that the appeal was directed to be posted on 7.12.2005. The bank filed a reply before the DRAT highlighting the consistent default by the borrower. The auction purchaser,

the third respondent herein, did not file an appeal before the DRAT but on 25.1.2006 filed an application under Section 151 of the Code of Civil Procedure. The DRAT took up the application on 7.9.2007 and observed that as the purchaser had already been impleaded as a party to the appeal, she would have the right to address the Court and, accordingly disposed of the application. As the factual narration would reveal the appeal was adjourned from time to time and, eventually on 20.5.2010, the DRAT passed the following order: -

> "Counsel for the parties present. I have heard them at length. Counsel for the appellant is ready to pay the entire amount up to date minus the penal interest for which no provision was made in that context. The column of penalty portion was left blank and no amount was mentioned therein therefore I am of the considered view that the appellant has not to pay the penal interest. The residue amount be paid to the bank within 45 days from today as agreed.
>
> The builder has already recovered the amount of Rs.7,11,745/- from the bank. That amount will be paid by the appellant to the bank directly within 45 days as agreed. The appellant will also pay Simple Interest @ 9% from the date

of payment to the builder till its realization within 45 days.

As agreed by the Auction Purchaser he is ready to accept Rs.5 lacs as costs from the appellant and would not insist for auction sale and would surrender his rights in favour of the appellant.

The said amount be deposited with the Registrar of this court within the period of 45 days failing which the appeal shall stand dismissed on this deposit as well as other deposits stated above. The auction purchaser can withdraw this.

Liberty is also given to the Auction Purchaser to file action against the bank for any omission committed by it. Liberty is given to the appellant as well as to the builder to get the Registry executed in favour of the appellant within two months thereafter i.e. after the elapse of 45 days mentioned above. Stamp duty etc. will be paid by the appellant.

The bank is further directed to furnish the statement of account minus the penal clause within ten days.

The bank is further directed to return the amount deposited by the Auction Purchaser in the sum of Rs.25,60,000/- along with the normal interest @ 9% per annum simple without prejudice to his right against the bank.

The matter stand disposed off. Auction Purchaser and the appellant are directed to sign this order."

8. Aggrieved by the aforesaid order the bank preferred writ petition and raised two contentions, namely (i) the DRAT had modified a reasonable and detailed order passed by DRT by a cryptic order, and (ii) that the DRAT erred in granting liberty to the third respondent to initiate any action against the bank for any omission. The High Court, by the impugned order, in the first paragraph dealt with the element of the claim of penal interest and opined that the grievance of the bank was baseless. Thereafter, adverting to the grant of 9% interest towards deposit made by the auction purchaser with the bank, observed that there was no error in the same as the money was lying with the bank. Thereafter, the writ court proceeded to observe as follows: -

> "Learned counsel for the auction purchaser points out that, in fact, this interest of 9 per cent is really not full compensation but only part compensation as liberty has been granted to the auction purchaser to pursue the remedy against the bank as according to the auction purchaser this property was auctioned by the petitioner bank

without even disclosing the factum of the lis pending between the owner and the bank in the DRT. We see no reason to exercise our extraordinary writ jurisdiction under Article 226 of the Constitution of India."

9. Mr. Sanjay Jain, learned senior counsel appearing for the appellant, submitted that though two issues were raised before the High Court, yet he would confine his relief to the second one, namely, grant of liberty to the third respondent to initiate any action against the bank for any omission. It is urged by him that the High Court has fallen into error by opining that there was no justification to exercise jurisdiction under Article 226 of the Constitution of India whereas the factual matrix warranted deletion of such an observation by the DRAT as a tribunal has no jurisdiction to grant such liberty and, especially, when a settlement between the borrower and auction purchaser had been arrived at. Learned counsel would submit that the DRAT had really not

addressed to any issue and, after recording a settlement in a most laconic manner, recorded the observations which really deserved to be quashed by the High Court. It is further canvassed by Mr. Jain that the High Court should have taken note of the fact that the order passed by the DRAT had already been complied with and it was absolutely unnecessary to drag the bank to a further litigation which is contrary to the spirit of SARFAESI Act and the purpose of Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "the RDB Act") It is also contended that the DRAT failed to take note of the prayer made by the appellant therein and for no manifest reason the matter was kept pending for more than four and half years.

10. Mr. Mohit Dham, learned counsel appearing for the respondent No. 1, contended that he had paid the dues of the bank within the time fixed by the DRAT and thereafter he had also transferred the

property in favour of a third party due to financial difficulties. In essence, submission of learned counsel is that putting the clock back is likely to cause serious jeopardy to him.

11. Mr. Jatin, learned counsel appearing for the auction purchaser, submitted that on the basis of the liberty he had already filed a suit in the Delhi High Court and is entitled to pursue the remedy because of action was taken in hot haste in by the bank in putting the property into auction without indicating that litigation was going on between the borrower and the bank. It is urged by him had the said fact was made known the third respondent would not have participated in the auction. It is argued by him that his claim for damages cannot be nullified and hence, the decision of the High Court is absolutely defensible and does not require to be interfered with.

12. Before we dwell upon the jurisdiction of the DRAT to give such a liberty to the auction purchaser, we think that it is absolutely imperative, in the case at hand, to take note of the fact that though the appeal was filed before the DRAT on 7.11.2005 and admitted on 14.11.2005, yet the same was disposed of on 20.5.2010 almost after four and half years. We are at pains to say that the DRAT has totally forgotten the obligation cast on it under the RDB Act and also has remained quite oblivious of the salient features and the seminal purpose of SARFAESI Act.

13. In this context, we may fruitfully refer to the Objects and Reasons of the SARFAESI Act. The relevant part of it reads as follows: -

"The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with international prudential norms and accounting practices there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in

the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them. Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow place of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Narasimham Committee I and II and Andhyarujina Committee constituted by the Central Government for the purpose of examining banking sector reforms have considered the need for changes in the legal system in respects of these areas."

14. In ***Mardia Chemicals Ltd. And others* v. *Union of India and others***[1], after referring to the Statement of Objects and Reasons this Court dealt with the submission that existing rights of private parties under a contract cannot be interfered with, more particularly, putting one party in an advantageous position over the other. In that context, the three-Judge Bench observed thus: -

1 (2004) 4 SCC 311

"As discussed earlier as well, it may be observed that though the transaction may have the character of a private contract yet the question of great importance behind such transaction as a whole having far-reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions, more particularly when financing is through banks and financial institutions utilizing the money for the people in general, namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact on the socio-economic drive of the country. The two aspects are intertwined which are difficult to be separated."

In the said case, it was further rules thus: -

"81. In view of the discussion held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the Debts Recovery Tribunal. The effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of

the economy of the country and welfare of the people in general which would subserve the public interest."

15. In ***Authorised Officer, Indian Overseas Bank and another*** **v.** ***Ashok Saw Mill***[2], though in a different context, the Court has expressed thus: -

"**33.** It is clear that while enacting the SARFAESI Act the legislature was concerned with measures to regulate securitization and reconstruction of financial assets and enforcement of security interest. The Act enables the banks and financial institutions to realize long-term assets, manage problems of liquidity, asset liability mismatches and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery of reconstruction."

Thereafter, the Bench proceeded to state thus: -

"**36.** The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore

2 (2009) 8 SCC 366

possession even though possession may have been made over to the transferee."

16. In ***United Bank of India*** **v.** ***Satyawati Tondon and others***[3], this Court restated the purpose of bringing the SARFAESI Act and in that context observed the role of the tribunal as under: -

"**23.** Sub-section (2) of Section 17 casts a duty on the Tribunal to consider whether the measures taken by the secured creditor for enforcement of security interest are in accordance with the provisions of the Act and the Rules made thereunder. If the Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that the measures taken by the secured creditor are not in consonance with sub-section (4) of Section 13, then it can direct the secured creditor to restore management of the business or possession of the secured assets to the borrower. On the other hand, if the Tribunal finds that the recourse taken by the secured creditor under sub-section (4) of Section 13 is in accordance with the provisions of the Act and the Rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor can take recourse to one or more of the measures specified in Section 13(4) for recovery of its secured debt.

---

3 (2010) 8 SCC 110

> **24.** Sub-section (5) of Section 17 prescribes the time-limit of sixty days within which an application made under Section 17 is required to be disposed of. The proviso to this sub-section envisages extension of time, but the outer limit for adjudication of an application is four months. If the Tribunal fails to decide the application within a maximum period of four months, then either party can move the Appellate Tribunal for issue of a direction to the Tribunal to dispose of the application expeditiously."

17. In ***Transcore v. Union of India and another***[4], the Court, while discussing about the various provisions of the SARFAESI Act, expressed thus: -

> **"60.** Value of an asset in an inflationary economy is discounted by "time" factor. A right created in favour of the bank/FI involves corresponding obligation on the part of the borrower to see that the value of the security does not depreciate with the passage of time which occurs due to his failure to repay the loan in time."

We have referred to the aforesaid authorities to show that speedy disposal of the application and the appeal are fundament objects of the enactment and "time factor" has inextricable nexus with the sustenance of economy.

---

4 (2008) 1 SCC 125

18. Having discussed about the purpose and legislative intendment of the SARFAESI Act we think it appropriate to refer to the legislative purpose of the RDB Act. We are absolutely conscious that this was an earlier legislation and because it could not become that effective, the SARFAESI Act was enacted. While dealing with the purpose of the said legislation and how it works, this Court in ***Satyawati Tondon*** (supra) has observed that an analysis of the provisions of the DRT Act shows that primary object of that Act was to facilitate creation of special machinery for speedy recovery of the dues of banks and financial institutions. This is the reason why the DRT Act not only provides for establishment of the Tribunals and the Appellate Tribunals with the jurisdiction, powers and authority to make summary adjudication of applications made by banks or financial institutions and specifies the modes of recovery of the amount determined by

the Tribunal or the Appellate Tribunal but also bars the jurisdiction of all courts except the Supreme Court and the High Courts in relation to the matters specified in Section 17. Thereafter the Division Bench proceeded to state thus: -

> "**7.** For few years, the new dispensation worked well and the officers appointed to man the Tribunals worked with great zeal for ensuring that cases involving recovery of the dues of banks and financial institutions are decided expeditiously. However, with the passage of time, the proceedings before the Tribunals became synonymous with those of the regular courts and the lawyers representing the borrowers and defaulters used every possible mechanism and dilatory tactics to impede the expeditious adjudication of such cases. The flawed appointment procedure adopted by the Government greatly contributed to the malaise of delay in disposal of the cases instituted before the Tribunals."

19. In ***Official Liquidator, Uttar Pradesh and Uttarakhand*** **v.** ***Allahabad Bank and others***[5], though in a different context, this Court observed that the RDB Act has been enacted in the backdrop that the banks and financial institutions

5 (2013) 4 SCC 381

had been experiencing considerable difficulties in recovering loans and enforcement of securities charged with them and the procedure for recovery of debts due to the banks and financial institutions which were being followed had resulted in a significant portion of the funds being blocked. Emphasis has been laid on blocking of funds in unproductive assets, the value of which deteriorates with the passage of time. That apart, the purpose of the RDB Act, as is evincible, is to provide for establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto. Section 17 of the RDB Act deals with jurisdiction, powers and authority of the Tribunals. It confers jurisdiction on the Tribunal to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

20. Thus, the intendment of this legislation is for speedy recovery of dues to the bank. In this backdrop, the tribunals are expected to act in quite promptitude regard being had to the nature of the lis and see to it that an ingenious litigant does not take recourse to dilatory tactics. It may be aptly noted that an action taken by the bank under SARFAESI Act is subject to assail before the DRT and a further appeal to the DRAT. Neither the DRT nor the appellate tribunal can afford to sit over matters as that would fundamentally frustrate the purpose of the legislation. In the case at hand, we really fail to fathom what impelled the DRAT to keep on adjourning the matter and finally dispose it by passing an extremely laconic order. It is really perplexing. A tribunal dealing with an appeal should not allow adjournments for the asking. It should be kept uppermost in mind of the Presiding Officer of the tribunal that grant of an adjournment should be

an exception and not to be granted in a routine and mechanical matter. In the case at hand, such a delineation by the DRAT only indicates its apathy and indifference to the role ascribed to it under the enactment and the trust bestowed on it by the legislature. A curative step is warranted and we expect the Chairman and the members of the DRAT shall endeavour to remain alive to the obligations as expected of them by such special legislations, namely, the SARFAESI Act and the RDB Act.

21. Be it noted, the principal purpose is to see that recovery of dues which is essential function of any banking institution does not get halted because of procrastinated delineation by the tribunal. It is worthy to note that the legislature by its wisdom under Section 22 of the RDB Act has provided that the DRT and the appellate tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the

principles of natural justice and subject to the rules framed. They have been conferred powers to regulate their own procedure as given to them. It is so, for the very purpose of their establishment is to expedite disposal of the applications and the appeals preferred before them. They have the character of specialized institutions with expertise and conferred jurisdiction to decide the lis in speedy manner so that the larger public interest, that is, the economy of the country does not suffer. But, a pregnant one, in the case at hand the DRAT did not dispose of the appeal for four and a half years. We can only say that apart from the curative step the tribunal as well as the DRAT has to rise to the occasion, for delay in adjudication of these type of litigations brings a long term disaster. A cute slumber shall not do.

22. The grievance of the bank does not end here. On the contrary this is the beginning of the end. Accentuating the grievance, it is submitted by Mr.

Jain, learned senior counsel for the appellant, that the DRAT travelled beyond the prayer made by the borrower inasmuch as the borrower in essentiality had prayed for grant of compensation and alternatively extension of time for sixty days. Due to the pendency of the appeal before the tribunal, submits Mr. Jain, the extension of time melted into total insignificance. Despite that, as the order would indicate, a consensus was arrived at between the auction purchaser and the borrower and the same is clear from the order, as the DRAT had directed that the auction purchaser and the borrower would sign the order. The bank was not a party to the said adjustment or consensus. The bank was only directed to refund the amount along with 9% interest and that has been done without recording a finding whether the bank was really at fault or not and, more so, when the borrower had exhibited a non-challant attitude not to pay back the money or to deposit

the amount as directed by the High Court. Learned senior counsel is also critical of the order passed by the High Court which has declined to address the core issue by stating that there was no need to exercise the extraordinary writ jurisdiction under Article 226 of the Constitution. Learned senior counsel would submit that the High Court has failed in its constitutional duty to scrutinise whether a liberty of the present nature could have been granted by the tribunal, clothed with such special and restricted jurisdiction.

23. Presently to the spectrum of jurisdiction. Section 17 of the SARFAESI Act allows any person, including a borrower, aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by secured creditor to submit an application to the DRT having jurisdiction in the manner within 45 days from the date of such measures have been taken. Sub-section (3) of Section 17 empowers the DRT to question the

action taken by the secured creditor and the transaction entered into by virtue of Section 13(4) of the SARFAESI Act. It has been held in ***Ashok Saw Mill*** (supra) that the legislature by virtue of incorporation of sub-section (3) in Section 17 has gone to the extent of vesting the DRAT with authority to set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Section 18 of the SARFAESI Act makes provision for an appeal to the appellate authority from any order made by the Debts Recovery Tribunal. The Debts Recovery Tribunal, needless to say, has the same jurisdiction as conferred under Section 17 of the RDB Act. In this context, Section 19 of the SARFAESI Act is worth reproducing: -

"**19. Right of borrower to receive compensation and costs in certain cases**. – If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal

or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made thereunder and directs the secured creditors to return such secured assets to the concerned borrowers, such borrower shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18B."

24. We have reproduced the aforesaid section to point out that the legislature has brought in this provision by way of substitution by Act 30 of 2004 with effect from 11.11.2004 to confer jurisdiction on the DRT and DRAT to entertain a plea of the borrower for grant of compensation and costs.

25. At this juncture, we may clarify that we do not intend to dwell upon the subtle distinction between the compensation and damages as canvassed at the Bar as that is not needed in this

case. The thrust of the matter is whether DRAT has the jurisdiction to grant any liberty and, more so, in a case when the borrower and the auction purchaser have entered into a compromise. As has been stated earlier, the bank was not a party to the compromise.

26. Section 19 of the RDB Act, occurring in Chapter IV of the Act, deals with procedure of tribunals. Sub-section (25) of Section 19 reads as follows: -

"(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

27. The aforesaid provision makes it quite clear that the tribunal has been given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Thus, the tribunal is required to function

within the statutory parameters. The tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers. In this context, we may refer to a three-Judge Bench decision in ***Upper Doab Sugar Mills Ltd.* v. *Shahdara (Delhi) Saharanpur Light Rly. Co. Ltd.***[6] wherein it has been held that when the tribunal has not been conferred with the jurisdiction to direct for refund, it cannot do so. The said principle has been followed in ***Union of India* v. *Orient Paper and Industries Limited***[7].

28. In ***Union of India v. R. Gandhi, President, Madras Bar Association***[8], the Constitution Bench, after referring to the opinion of

---

6 AIR 1963 SC 217

7 (2009) 16 SCC 286

8 (2010) 11 SCC 1

Hidayatullah, J. in ***Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala***[9]***,*** the pronouncements in ***Jaswant Sugar Mills Ltd.* v. *Lakshmi Chand***[10]***, Associated Cement Companies Ltd.* v. ***P.N. Sharma***[11] and ***Kihoto Hollohan* v. *Zachillhu***[12], ruled thus: -

"**45.** Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are:

(*i*) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising

9 AIR 1961 SC 1669

10 AIR 1963 SC 677

11 AIR 1965 SC 1595

12 1992 Supp (2) SCC 651

under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.

(*ii*) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an "expert" in the field to which the tribunal relates. Some highly specialised fact-finding tribunals may have only technical members, but they are rare and are exceptions.

(*iii*) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act."

29. From the principles that have been culled out by the Constitution Bench, it is perceptible that a tribunal is established under a statute to

adjudicate upon disputes arising under the said statute. The tribunal under the RDB Act has been established with a specific purpose and we have already focused on the same. Its duty is to see that the disputes are disposed of quickly regard being had to the larger public interest. It is also graphically clear that the role of the tribunal has not been fettered by technicalities. The tribunal is required to bestow attention and give priority to the real controversy before it arising out of the special legislations. As has been stated earlier, it is really free from the shackles of procedural law and only guided by fair play and principles of natural justice and the regulations formed by it. The procedure of tribunals has been elaborately stated in Section 19 of the RDB Act.

30. It is apt to note here that Section 34 of the SARFAESI Act bars the jurisdiction of the civil court. It reads as follows: -

> "**34. Civil court not to have jurisdiction**. – No civil 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)."

Section 34 of the RDB Act provides that the said Act would have overriding effect. We have referred to the aforesaid provisions to singularly highlight that the sacrosanct purpose with which the tribunals have been established is to put the controversy to rest between the banks and the borrowers and any third party who has acquired any interest. They have been conferred jurisdiction by special legislations to exercise a particular power in a particular manner as provided under the Act. It cannot assume the role of a court of different nature which really can grant "liberty to initiate any action against the bank". It is only required to decide the lis that comes within its own domain. If it does not fall

within its sphere of jurisdiction it is required to say so. Taking note of a submission made at the behest of the auction purchaser and then proceed to say that he is at liberty to file any action against the bank for any omission committed by it has no sanction of law. The said observation is wholly bereft of jurisdiction, and indubitably is totally unwarranted in the obtaining factual matrix. Therefore, we have no hesitation in deleting the observation, namely, "liberty is also given to the auction purchaser to file action against the bank for any omission committed by it".

31. As we have directed for deletion for the same reasons we also set aside the judgment of the High Court whereby it has declined to interfere with the grant of liberty by the DRAT. This being the only prayer by Mr. Jain, it is answered in the affirmative in his favour by stating that such grant of liberty was not within the domain of the tribunal regard being had to its limited jurisdiction under such special legislation and further, especially,

when the bank was not a party to the compromise.

32. Before parting with the case, we are obliged to deal with another aspect. DRAT is required to adjudicate the lis in an apposite manner. It is hearing an appeal from an order passed by the DRT. It cannot afford to pass a laconic order. Learned counsel for the auction purchaser endeavoured hard to impress us that the order being a cryptic one this Court should set aside the same and remit the matter to the DRAT. The said prayer has been seriously opposed by Mr. Jain, learned senior counsel for the appellant-bank and Mr. Dham, learned counsel for the borrower. Two aspects weigh in our mind not to take recourse to such a mode, namely, (i) the auction purchaser has not challenged the order passed by the DRAT before the High Court nor has he come to this Court and further Mr. Jain has restricted his argument only with regard to grant of liberty; and

(ii) with the efflux of time the bank has realized its money and the property has changed hands. It can be stated with certitude that it is absolutely unnecessary to direct the DRAT to proceed with the appeal *de novo.* Hence, we refrain from adopting the said course.

33. Resultantly, the appeal is allowed to the extent indicated hereinabove. In the facts and circumstances of the case there shall be no order as to costs.

.....J.
[Anil R. Dave]

.....J.
[Dipak Misra]

New Delhi;
September 13, 2013.