G. Corp Lotus Mall Private Limited Vs Axis Bank Limited & Ors

Court: Karnataka High Court At Bengaluru

Date of Decision: Jan. 29, 2025

Acts Referred: Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 â€" Section 2(ha), 13(4), 17, 18, 18(1)

Hon'ble Judges: Krishna S Dixit, J; G Basavaraja, J

Bench: Division Bench

Advocate: Manu P Kulkarni, Shristi Widge, Rayappa Y, George Joseph, Aniketh B C, G L Vishwanath, Manasa B Rao

Final Decision: Allowed

Judgement

Krishna S Dixit, J

CAV ORDER

1. Petitioner is knocking at the doors of Writ Court for laying a challenge to the order dated 13.12.2024 made by the Debt Recovery Appellate

Tribunal at Chennai whereby his applications for waiver of statutory deposits u/s.18 of The Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 as a pre-condition for maintaining the appeals have been turned down.

2. The principal prayers of the petitioner are textually as under:

Ã¢â‚¬Å“(i) Issue writ of certiorari or any other writ, order or direction as this HonÃ¢â‚¬â„¢ble Court may deem fit setting aside the order dated 13.12.2024

(Annexure-A) in I.A.No.262/2024 in AIR No. 1854/2023 and I.A.No.714/2024 in AIR No.84/2024 pending before the HonÃ¢â‚¬â„¢ble Debts Recovery

Appellate Tribunal, Chennai;

(ii) Allow I.A. No.262/2024 in AIR NO.1854/2023 and I.A.No.714/2024 in AIR No.84/2024 pending before the HonÃ¢â‚¬â„¢ble Debts Recovery

Appellate Tribunal, Chennai and direct that the said appeals be heard on merits without any pre-deposit.

(iii) In the alternative to prayer no.(ii) direct that the appeals in AIR No.1854/2023 and AIR No.84/2024 pending before the HonÃ¢â‚¬â„¢ble Debts

Recovery Appellate Tribunal, Chennai be heard upon deposit of a cumulative and aggregate sum of Rs.9,80,46,885.25/- being 25% of

Rs.39,21,87,541/-.Ã¢â‚¬â€‹

3. Foundational facts of the case:

3.1 Petitioner happens to be the guarantor for the term loan of Rs.150.00 crore availed by the 3rd respondent. The 1st respondent-bank initiated

SARFAESI proceedingsi nter alia against the borrower and the petitioner, that eventually resulted into issuance of Possession Notice dated

12.02.2020 followed by Sale Notice dated 26.07.2022 u/s.13(4) of the 2002 Act. Petitioner filed S.A.No.95/2020 renumbered as TSA No.11/2022 for

assailing the Possession Notice. He has also filed SA No.7/2023 assailing the Sale Notice.

3.2 The Debt Recovery Tribunal, Bangalore by a common order dated 09.11.2023 dismissed both the SAs, eventually resulting into petitioner moving

two separate appeals ie.,AIR No.1854/2023 and AIR No.84/2024. He had also filed two separate applications respectively I.A.No.264 of 2024 in the

former and I.A.No.714 of 2024 in the latter seeking waiver of pre-deposit prescribed u/s.18 of 2002 Act. The Debt Recovery Appellate Tribunal vide

order dated 13.12.2024 has directed the petitioner to deposit 25% of Rs.82,58,87,541-00 ie., Rs.20,64,71,885-00 in each of the appeals as a

precondition for maintaining them. Reprieve in terms of equalized installments is also granted. Aggrieved thereby, petitioner is complaining before this

court.

4. Learned counsel for the petitioner seeks to falter the impugned order on the grounds that:

4.1 The provisions of Sec.18 of 2002 Act requiring pre-deposit should be construed in such a way that even if there are multiple appeals arising from

the same debt, pre-deposit in one would enure to the benefit of the rest.

4.2 While working out amount to be made pre-deposit of, any payment made by the sureties/guarantors towards the loan account in question has to be

given deduction inasmuch as the term employed inter alia in Sec.18 is debt due as defined u/s.2(ha) of the Act.

4.3 The proceedings resulting into issuance of Possession Notice followed by Sale Notice u/s.13(4) of the Act, should be treated as constituting one

single appeal for the purpose of Sec.18 and therefore duplication of pre-deposit is not justified.

4.4 Learned Panel Counsel appearing for the bank and the learned Sr. Advocate appearing for the respondent-auction buyer resist the petition making

submission in justification of the impugned order and the reasons on which it has been structured. Learned Sr. Advocate contends that under the very

scheme of Secs. 17 & 18 of the 2002 Act, making pre-deposit in each of the appeals is a sine qua non; Parliament in its wisdom has enacted that

way and if it wanted the requirement to be otherwise, the text of these provisions would have been much different. Learned Panel Counsel cottons

with the same contention and repels the argument of petitionerÃ¢â‚¬â„¢s counsel that the deductions have not been waived from the outstanding debt

whilst working out pre-deposit amount. He also highlighted the conduct of the petitioner which according to him disentitles to the discretionary relief at

the hands of this Court.

5. Having heard learned counsel appearing for the parties and having perused the Petition Papers and also after adverting to relevant of the rulings

cited at the Bar, we are inclined to grant indulgence in the matter as under and for the following reasons:

5.1 Section 18(1) with second Proviso reads as under:

Ã¢â‚¬Å“Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal along with such fee,

as may be prescribed], Section 12, for under section 17, may prefer an appeal to the Appellate Tribunal within thirty days from the date of

receipt of the order of Debts Recovery Tribunal:

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower.

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the

amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per

cent. of debt referred to in the second proviso.Ã¢â‚¬â€‹

It has long been settled that right of appeal is a creature of law and therefore, the Law Maker can condition it subject to the rider that such condition

shall not be unreasonable or unjustifiably onerous. Parliament in its wisdom has enacted the prescription of making pre-deposit after the Apex Court in

MARDIA CHEMICALS LTD vs. UNION OF IND (I2A004) 4 SCC 311, has done away with such a requirement that was there in section 17 of

the 2002 Act. Apparently, there is no challenge to the requirement of making such a pre-deposit. Therefore, the task of this court is only to construe

the provisions of section 18; obviously, court cannot rewrite it, as rightly contended by learned Sr. Advocate appearing for the auction buyer.

5.2 Learned counsel appearing for the petitioner is right in his submission that the requirement of pre-deposit u/s. 17 of the 2002 Act having been

struck down in MARDIA CHEMICALS supra, section 18 has been restructured requiring pre-deposit coupled with discretion to waive a part thereof.

He draws our attention to the Parliamentary debates that preceded the amendment to section 18 to tell that the condition of pre-deposit was not to

make challenge to the DRT order unreasonably onerous to the borrower/surety but only to secure the amount due as debt to the Bank/Financial

Institution, as determined by the DRT.

5.3 The following Parliamentary debates dated 7.12.2004 on the Enforcement of the Security Interest and Recovery of Laws (Amendment)

Ordinance, 2004, support the submission that the requirement of making pre-deposit in terms of section 18 of the Act is not appeal-specific but the

debt-due specific. In other words, notwithstanding multiple appeals, if pre-deposit is made in one of them, the requirement of section 18 is complied

with and that there is no justification for insisting upon the same pre-deposit being made in each of the appeals.

Ã¢â‚¬Å“The Minister of Finance (Shri.P.Chidambaram)Ã¢â‚¬Â¦ That judgement of the Supreme Court in Mardia Chemicals was passed on 8th of

April, 2004Ã¢â‚¬Â¦So, I think it was absolutely necessary not to leave a situation where after sub-Section 2 of Section 17 was struck down by the

Supreme Court, the result was that there was no effective way in which the lenders could approach the tribunalÃ¢â‚¬Â¦If these two rulings of the

Supreme Court were allowed to stand without any corrective measures, for a long time what would have happened is, for that entire period,

this Act would has been a virtual dead letter. Ã¢â‚¬Â¦we have, in deference to the observations of the Supreme Court, deleted sub-Section 2 of

Section 17, and we have also introduced a provision by which the borrower will be given an opportunity to state his case, before measures

can be taken under sub-Section 4 of Section 13, and immediately the borrower can challenge it before the tribunal. If the tribunal upholds

the claim of the lender, and then the borrower wishes to go for an appeal, at that stage, a provision has been introduced where the

borrower would have to deposit 50 per cent of the amount which has been decided as owing from himÃ¢â‚¬Â¦ At the first stage, he deposits

nothing, and at the second stage, the appellate stage, he would have to deposit 50 per cent. I think, this is a fair provision. This balances

the interest of both the lender and borrower. I have no doubt that this provision will be a salutary provision for effectively implementing this

ActÃ¢â‚¬Â¦Ã¢â‚¬â€‹

5.4 Let us examine the consequences of a view in variance with the above: If there are multiple borrowers and plural sureties in respect of the very

same loan, and each one of them files the appeal u/s 18, then the total amount of deposit may far exceed the debt due. Apparently, that is not the

intent of the Parliament, as rightly submitted by learned counsel appearing for the petitioner. A great jurist & Chief Judge AHARON BARAK of

IsraelÃ¢â‚¬â„¢s Supreme Court in his PURPOSIVE INTERPRETATION IN LA (WPrinceton, First Indian Sub-continent Printing 2023 at pg.361)

writes:

Ã¢â‚¬Å“Ã¢â‚¬Â¦the legislature enacts statutes with the objective purpose of achieving the proper modes of behavior. Hence the presumption that

legislation seeks to achieve reasonable results, logically, avoiding anything that is needlessly contrary to common sense. The purpose of a

statute is presumed not to be the performance of a useless activity, not to make unreaslistic demandsÃ¢â‚¬Â¦Ã¢â‚¬â€‹

5.5 The contention of respondents that the text of section 18 of the Act is plain & clear and therefore, does not require any interpretation, is attractive

at the first blush; however, a deeper examination shows it otherwise. Every text howsoever plain it may be, requires interpretation. It cannot be

reasonably understood sans interpretation. Prof. J.H.Wigmore (Evidence (1981) Ã‚Â§ 2459), opines :Ã¢â‚¬Å“The process of interpretation, then, though

it is commonly simple and often unobserved, is always present, being inherently indispensable...Ã¢â‚¬ Law enacts oneÃ¢â‚¬â„¢s thought , which

cannot act upon another unless it is comprehended. Even a plain text of law requires interpretation because only through that process, we can

conclude whether its meaning is plain or not. Added, interpretation is concerned with unearthing the hidden meaning from the text of a statute. A text

may yield varying meanings in different sets of facts.

5.6 Ronald DworkinÃ¢â‚¬â„¢s jurisprudence also recognizes a vast reservoir of principles Ã¢â‚¬Ëœimplicit Ã¢â‚¬â„¢ in the practice of law, principles that follow from

the best interpretive theory of explicit law (Ronald Dworkin, LawÃ¢â‚¬â„¢s Empire (Cambridge, Mass: Harvard University Press, 1986), chapters 3,7)A.

vast majority of statutes yield plain meanings in the vast majority of cases. Only in a minority of cases, the text of law becomes unclear, as it

has happened in the case at hand. Most cases that come before court belong to the latter category. Language of the law sets the boundaries of

its interpretation. However, any text will have not only an express meaning but some implicit meanings too. The meaning of a statute can be said to be

explicit when the text of its very provisions conveys to the reader through the dictionary meaning of the language that is understood in its context. On

the other hand, the meaning of a text can be said to be implicit when it conveys to the reader not as a part of dictionary meaning of the language but

as if it is written in invisible ink. In other words, to understand the implicit meaning, one has to read between the lines. That is where the task of a

judge as the mouth of Law Maker begins. This implicit meaning has to be inferred from the policy content which the Law Maker has broadly enacted.

5.7 Added, there is a strong presumption that the legislature does not intend its statutes to be unjust & unreasonable. It is more so in a constitutionally

ordained Welfare State. Elements of reason & justice should animate construction of statutes. Therefore, we are of the considered opinion that when

there are multiple appeals, pre-deposit in one of them enures to the benefit of other, provided that debt is the same. Incidentally, question may crop up

as to what should happen when one such appeal in which pre-deposit is made is withdrawn. Answer to this need not detain us long. The DRAT will

be within its power to insist upon the pre-deposit in one of the rest of appeals. In which of such appeals pre-deposit should be insisted upon, is also

within the domain of DRAT. There is force in the submission of learned counsel for the petitioner that the Madras High Court in

M.RAMAKRISHNAN vs. DENA BAN 2K008 SCC OnLine Mad 540 and the Kerala High Court inS ENIOR MANAGER, UNION BANK OF

INDIA vs. R.DHANALAKSHM MIANU/KE/2976/2022 have taken the view which broadly accords with ours. The contention of learned counsel

appearing for the petitioner that both the appeals in question should be treated as one single appeal, does not merit consideration in view of our

observation in the preceding paragraphs.

5.8 The next contention of the petitioner that the payments made by a surety/guarantor has not been accounted, need not be examined by us. To some

extent, this aspect borders merits of the main matter. However, in determining 25% of the amount of debt due, the DRAT has to examine if any

payment is made towards the debt in question and such a payment is given due deduction. All these aspects being a matter of record, their

examination would not pose any difficulty to the DRAT. The contention of learned Panel Counsel that while arriving at the figure the payment made

by the surety is also counted, is left to be considered by the DRAT after hearing both the sides.

5.9 The vehement contention of learned Sr. Advocate appearing for the auction buyer that the conduct of the petitioner has been adversely

commented upon by a learned Single Judge of this Court in petitionerÃ¢â‚¬â„¢s W.P.No.15632/2021 disposed off on 16.03.2023, does not much impress

us. There is some adverse observation against the petitioner, is true. However, grounds are reserved to him for agitation in the proceedings. At the fag

end of paragraph 14 of the said judgment, it is observed as under:

Ã¢â‚¬Å“The intention of the petitioner appears to be to dodge the issue as long as possible and as far as possible. Therefore, on this solitary

ground of non-divulgence of aforesaid facts, I decline to entertain the petition. The petitioner is anyway before the DRT in several

proceedings. The grounds that are urged in this petition can always be urged before the DRT and the DRT is well within its jurisdiction to

consider all those grounds in support of the grievance of the petitioner.Ã¢â‚¬â€‹

The above observations have reserved the contentions to the petitioner for being urged in the pending proceedings before the DRT/DRAT. Whatever

culpable conduct based on which petitioner was denied relief in the said writ petition, therefore cannot be the basis to send him back empty handed. It

was Justice Oliver Wendell Holmes, who a century ago said in DAVIS vs. MILLS 194 U.S. 451 (1904):

Ã¢â‚¬Å“Constitutions are intended to preserve practical and substantial rights, not to maintain theoriesÃ¢â‚¬Â¦Ã¢â‚¬â€‹.

In the above circumstances, this petition succeeds; a Writ of Certiorari issues quashing the impugned order; the subject applications are remitted back

to the portals of Debt Recovery Appellate Tribunal, Chennai, for consideration afresh in the light of observations herein above made.

No costs.

We place on record our deep appreciation for the able assistance rendered by our Research Assistant Mr.Raghunandan K.S.