

Godawari Devi and Others Vs The Debts Recovery Tribunal and Others

Court: Rajasthan High Court

Date of Decision: April 8, 2015

Acts Referred: Constitution of India, 1950 - Article 227

Limitation Act, 1963 - Section 5

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) - Section 13, 13(2), 13(4), 17

Hon'ble Judges: Sangeet Lodha, J

Bench: Single Bench

Advocate: Rameh Purohi, for the Appellant; Jagdish Vyas, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Sangeet Lodha, J.

1. These three writ petitions assailing the recovery proceedings initiated by the State Bank of Bikaner and Jaipur (SBBJ), under the provisions of

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act of 2002") for recovery of

outstanding dues against the loan advanced to the proprietorship concern - M/s. Rajat Fashion Bazar, the orders passed by the Debt Recovery

Tribunal ("the Tribunal") and Debt Recovery Appellate Tribunal ("Appellate Tribunal") in the proceedings under the Act of 2002 and the auction

sale of secured assets by the secured creditor, SBBJ, were heard together and are being decided by this common order.

2. The relevant facts are that M/s. Rajat Fashion Bazar, a sole proprietorship concern of Smt. Godawari Devi, obtained the loan from Collectorate

Branch of the SBBJ in the form of cash credit limit to the tune of Rs. 5 lacs on 15.11.2000. Smt. Godawari Devi mortgaged her immovable

property, a Nohra, converted into shop situated in Ward No. 8 at Mela Darwaja Bus Stand, Vivekanand Marg, Pali. Shri Mohanlal, the husband

of Smt. Godawari Devi stood as guarantor for the loan advanced. The borrower defaulted in repayment of loan after 11.7.02 and therefore, the

loan account was declared "Non Performing Asset" (NPA) and the SBBJ initiated the recovery proceedings against the borrower and its

proprietor Smt. Godawari Devi and the guarantor Shri Mohanlal, by issuing a notice under Section 13(2) of the Act of 2002, on 10.10.12. At the

same time, the SBBJ also filed a suit before the District Judge, Pali for recovery of a sum of Rs. 6,66,417/- against the borrower and the

guarantor. Pursuant to the provisions of Section 13(4) of the Act of 2002, the possession of the secured asset was taken by the SBBJ on 12.1.05.

3. Aggrieved by the action of the SBBJ, the borrower and the guarantor preferred a writ petition being No. 1125/05 before this court. The writ

petition stood dismissed by this court vide order dated 29.3.05 observing that the petitioner is guilty of suppression of important material fact in not

disclosing whether the Bank has withdrawn the payment of Rs. 4,68,000/- by encasing the cheque issued by the petitioner borrower. Aggrieved

thereby, the petitioners therein, preferred a Special Appeal being No. 125/05 before the Division Bench of this court. On 5.5.06, when the matter

came up for hearing, the Division Bench taking sympathetic view extended an opportunity to the petitioners therein to deposit Rs. 2.75 lacs

towards the repayment of outstanding dues. After taking instructions from the petitioners, the counsel appearing on their behalf, made a statement

before the court that the amount will be deposited within one week. The borrower and the guarantor failed to deposit the amount despite

assurance being given to the court as aforesaid and that apart, on the next date of hearing i.e., on 23.5.06, when the court wanted to know as to

whether they are ready and willing to deposit the amount, the counsel appearing on their behalf expressed inability to deposit the amount due.

Accordingly, the Special Appeal preferred on behalf of the borrower and the guarantor as aforesaid, was dismissed by a Bench of this court vide

order dated 23.5.06.

4. Thereafter, the SBBJ issued a notice for auction of the secured asset which was published in the newspaper on 12.7.06. In the meantime, the

borrower alongwith guarantor preferred an appeal before the Debt Recovery Tribunal, Jaipur under Section 17 of the Act of 2002.

5. During the pendency of the appeal, the borrower and guarantor preferred a writ petition being No. 4413/06 before this court, questioning the

legality of auction notice issued by the SBBJ as aforesaid, stating that the member of the Debt Recovery Tribunal has been transferred and no

other member has been posted vice him and therefore, the matter is not likely to be taken up by the Debt Recovery Tribunal for consideration on

the date already fixed i.e. 11.8.06.

6. On 14.8.06, a coordinate Bench of this court passed an order in the said writ petition in the following terms:

Heard.

Petitioner will deposited 30% of sum of Rs. 9,20,584/- with the respondent No. 2. If the amount is deposited, no coercive action will be taken

against the petitioner.

7. It is to be noticed that while passing the interim order as aforesaid, no notice was directed to be issued to the respondent therein, SBBJ.

8. It is stated that the copy of the interim order passed by this court as aforesaid, was not communicated by the petitioners therein to the SBBJ and

consequently, the secured asset was put to auction on 18.8.06. The highest bid of Moolchand Gulechha, the petitioner herein in the Writ Petition

No. 1783/07, for Rs. 18,01,000/- was confirmed by the competent authority of SBBJ and accordingly, the sale price was deposited by the

auction bidder and the possession of the property was handed over to him on 24.8.06.

9. On 28.8.06, the borrower alongwith guarantor preferred an application before the Tribunal with the prayer for staying the confirmation of sale of

the property in question. The application was rejected by the Tribunal vide order dated 29.8.06.

10. Aggrieved by the order dated 29.8.06 passed by the Tribunal, the borrower alongwith guarantor preferred an appeal before the Debt

Recovery Appellate Tribunal, Delhi. The appeal was allowed by the Appellate Tribunal vide order dated 8.3.07 observing that while auctioning the

property for consideration of Rs. 18 lacs, the officials of the SBBJ have not acted fairly. The Appellate Tribunal observed that ignoring the orders

of this court, auction held on 18.8.06 is a farce, whereby valuable property of the appellants therein has been sold for a paltry sum. Accordingly,

while setting aside the auction held on 18.8.06 and the sale confirmation certificate issued, the SBBJ was directed to return the amount to the

auction purchaser and restore the possession to the appellants therein. The appellants were given a week's time to deposit the amount in terms of

interim order dated 14.8.06 passed by this court. The SBBJ was restrained from taking further action against the appellants therein till the decision

of the appeal pending before the Tribunal. While allowing the appeal as aforesaid, the Appellate Tribunal directed that the appropriate authority of

SBBJ shall initiate disciplinary action against the two officers of the SBBJ namely, Mr. K.C. Goyal, Branch Manager, Mr. R.C. Pareek, Chief

Manager, who had acted high handedly with the sole intention to cause considerable hardship to the appellants therein.

11. In these circumstances, the order dated 8.3.07 passed by the Appellate Tribunal in Appeal No. 162/06, the SBBJ has preferred writ petition

No. 1674/07.

12. The legality of the order dated 8.3.07 passed by the Appellate Tribunal is also questioned by the auction purchaser Moolchand Gulechha by

way of Writ Petition No. 1783/07.

13. Mr. M.S. Singhvi, learned Senior Advocate appearing for SBBJ submitted that the findings recorded by the Appellate Tribunal are ex facie

perverse and the order dated 8.3.07 is ex facie without jurisdiction. Learned counsel submitted that the Appellate Tribunal was hearing the appeal

only against an interlocutory order, however, it has proceeded to consider the matter as if it was deciding the main matter, which is still pending

consideration before the Tribunal. Learned counsel submitted that indisputably, the appeal preferred by the borrower and the guarantor before the

Tribunal is barred by limitation and unless the delay in filing the appeal is condoned, no order could have been passed by the Tribunal on the

application seeking interim relief. Learned counsel submitted that the Appellate Tribunal has seriously erred in recording the finding regarding

violation of interim order dated 14.8.06 passed by this court. Learned counsel submitted that it is a matter of record that certified copy of order

dated 14.8.06 was obtained by the petitioners in the Writ Petition No. 4413/06 on 14.8.06 itself yet, until 25.8.06, they did not care to serve the

copy of the order on SBBJ. Learned counsel submitted that the failure on the part of the borrower and the guarantor in not communicating the

interim order passed in their favour immediately indicates that they did not have ready money to be deposited in terms of the interim order passed

by this court as aforesaid. Learned counsel submitted that the unequivocal facts on record in this regard have altogether been ignored by the

Appellate Tribunal. Learned counsel submitted that the Appellate Tribunal has seriously erred in drawing inference on account of presence of

Omprakash alongwith his friends at the site of auction. Learned counsel submitted that the Appellate Tribunal has also erred in ignoring the fact that

the borrower and the guarantor had unsuccessfully challenged the validity of the notice issued under Section 13 of the Act of 2002 by way of filing

the writ petition before this court. Learned counsel submitted that the Appellate Tribunal has committed serious error in recording a finding that the

property sold by public auction was valued at Rs. 42 lacs. Learned counsel submitted that the validity of the auction was not even a subject matter

of challenge before the Tribunal and therefore, the Appellate Tribunal while examining the legality of the order dated 29.8.06 could not have

examined the validity of the auction conducted by the SBBJ after following the due procedure. Learned counsel submitted that the Appellate

Tribunal has acted absolutely without jurisdiction in directing disciplinary action against the officers of SBBJ. Learned counsel submitted that the

Appellate Tribunal was not justified in interfering with the order passed by the Tribunal and granting indulgence to the borrower and the guarantor,

who have time and again defaulted in making payment despite the assurance being given to this court at the different stages. Accordingly, it is

submitted that the order impugned dated 8.3.07 passed by the Appellate Tribunal deserves to be quashed and set aside.

14. On the other hand, Mr. Ramesh Purohit, learned counsel appearing for the borrower and the guarantor in Writ Petition No. 4413/06 submitted

that in view of subsequent event and by efflux of time, the writ petition preferred has rendered infructuous.

15. Mr. Mahesh Bora, Senior Advocate, appearing on behalf of the borrower and the guarantor in Writ petition No. 1674/07 and 1783/07,

submitted that the order passed by the Appellate Tribunal after examination of all the relevant aspects in their entirety and objectivity, does not

suffer from any infirmity, illegality or jurisdictional error so as to warrant interference by this court in exercise of its supervisory jurisdiction under

Article 227 of the Constitution of India. Learned counsel submitted that the copy of the stay order alongwith 7 drafts amounting to Rs. 2,80,000/-

in total, were forwarded to the SBBJ by fax inasmuch as, on 18.8.06, the Bank authorities refused to receive the drafts as well as copy of the

interim order passed by this court. It is submitted that on 1.9.06, the 7 drafts in all for Rs. 2,80,000/- dated 21.8.06 were submitted to the SBBJ.

Learned counsel submitted that on the two shutters of the premises, the locks of the SBBJ are there and a small door is in possession of the

borrower and therefore, the possession of the disputed property has not been handed over to the auction purchaser till this date. Learned counsel

submitted that the value of the property in question at the relevant time was Rs. 42 lacs which was auctioned by the SBBJ for a paltry sum Rs.

18,01,000/- and thus, considering the totality of the facts and circumstances of the case, the order passed by the Appellate Tribunal cannot be

faulted with. Learned counsel submitted that the property in question was valued at Rs. 18.17 lacs in the month of January, 05 and the auction

took place in the month of August, 06 and therefore, the question of disposing of the property at the meagre price Rs. 18,01,000/- is ex facie

unreasonable. Learned counsel submitted that the reserve price was kept at Rs. 18 lacs, however, the auction bid was started from Rs. 15 lacs,

which shows the connivance of the authorities of the SBBJ with the auction bidders. Learned counsel submitted that it is incorrect that the interim

order passed by this court was not communicated to the SBBJ till 25.8.06. It is submitted that the petitioner had carried cash as well as cheques at

the place of auction and the officials of the SBBJ were requested to accept the same but they declined. Learned counsel submitted that the

photographs placed on record clearly show that the representatives of the borrower persuaded the authorities of the SBBJ to stop the auction, but

to no avail. Learned counsel submitted that the total outstanding dues in the year 2005 was calculated as Rs. 6,25,000/- out of which 1,57,000/-

was deposited by the borrower and therefore, the amount outstanding comes to the tune of Rs. 4,68,000/- but in the year 2006 when the property

was put to auction, how the outstanding dues were shown by the SBBJ to be a sum of Rs. 9,22,000/-, remains unexplained. Learned counsel

submitted that in view of the high handed action taken by the SBBJ in auctioning the secured asset at throw away price, the order impugned

passed by the Appellate Tribunal cannot be said to be arbitrary, illegal or without jurisdiction.

16. Learned counsel appearing for the petitioner-Moolchand Gulechha submitted that the petitioner is a bona fide purchaser who has purchased

the property in open auction and therefore, all the allegations levelled regarding the property being sold at throw away price are absolutely

baseless. Learned counsel submitted that the sale confirmation certificate has been issued in favour of the petitioner and on depositing the sale

consideration, the possession having been handed over to the auction purchaser, the concluded sale could not have been interfered with by the

Appellate Tribunal while deciding the appeal preferred against the interlocutory order passed by the Tribunal. Learned counsel submitted that

order impugned passed by the Appellate Tribunal beyond the scope of the appeal under consideration before it, is ex facie without jurisdiction and

therefore, deserves to be set aside.

17. I have considered the rival submissions and perused the material on record.

18. At the outset, it would be appropriate to notice the factual position emerging from the record, which is not in dispute.

19. The borrower - M/s. Rajat Fashion Bazar, a proprietorship concern, was advanced loan in form of cash credit limit to the tune of Rs. 5 lacs by

the SBBJ, on 15.12.2000. The proprietor of the borrower business concern, Smt. Godawari Devi, mortgaged her immovable property and Shri

Mohanlal, the husband of Smt. Godawari Devi, stood as guarantor. The borrower committed default in repayment of the loan and therefore, its

account was declared NPA and thereafter, the proceedings were initiated by the SBBJ for enforcement of security interest by issuing a notice

under sub-section (2) of Section 13 of the Act of 2002. It is also a common ground between the parties that the secured asset was taken

possession of by the SBBJ, pursuant to the notice issued under Section 13(4) of the Act of 2002, on 12.1.05. It is also not in dispute that the

borrower deposited a sum of Rs. 1,57,000/- and offered remaining amount of Rs. 4,68,000/- by way of post dated cheques, however, the

possession of the secured asset was not handed over by the SBBJ to the borrower and therefore, the borrower and guarantor preferred a writ

petition being No. 1125/05, which stood dismissed by this court vide order dated 29.3.05. The Special Appeal preferred by the petitioner was

also dismissed by a Bench of this court inasmuch as, the petitioner failed to deposit the part of the outstanding dues in terms of the interim order.

20. At this stage, the petitioner filed an application under Section 17 of the Act of 2002 before the Debt Recovery Tribunal, Jaipur with the prayer

that the SBBJ be restrained from taking any action or actual possession of the secured asset. That apart, it was prayed that the auction notice

dated 12.7.06 issued by the SBBJ be declared illegal and void ab initio. The borrower also prayed for interim order in terms that the SBBJ may be

restrained from sale or taking any action or actual possession of the secured asset and further be restrained to proceed against the said property.

The application preferred was accompanied by an application under Section 5 of Limitation Act.

21. A perusal of the order sheet of the Tribunal reveals that on 24.7.06, while issuing the notices, it was made clear that first the application under

Section 5 of Limitation Act shall be heard. On 7.8.06 the matter was adjourned by the Tribunal to 11.8.06.

22. During the pendency of the appeal before the Tribunal, on 11.8.06, the petitioner filed the writ petition being No. 4413/06 before this court

seeking directions to the SBBJ not to take any coercive action against the petitioner with respect to the property in question or otherwise till the

matter is decided by the Tribunal. The writ petition as aforesaid was filed by the petitioner stating that the Presiding Officer of the Tribunal has been

transferred and no other member is posted and therefore, the matter is not likely to be argued before the Tribunal on 11.8.06 whereas, the SBBJ is

going to auction the secured asset on 18.8.06. As noticed above, on 14.8.06, this court passed an interim order in favour of the petitioner,

however, no notice of the writ petition, was directed to be issued to the respondents. Be that as it may, even according to the petitioner borrower,

the writ petition No. 4413/06 preferred by it, for immediate relief on account of non availability of the Presiding Officer of the Tribunal, has

rendered infructuous by efflux of time.

23. Thus, the only question which survives for consideration of this court is whether the order impugned dated 8.3.07 passed by the Appellate

Tribunal allowing the appeal preferred by the borrower against the order dated 29.8.06 passed by the Tribunal rejecting the prayer of the

borrower for interim relief, is sustainable in the eyes of law?

24. It is not in dispute that the secured asset was auctioned by the SBBJ on the date fixed i.e. 18.8.06 and the auction was knocked down in

favour of the highest bidder-Moolchand, for a consideration of Rs. 18,01,000/-. According to the borrower, the amount offered by the petitioner

in terms of the interim order dated 14.8.06 passed by this court in Writ Petition No. 4413/06, was not accepted by the SBBJ and the secured

asset was put to auction in defiance of the directions issued by this court. But then, the borrower neither filed contempt petition alleging

disobedience of the order passed by this court nor the factum of defiance of the interim order was brought on record by way of additional

pleadings.

25. However, an interlocutory application was preferred by the borrower and the guarantor before the Tribunal in the pending appeal, on 28.8.06,

praying for stay on confirmation of sale of the property in question. The Tribunal arrived at the finding that the borrower and the guarantor, the

applicants therein, have no prima facie case in their favour and they have failed to comply with the directions issued by this court vide order dated

14.8.06 passed in Writ Petition No. 4413/06. That apart, the Tribunal observed that the appeal preferred is barred by limitation and the

application preferred under Section 5 of Limitation Act, is pending for disposal. Accordingly, the interlocutory application seeking interim relief was

rejected by the Tribunal.

26. It is to be noticed that aggrieved by the order passed by the Tribunal as aforesaid, the appeal preferred by the borrower and the guarantor has

been allowed by the Appellate Tribunal, observing that 15th and 16th August, 06 were public holidays, on account of Independence Day and

Janmashtami and therefore, the order passed by this court could not have been obtained by the appellants therein on 14th, 15th or 16th August,

2006 and it could have been obtained only 17th August, 2006. The Tribunal observed that this court is located at Jodhpur and the Bank is located

at Pali, a small town, far away from Jodhpur. Relying upon the photographs produced on record alleged to be depicting the scene of the auction

site and the presence of the borrower's son and his friends, the Tribunal observed that it is difficult to accept the version of the officials of the Bank

as if they had no knowledge about the order passed by this court. The Appellate Tribunal observed that it is difficult to believe that the appellants

therein failed to show the copy of the order to the Bank officials. The Appellate Tribunal further opined that the property is valued at Rs. 42 lacs,

the reserved price was fixed at Rs. 18 lacs by the Bank and admittedly, the bid started from Rs. 15 lacs. The Appellate Tribunal opined that two

bank officers namely Mr. K.C. Goyal and Mr. R.C. Pareek have acted high handedly to cause losses to the appellants.

27. A perusal of the material on record reveals that the observations made by the Appellate Tribunal that 15th and 16th August, 06 being public

holidays, the borrower could have obtained the certified copy of the order not before 17.8.06, is ex facie erroneous inasmuch as, it is a matter of

record that the certified copy of the order was obtained by the borrower on 14.8.06 itself. The observation of the Tribunal that the seat of the High

Court at Jodhpur is far away from Pali, is also factually incorrect inasmuch as, the distance between Jodhpur and Pali is not more than 75 kms.

There is nothing on record suggesting that the copy of the interim order passed by this court was sought to be served by the petitioner to the Bank

officials before the date of the auction and they had offered 30% of the outstanding dues to the SBBJ before 18.8.06. As a matter of fact, the

record shows that a copy of the order dated 14.8.06 was sent by the petitioner to the respondent-SBBJ by way of fax message on 25.8.06. It is

alleged that the petitioner offered 7 drafts of Rs. 40,000/- each amounting to Rs. 2,80,000/- to the respondent-SBBJ but then, there is nothing on

record to suggest that the amount was offered by the petitioner by way of drafts prior to 18.8.06. As a matter of fact, the drafts, the copies

whereof were forwarded to the SBBJ by the petitioner by fax are dated 21.8.06. Even according to the borrower, the 7 drafts in all for Rs.

2,80,000/- dated 21.8.06 were actually submitted to the SBBJ on 1.9.06. It is true that the petitioner had taken the stand that on 17.8.06, for

compliance of the interim order passed by this court in S.B.C. Writ Petition No. 4413/06, cash was taken to the Bank which was refused on the

ground that without copy of the Hon"ble Court's order, the amount cannot be accepted. Assuming for the sake of arguments that the borrower

was ready to deposit the amount in terms of the interim order passed by this court in cash, but then, when the copy of the order dated 14.8.06 was

readily available, what prevented the borrower to produce the same before the official of the SBBJ. In the considered opinion of this court, even

the photographs placed on record showing the presence of the son of the proprietor of the borrower business concern and his alleged friends,

alleged to be seen interacting with the Bank officials, in no manner indicative of the fact that the amount to be deposited in terms of the interim

order passed by this court was offered by the borrower to the SBBJ. Thus, without there being any evidence suggesting that the borrower offered

the amount in terms of the interim order passed by this court in cash or by draft on or before 18.8.06, the inference drawn by the Appellate

Tribunal, on the factually incorrect premise that the copy of the order was not available with the borrower before 17.8.06 as also on the basis of

the photographs placed on record, is ex facie erroneous and perverse.

28. There is yet another aspect of the matter. By way of interim relief, the petitioner had prayed for staying the further proceedings of the auction,

however, while deciding the appeal against the order passed by the Tribunal, rejecting the interlocutory application, the Appellate Tribunal has

proceeded to set aside the auction sale and the confirmation of sale certificate issued pursuant thereto and even directed for restoration of

possession to the borrower, whereas, the appeal preferred by the borrower and the guarantor, which is barred by limitation, is still pending

consideration before the Tribunal. In the considered opinion of this court, while setting aside the auction sale and the confirmation of sale certificate

beyond the scope of the appeal, the Appellate Tribunal has acted without jurisdiction. As a matter of fact, till the application under Section 5 of the

Limitation Act is allowed and the delay in filing the appeal is condoned by the Tribunal, the appeal preferred by the borrower is an incompetent

appeal.

29. In view of the discussion above, this court is firmly of the opinion that the Appellate Tribunal has seriously erred in interfering with order dated

29.8.06 passed by the Tribunal, rejecting the prayer for interim relief of the borrower and guarantor and therefore, the writ petition No. 1674/07

preferred by the SBBJ and Writ Petition No. 1783/07 preferred by the auction purchaser Moolchand Gulechha deserve to be allowed and the

order impugned passed by the Appellate Tribunal deserves to be set aside.

30. Coming to the Writ Petition No. 4413/06 preferred by the petitioner Godawari Devi and others, it is to be noticed that while filing the writ

petition as aforesaid, the factum of dismissal of earlier writ petition and the Special Appeal was concealed by the petitioner. Admittedly, the

petitioner had invoked the jurisdiction of this court only on the premise that the Presiding Officer of the Tribunal was not available at the relevant

time. It is not in dispute that the application preferred by the petitioner for interim relief was later considered by the Tribunal and therefore, the

petitioner is not entitled for any further indulgence in the matter by this court. Moreover, even according to the petitioner, by efflux of time, the said

writ petition has rendered infructuous and therefore, the same deserves to be dismissed accordingly.

31. In the result, the writ petitions No. 1674/07 and 1783/07 are allowed. The order impugned dated 8.3.07 passed by the Appellate Tribunal in

Appeal No. 162/06 is set aside.

32. The writ petition No. 4413/06 is dismissed as having become infructuous.

33. The parties shall be at liberty to raise all questions regarding the proceeding initiated for recovery of the outstanding dues, the legality of the

auction sale on the grounds available and all other ancillary questions, in the proceedings pending before the Debt Recovery Tribunal. It is made

clear that before considering the appeal preferred on merits, the Debt Recovery Tribunal shall first decide the application preferred by the

appellants therein under Section 5 of Limitation Act for condonation of delay. On the delay being condoned, the appeal shall be decided by the

Debt Recovery Tribunal, on merits, after hearing all the parties, in accordance with law. The parties shall be at liberty to make additional

submissions and placed on record all material relevant to the controversy raised before the Debt Recovery Tribunal. No order as to costs.