

Delhi High Court

R.V. Saxena vs Union Of India (Uoi) And Ors. on 14 December, 2005

Equivalent citations: AIR 2006 Delhi 96, II (2006) BC 455, 2006 133 CompCas 100 Delhi, 127 (2006) DLT 267, (2006) 142 PLR 67

Author: M Katju

Bench: M Katju, M B Lokur

JUDGMENT Markandeya Katju, C.J.

1. This writ petition has been filed challenging the order of the Debt Recovery Appellate Tribunal (DRAT) dated 23.9.2005 and praying for declaring the proviso to Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter refer to as the Act) which requires pre-deposit for entertainment of the appeal under Section 18 of the Securitisation Act as ultra-vires Article 14 of the Constitution of India.

2. Heard learned counsel for the parties and perused the record.

3. The petitioner is a retired Government servant. Respondent No. 3 M/s Graffiti Infotech Ltd. is a company registered under the Indian Companies Act and is carrying on the business of dealing in laptop computers etc. Presently, it is being managed by respondent No. 4. The respondent No. 3 availed certain credit facilities to the extent of Rs. 30 lakhs by way of hypothecation of stocks etc. Immediately after availing the loan from respondent No. 2/Punjab & Sind Bank, respondent No. 3 has been showing losses. On account of irregularities in repayment to respondent No. 2, the said respondent No. 2 declared respondent No. 3 as a non-performing asset on 31.3.2002.

4. The respondent No. 2 bank sent notice dated 7.9.2002 under Section 13(2) of the Securitisation Act, inter-alia, claiming a sum of Rs. 44,77,239/- along with interest @ 18.15% per annum up to 31.3.2002. Subsequently notice dated 26.2.2003 claiming Rs. 47,08,662/- was issued by respondent No. 2. In reply to the notice dated 26.2.2003, the petitioner sent a letter stating that a sum of Rs. 2.09 lakhs has been deposited by the principal borrower/respondent No. 3 company and further substantial amount was likely to be deposited. It was requested that no legal action be taken in pursuant to the notice. It is also stated that respondent No. 3 had deposited Rs. 16.50 lakhs till September, 2004.

5. The petitioner along with respondents 3 to 5 filed writ petition Nos.4657-61/2004, inter alia, challenging the vires of the Act and also the order dated 26.2.2004 passed by the Chief Metropolitan Magistrate directing taking possession of the properties alleged to have been mortgaged with the respondent No. 2/bank. Pursuant to the orders passed by this Court another sum of Rs. 2.50 lakhs was deposited with the respondent No. 2 by the respondent No. 3. The said writ petition was disposed of by order dated 16.4.2004 in view of the judgment of the Supreme Court in Mardia Chemicals case.

6. Subsequently, petitioner received a notice dated 13.9.2004 whereby the receiver appointed by the Chief Metropolitan Magistrate by order dated 7.8.2004 sought to take possession of the two properties being Flat No. B-21, South Park Apartments, Kalkaji, New Delhi and Flat No. 80, NPL

Apartments, VIKASPURI, New Delhi. It is stated that subsequently pursuant to negotiations a sum of Rs. 4.53 lakhs was deposited with the respondent No. 2 on 25.9.2004.

7. It is alleged in the writ petition that contrary to the assurances of the bank, possession of the property bearing Flat No. 80, NPL Apartments, VIKASPURI, New Delhi was taken over by the receiver on 29.12.2004. The other property bearing Flat No. B-21, South Park Apartments, Kalkaji, New Delhi, possession of which was also to be taken over pursuant to the notice dated 13.9.2004, is still with the guarantor. No action in respect of the said property has been taken. It is alleged that the action of respondent No. 2 in taking over possession of the property is contrary to the provisions of the Act. It is alleged that since the property has not been mortgaged in accordance with law, the respondent No. 2 bank is not a secured creditor and thus no proceedings under the Securitization Act could be initiated. It is alleged that no mortgage of the property could be created without the prior permission from the DDA. The petitioner had no intention and never attempted to create a mortgage of the said property, much less in favor of the bank. It is alleged that respondent Nos. 4 and 5 got certain papers signed from the petitioner which were submitted to the respondent bank. Petitioner has alleged that there is no legal, valid or enforceable mortgage of the said property. It is submitted that submission of the share certificate would by no stretch of imagination be said to be creating mortgage of the property bearing Flat No. 80, NPL Apartments, VIKASPURI, New Delhi.

8. In January, 2005, petitioner received notice dated 10.1.2005 whereby respondent No. 2 threatened to sell the aforesaid property in case the amount demanded was not paid within 30 days. Subsequently, on 1.2.2005, a public notice appearing in the daily newspaper, i.e. the Indian Express stated that the said property was sought to be sold and bids in respect of the same were invited up to 28.2.2005. It is stated that the action of the respondent bank was illegal since there was no mortgage nor was respondent No. 2 a secured creditor, and hence it could not invoke the provisions of the Securitisation Act.

9. The petitioner approached the Debts Recovery Tribunal by way of appeal which restrained respondent No. 2 from selling the property without the prior permission of the Tribunal. Since no bid was received by the respondent bank, hence it issued auction notice on 5.2.2005, but the tribunal restrained the bank from inviting bids/or selling the property.

10. The father of the respondent No. 4 had filed an appeal in respect of property bearing Flat No. B-21, South Park Apartments, Kalkaji, New Delhi and an appeal had been filed by the petitioner in respect of property bearing Flat No. 80, NPL Apartments, VIKASPURI, New Delhi which were both heard together. On 14.9.2005 the Tribunal dismissed the petitioner appeal. In the appeal No. 50/2004 filed by the father of respondent No. 4, the Tribunal held that the guarantor be given certain rebate and discounts and the balance amount will be paid minus of the amount of the petitioner flat.

11. Aggrieved against of the order passed by the Tribunal, petitioner filed appeal under Section 18(1) of the Act before the Appellate Tribunal, copy of which is Annexure P-1. The Appellate Tribunal required the petitioner to deposit 25% of the outstanding amount due to the respondent bank.

12. The petitioner has challenged the Constitutional validity of the second proviso to Section 18(1) of the Act which provides that no appeal filed under Section 18 to the DRAT shall be entertained unless the borrower has deposited with the Tribunal 50% of the amount of the debt due from him as claimed by the secured creditors.

13. The second proviso to Section 18 states:

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.

14. By an order dated 23.9.2003 the Appellate Tribunal has directed the petitioner to deposit 25% of the debt within two weeks.

15. In the application for waiver before the Appellate Tribunal the petitioner has submitted that he is a retired Government servant of more than 71 years of age and has no means to make the deposit and hence that should be waived. However, by its order dated 23.9.2003, the Appellate Tribunal has held that it does not have a discretion to reduce the amount of deposit below 25%. Aggrieved by this, this writ petition has been filed in this Court. We are of the opinion that there is no merit in this petition.

16. The right of appeal is not an inherent right but is a creature of the statute. The Legislature can impose conditions under which this is to be exercised. Moreover, the proviso to Section 18 does not require the entire amount to be deposited, but only 50% thereof which can be reduced to a minimum of 25% of the sum. We see no illegality in this proviso. There are similar provisions in many enactments and they are being upheld by the Supreme Court. For example, in the second proviso under Section 15(1) of the Foreign Trade (Development and Regulation) Act, 1992, it is provided that the appeal against an order imposing a penalty or redemption charges shall not be entertained unless the amount of the penalty or redemption charges have been deposited by the appellant. Similarly in many other statutes, there are such similar provisions.

17. In Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the city of Ahmedabad and Ors. , the Supreme Court referred to its earlier decision in Vijay Prakash D.Mehta v. Collector of Customs (Preventive) 1968 4 SCC 402 wherein the Supreme Court observed:

"The right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.

18. In Anant Mills Ltd. v. State of Gujarat the Supreme Court held that the right of appeal is a creature of the statute and it is for the Legislature to decide whether the right of appeal should be

unconditionally given to an aggrieved party or it should be conditionally given. The right to appeal which is a statutory right can be conditional or qualified.

19. In *Elora Construction Company v. The Municipal Corporation of Gr.Bombay and Ors.* , the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Act which required pre-deposit of the disputed tax for the entertainment of the appeal. The Bombay High Court upheld the said provision and its judgment has been referred to with approval in the decision of Supreme Court in *Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the city of Ahmedabad and Ors.* (supra). The Supreme Court has also referred to its decision in *Shyam Kishore and Ors. v. Municipal Corporation of Delhi and Anr.* in which a similar provision was upheld.

20. It may be noted that in *Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the city of Ahmedabad and Ors.*(supra) the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax . In other words a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution.

21. In view of the above there is no force in this petition and is dismissed.