

Court No. - 7

Case :- MATTERS UNDER ARTICLE 227 No. - 2135 of 2022

Petitioner :- M/S Ramom Motion Auto Corp. Pvt. Ltd.

Thru.Dir.Krishna Agarwal And Others

Respondent :- Debt Recovery Appellate Tribunal Thru.Registrar And Others

Counsel for Petitioner :- Abhishek Khare,Prithish Kumar

Counsel for Respondent :- Prashant Kumar Srivastava

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Sudeep Kumar, Advocate alongwith Sri Abhishek Khare, Advocate, the learned Counsel for the petitioners and Sri Prashant Kumar Srivastava, Advocate, the learned counsel for the respondent No. 3 & 4.

2. Briefly stated, the facts of the case are that the petitioners had taken a financial assistance from the Indian Overseas Bank, Main Branch, Lucknow (respondent No. 3). The respondent No. 3 has initiated proceedings for recovery of the aforesaid amount under provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as "SARFAESI Act"), against which the petitioners had filed Securitisation Application No. 113 of 2017 before the Debts Recovery Tribunal, Lucknow (herein after referred to as "DRT"), in which the DRT had granted an interim protection to the petitioners, Thereafter the respondent Bank had withdrawn the action initiated against the petitioners. The respondent-Bank again initiated proceedings for recovery of certain amount by issuing the notice dated 05.03.2018 under Section 13 (2) of the SARFAESI Act to the petitioners. The petitioners submitted a reply on 31.03.2018 but without disposing off the reply, the Bank issued a possession notice dated 24.08.2018. The petitioners have challenged the aforesaid demand notice dated 05.03.2018 and possession notice dated 24.08.2018 before the DRT in Securitisation Application No. 186 of

2019 and the DRT had stayed the recovery proceedings by means of an order dated 12.03.2019.

3. The petitioners have further stated that meanwhile Sri O.P. Agarwal who was Director of the petitioner No. 1 Company, died on 27.05.2019 and the petitioners moved an application for substitution, which was allowed by means of an order dated 18.09.2019. The Securitisation Application No. 186 of 2019 was dismissed as being time barred by means of an order dated 29.10.2021 and an application for review of the aforesaid order is pending before the DRT.

4. The petitioners have further stated that meanwhile the respondent-Bank filed an application under Section 14 of the SARFAESI Act before the District Magistrate, Lucknow and on 28.03.2022, the Additional District Magistrate (Administration), Lucknow passed an order on the said application for taking possession of the petitioners' property.

5. The petitioners had challenged the order dated 28.03.2022 by filing Writ C No. 2192 of 2022 and this Court had passed an order dated 20.04.2022 directing the petitioners to challenge the aforesaid orders before the DRT under Section 17 of the SARFAESI Act.

6. The petitioners then filed Securitisation Application No. 249 of 2022 before the DRT in which notices were issued to the respondent-Bank. During pendency of the said application, on 22.04.2022, the Sub Divisional Magistrate, Sadar, Lucknow issued a letter to the Inspector, Police Station Ghazipur, Lucknow directed him to take possession of the petitioners' property. The petitioners filed an application for interim relief, upon which the DRT passed an order on 28.04.2022 restraining the Bank from taking physical possession of the property till the next date of listing and the matter was posed for 27.05.2022. The aforesaid order was passed in absence of the learned counsel for the Bank and the aforesaid order dated 28.04.2022 contains a subsequent noting that later on learned counsel for the Bank appeared at about 04:00 p.m. and he filed an application for urgent hearing of the matter. Upon which, the matter fixed for

29.04.2022 i.e. the day following the date of the order. On 02.05.2022, the DRT passed an order recording the submission of the learned counsel for the Bank that the loan account has been transferred to Assets Recovery Management Branch of the Bank, which has not been impleaded by the petitioners and the petitioners had not approached the Tribunal with clean hands and they had suppressed the material facts. The Tribunal ordered the case to be listed on 15.07.2022 for further arguments and the petitioners were directed to correct the particulars of the respondent-Bank in the array of parties. After making the aforesaid narrations, the DRT passed an order that the stay granted to the petitioners is vacated on above facts.

7. The petitioners challenged the aforesaid order dated 02.05.2022 by filing Appeal No. 191 of 2022 before the Debts Recovery Appellate Tribunal (which will hereinafter referred to as "DRAT") and on 20.05.2022, DRAT has passed an order recording the submission of the learned Counsel for the respondent-Bank that the appeal was filed without complying with the fulfilling the requirement depositing 50% of the amount claimed as per Section 18 of the SARFAESI Act and, therefore, is not maintainable and recording the submission made by the learned counsel for the petitioners in reply that the appeal has not been filed against the final order passed under Section 17 of the Act and, therefore, no pre-deposit is required. The DRAT ordered the case to be listed on 28.07.2022 for consideration of the matter of waiver of deposit.

8. The petitioners have filed this writ petition in the aforesaid factual background, challenging the order dated 02.05.2022 passed by the DRAT whereby the stay order dated 28-04-2022 has been vacated, on the ground that the order has been passed hastily, without application of mind and that it will result in the petitioners' property being taken away without adjudication of the respective rights of the parties in the case before the DRT in which the final submissions are going on.

9. Sri Prashant Kumar Srivastava, the learned counsel for the respondent No. 3 & 4 has raised a preliminary objection against the

maintainability of the writ petition before this Court sitting at Lucknow on the ground that the DRAT is situated at Allahabad. He has placed reliance on a Full Bench judgment of this Court in **Manish Kumar Mishra Vs. Union of India**, 2020 SCC OnLine All 535 = AIR 2020 All 97.

10. He has further submitted that the order dated 02.05.2022 has been challenged before the DRAT and the writ petition filed during the pendency of the appeal is misconceived. He has also submitted that the petitioner has not made the statutory deposit as required by Section 18 of the SARFAESI Act and, therefore, no order can be passed in the appeal.

11. Replying to the aforesaid objection, Sri Sudeep Kumar, the learned counsel for the petitioners has stated that the petitioners' had taken a loan from the respondent no. 3 Bank situated at Lucknow, for recovery of the aforesaid amount, the Additional District Magistrate (Administration), Lucknow passed an order on 28.03.2022 for taking possession of the petitioners' property situated at Lucknow, in an appeal filed by the petitioners the DRT sitting at Lucknow had passed an interim order on 28-04-2022 and the same has been vacated on 02-05-2022 at Lucknow, which is the cause of action for approaching this Court. He has submitted that judgment in the case of *Manish Kumar Mishra (supra)* helps the petitioners.

12. The learned counsel for the respondent-Bank has also submitted that the petitioners had not approached the DRT with clean hands as they had impleaded "Indian Overseas Bank, Lucknow Main Branch, 3 Vidhan Sabha Marg, Lucknow-226001 through its authorized Officer" in the Securitisation Application whereas the petitioners' loan account has been transferred to the Assets Recovery Management Branch which has not been arrayed as a defendant.

13. Refuting this submission, the learned counsel for the petitioners has submitted that the petitioners had taken financial assistance from Indian Overseas Bank, Main Branch, Lucknow and it was Indian Overseas Bank Main Branch, Lucknow which had filed an application

under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 for recovery of the aforesaid amount from the petitioners and, therefore, the petitioners had impleaded the Bank with the aforesaid description. He has further submitted that even if the Bank has transferred the account to any of its branch and still the Bank had filed an application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 in the name of the Branch from which the loan had been taken the petitioners and, therefore, the petitioners cannot be blamed for having arrayed the said Branch. In any case, the defect in description of the parties is always curable and it does not affect the maintainability of the application.

14. I have considered the rival submissions made by the learned counsel for the parties.

15. Regarding the first objection raised by the learned Counsel for the respondent – Bank, I find the petitioners had taken loan from the respondent-bank at Lucknow, the recovery proceedings have been initiated by the respondent-Bank at Lucknow, the Securitisation Application No. 249 of 2022 filed by the petitioners is pending before the DRT at Lucknow and the DRT has passed an interim order dated 28-04-2022 in favour of the petitioners which has been vacated by means of the order dated 02-05-2022 passed by the DRT at Lucknow. In furtherance of the aforesaid order, the Sub Divisional Magistrate, Sadar Lucknow has sent a letter dated 06.06.2022 to the Inspector, In-charge of the Police Station Ghazipur, Lucknow for taking possession of the petitioners' property situated at Lucknow. The petitioners have challenged the order dated 02-05-2022 before the DRAT at Allahabad and they are aggrieved by an order of DRAT whereby the matter has been posted for 28-07-2022.

16. The relevant portion of the Article 226 of the Constitution of India provides as follows:-

“226. Power of High Courts to issue certain writs: -

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority,

including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) *The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories*

(3)"

(Emphasis Supplied)

17. A perusal of the Article 226 of the Constitution of India makes it manifest that it confers power upon every High Court to issue directions, orders or writs throughout the territories in relation to which it exercises jurisdiction. Clause (2) of the Article 226 of the Constitution of India further provides that the power to issue directions, orders or writs may be exercised by any High Court exercising jurisdiction in relation to the territory within which the cause of action wholly or in part arises for exercise of such power, notwithstanding that the seat of the Government, authority or the residence of any person to whom direction, order or writ is to be issued, is not within those territories.

18. In the celebrated judgment in the case of **Nasiruddin vs State Transport Appellate Tribunal**, 1975 (2) SCC 671, which was a case decided long after coming into force of the Constitution of India, the Hon'ble Supreme Court held that:-

"38... If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad....".

(Emphasis Supplied)

19. As per the law laid down by the Hon'ble Supreme Court in **Nasiruddin (supra)** an application under Article 226 of the Constitution of India will lie at Lucknow even if the petitioners allege that a part of the cause of action arose within the areas of Oudh.

20. The judgment of **Nasiruddin (supra)** was followed and reaffirmed by the Hon'ble Supreme Court in the case of **U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow Vs. State of U.P. and others**, 1995 (4) SCC 738, wherein the Hon'ble Supreme Court has held that, *“to decide the question of territorial jurisdiction it is necessary to find out the place where the "cause of action" arose. We, with respect, reiterate that the law laid down by a Four-Judge Bench of this Court in Nasiruddin's case holds good even today despite the incorporation of an explanation to Section 141 to the Code of Civil Procedure”*.

21. In **Manish Kumar Mishra Vs. Union of India**, 2020 SCC OnLine All 535 = AIR 2020 All 97, a Full Bench of this Court has explained the law regarding territorial jurisdiction and the difference between “cause of action” and “right of action” in the following words: -

“133. The meaning of the expression “cause of action” as distinct from “right of action”, as evolved in terms of the precedents, would go to show that a right of action is a remedial right affording a redress for the infringement of a legal right and a right of action arises as soon as there is an invasion of rights whereas a cause of action would refer to the set of operative facts giving rise to such right of action. A person residing anywhere in the country being aggrieved by an order of the Government (Central or State), or authority or person may have a right of action at law but the same can be enforced by invoking the jurisdiction under Article 226 of only that High Court, within whose territorial limits the cause of action wholly or in part arises.

134. The “right of action” being the right to commence and maintain an action is therefore distinguishable from “cause of action” in that the former is a remedial right while the latter would comprise the operative facts giving rise to such remedial right. The former would be a matter of right and would depend upon the substantive law whereas the latter would be governed by the law of procedure.

135. It is, therefore, seen that a “cause of action” is the fact or corroboration of facts which affords a party right to judicial

interference on his behalf. The “cause of action” would be seen to comprise : (i) the plaintiff's primary right and the defendant's corresponding primary duty; and (ii) the delict or wrongful act or omission of the defendant, by which the primary right and duty have been violated. The term “right of action” is the right to commence and maintain action or in other words the right to enforce a cause of action. In the law of pleadings, “right of action” can be distinguished from “cause of action” in that the former is a remedial right while the latter would comprise the operative facts giving rise to such remedial right. The former would be a matter of right and depend on the substantive law while the latter would refer to the bundle of operative facts and would be governed by the law of procedure.

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146. We may therefore observe that Article 226(1) provides the source of power of the High Court as well as its territorial jurisdiction, whereas Article 226(2) amplifies the jurisdiction in relation to a cause of action by providing that the territorial jurisdiction would be exercisable in relation to the territories within which the cause of action, arises, wholly or in part. The cause of action would include material and integral facts and accrual of even a fraction of cause of action within the jurisdiction of the Court would provide territorial jurisdiction for entertaining the petition.

147. The territorial jurisdiction is to be decided on the facts pleaded in the petition and in determining the objection of lack of territorial jurisdiction the Court would be required to take into consideration all the facts pleaded in support of the cause of action without embarking upon an enquiry as to the correctness or otherwise of the said facts. The question whether a High Court has territorial jurisdiction to entertain a writ petition is to be answered on the basis of the averments made in the petition, the truth or otherwise, whereof being immaterial. The expression “cause of action”, for the purpose of Article 226(2), is to be assigned the same meaning as under Section 20(c) CPC, and would mean a bundle of facts which are required to be proved. However, the entire bundle of facts pleaded, need not constitute a cause of action as what is necessary to be proved are material facts on the basis of which a writ petition can be allowed.

148. In order to confer jurisdiction on the High Court to entertain a writ petition, the Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts constitute a cause so as to empower the Court to decide a dispute which has, at least in part, arisen within its jurisdiction. Each and every fact pleaded in the application may not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts are such which have a nexus or relevance with the lis that is involved in the case. Facts, which have no bearing with the lis or the dispute involved in the

case would not give rise to a “cause of action” so as to confer territorial jurisdiction on the Court concerned, and only those facts which give rise to a cause of action within a Court’s territorial jurisdiction which have a nexus or relevance with the lis that is involved in that case, would be relevant for the purpose of invoking the Court’s territorial jurisdiction, in the context of clause (2) of Article 226.”

22. Examining the facts of the case in light of the law laid down in the above noted case, I am of the considered opinion that the petitioners’ immediate grievance, which compelled them to file the instance Writ Petition arose upon passing of the order dated 20-05-2022 by the DRAT at Allahabad, whereby the matter has been posted for 28-07-2022 without passing any interim order, and, therefore, “the right of action” can be said to have accrued to the petitioners at Allahabad. However, the “cause of action” for filing the Writ Petition, which is the bundle of facts leading to filing of the instant Writ Petition, is that the petitioners’ had taken a loan from the respondent no. 3 Bank situated at Lucknow, for recovery of the aforesaid amount the Additional District Magistrate (Administration), Lucknow passed an order on 28.03.2022 for taking possession of the petitioners’ property situated at Lucknow, in an appeal filed by the petitioners the DRT sitting at Lucknow had passed an interim order on 28-04-2022 and the same has been vacated on 02-05-2022 at Lucknow. Therefore, it cannot be said that the cause of action for approaching this Court, or at least a part thereof, has not accrued to the petitioners at Lucknow and I reject the preliminary objection raised by the learned Counsel for the respondent – Bank that the writ petition filed by the petitioners is not maintainable before this Court sitting at Lucknow

23. Regarding the second objection raised by the learned counsel for the respondents that the petitioners have not made statutory deposit required under Section 18 of the SARFAESI Act. The learned counsel for the petitioners has submitted that the Section 18 of the SARFAESI Act requires a deposit of 50% of the amount of debts due to be deposited by any person aggrieved by an order made by the DRT under Section 17 of the SARFAESI Act. He has submitted that the petitioners’ application under Section 17 of the SARFAESI Act is

still pending, and, therefore, the provision of making a deposit of 50% of the amount does not apply to the appeal filed by the petitioners. He has further submitted that the petitioners have filed an application seeking exemption from making a deposit and the DRAT has fixed 28.07.2022 for disposal of the aforesaid application.

24. Regarding the objection raised by the learned Counsel for the respondent- Bank in respect of the petitioners having impleaded the Indian Overseas Bank, Main Branch, Lucknow, I find that the petitioners had taken the financial assistance from Indian Overseas Bank Main Branch, Lucknow and it was the said Branch which had filed the application against the Petitioners under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 for recovery of the aforesaid amount from them and, therefore, the petitioners had impleaded the Bank with the aforesaid description. In any case, the Asset Recovery Management Branch of the Bank is not a separate juristic person and is not a legal entity distinct from the Bank. In case, during pendency of the case the Bank has transferred the account to any of its branch and still the Bank had filed an application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 in the name of the Branch which had granted the loan to the petitioners, the petitioners cannot be blamed for having arrayed the said Branch as a respondent. Even if there is a defect in the description of a party, it is always curable and it does not affect the maintainability of the application.

25. The petitioners have approached the DRAT for redressal of their grievance against the order dated 02-05-2022 whereby the interim order dated 28-04-2022 granted in their favour has been vacated by the DRT without recording any reason or satisfaction for doing the same and although there is an imminent threat of the petitioners being dispossessed from their property, the DRAT has fixed the matter for 28-07-2022. This indicates that the alternative remedy available before the DRAT has proved not to be an efficacious remedy. Even otherwise, the existence of an alternative remedy is not an absolute bar against this Court's discretionary

jurisdiction under Article 226 of the Constitution of India. The circumstances of the case warrant interference by this Court in exercise of its extraordinary jurisdiction.

26. As the DRT had granted an interim protection to the petitioners by means of the order dated 28-04-2022, which has been vacated by means of the order dated 02-05-2022 passed by the DRT merely by recording the submissions of the parties and without recording any finding or satisfaction of its own and keeping in view the fact that the final arguments in the case have already commenced and the same are going on and the case has been fixed for hearing further arguments, this Court finds that in case the petitioners are dispossessed from their property after commencement of the final arguments and before conclusion of the same and passing of a final verdict, it would occasion a failure of justice.

27. In view of the aforesaid discussion, this Writ Petition is partly allowed. The order dated 02-05-2022 passed by the DRT in S.A. No. 249 of 2022 is hereby quashed and it is provided that the order dated 28-04-2022 passed by the DRT in the aforesaid shall continue to remain in operation till a final order is passed after conclusion of arguments of the parties.

28. The DRT is directed to proceed with the hearing of S.A. No. 249 of 2022 expeditiously and to make an endeavor to conclude the same as early as possible. All the parties to the case are directed to co-operate in expeditious disposal of the case. In case the petitioners do not co-operate in expeditious disposal of the matter and they seek any unnecessary adjournments, it will be open to the DRT to pass suitable orders in accordance with the law taking into consideration all the relevant facts and circumstances.

Order Date :- 13.6.2022

Jaswant