

# SUPREME COURT OF INDIA

Indian Bank

Vs.

Manilal Govindji Khona

C.A.No.1416 of 2015

(V.Gopala Gowda and C.Nagappan JJ.)

03.02.2015

## JUDGMENT

### **V.GOPALA GOWDA, J.**

1. Leave granted.

2. The appellant in this appeal has challenged the judgment and order dated 29.08.2012 of the High Court of Judicature at Bombay, passed in Writ Petition No. 3652 of 2012, whereby the High Court allowed the writ petition and Misc. Application No. 7 of 2012 for condonation of delay in filing Misc. Application (L) No. 34 of 2012 filed by the respondent before the Debt Recovery Tribunal (for short "DRT") and quashing the orders dated 10.04.2012 and 22.02.2012 passed by the Debt Recovery Appellate Tribunal (for short "DRAT"), Mumbai, in Misc. Appeal No.35 of 2012 and the DRT respectively.

3. The brief facts of the case are stated hereunder in a nutshell :-

A Civil Suit No. 2636 of 1987 was filed by the appellant-Bank before the High Court of Judicature at Bombay against the respondent on 07.09.1987 for recovery of Rs.69,50,213.59 with interest @ 18.5% p.a. with quarterly rests and enforcement of the mortgage. The High Court vide its order dated 09.12.1996 passed a consent decree in the Civil Suit for the suit amount together with concessional rate of interest at 12% p.a. which was to be paid by the respondent to the Bank on or before 31.05.1997. On 31.05.1997, the respondent tendered the amount in terms of the decree dated 09.12.1996, which was refused by the appellant. The respondent moved Chamber

Summons No.1066 of 1997, inter alia, for recording the payment of decretal amount tendered on 31.05.1997. On 01.08.1997, the respondent applied for ad interim relief in terms of the above Chamber Summons. However, by the order dated 01.08.1997, the High Court was pleased to decline to grant ad interim relief but adjourned the said Chamber Summons for recording evidence to establish the fact that the respondent had tendered the payment of the decretal amount on or before 31.05.1997. Being aggrieved by the same, the respondent preferred Appeal No.960 of 1997 before the Division Bench of the High Court. By an order dated 05.12.1997, the said appeal was dismissed and the S.L.P filed by the respondent was also dismissed by this Court on 23.03.1998.

4. Thereafter, the High Court directed the Court Receiver by its order dated 03.12.1999, to sell the mortgaged property of the respondent and permitted the appellant-Bank to participate in the auction, and the Court Receiver issued notices for auctioning the mortgaged property. The auction was held on 06.05.2000 at which the appellant-Bank purchased the mortgaged property for Rs.2,00,00,000/-, the sale of which was approved by the High Court vide its order dated 21.07.2000. The Court Receiver issued the Sale Certificate on 18.4.2002 and the same was registered in the name of the appellant-Bank. Thereafter, a series of applications and proceedings were initiated by the respondent before the DRT, DRAT and different High Courts and Civil Courts seeking various reliefs against the appellant-Bank. After the period of 7 years of the issuance of the recovery certificate in favour of the appellant-Bank, the respondent moved a Misc. application before the Recovery Officer to set aside the sale of the mortgaged property which was dismissed on 2.12.2011 by DRT-II, Mumbai. The respondent moved an application for rectification of recovery certificate dated 29.11.2004 along with an application for condonation of delay in filing the Misc. application for rectification of recovery certificate dated 29.11.2004 and an application seeking interim orders in respect of the property which was sold in the public auction by the Court Receiver. The DRT dismissed the interim application by its order dated 30.01.2012. The DRT-II further rejected the condonation of delay application filed by the respondent by its order dated 22.02.2012. The respondent aggrieved by the above said order filed an appeal before the DRAT and the same was dismissed vide order dated 10.04.2012. The respondent further chose to challenge the order of DRAT before the High Court in W.P.No.3652 of 2012 urging various grounds and prayed to quash the same and pass appropriate order in the light of the facts and circumstances of the case. On 29.8.2012, the High Court after hearing the learned counsel for the parties has allowed the writ petition by setting aside the orders of the DRT and the DRAT and condoned the delay in filing Misc.

Application (L) No. 34 of 2012 filed by the respondent and restored the Misc. application filed by him before the DRT-II, Mumbai to its file and directed it to decide the same on its own merits in accordance with law afresh in the light of the law declared by this Court and the High Court on the subject matter.

5. As the issue before us is with regard to the condonation of delay in filing the Misc. Application by the respondent and allowing the same in the writ petition filed by the respondent which is under challenge in this appeal at the instance of the appellant-Bank by urging various legal grounds, we will deal with this aspect of the case only, in this judgment. On 25.01.2012, the respondent filed Misc. Application (L) No.34 of 2012 before DRT-II, Mumbai for avoiding the sale and seeking rectification of Recovery Certificate and decree dated 9.12.1996, passed by the High Court. The filing of that Misc. application was delayed by 23 days. Therefore, the respondent filed Misc. Application No. 7 of 2012 for condonation of delay in filing the Misc. Application(L) No.34 of 2012 before the DRT-II, which application was dismissed by its order dated 22.02.2012, by declining to exercise its discretionary power to condone the delay in filing such Misc. application by the respondent. Being aggrieved of the said order, the respondent filed Misc. Appeal No. 35 of 2012 before the DRAT questioning the correctness of the above order and prayed to set aside the same and allow the application by condoning the delay in filing that application before the DRT. The DRAT vide its order dated 10.4.2012 dismissed the appeal holding that the same is barred by limitation and no proper and satisfactory explanation was assigned by the respondent.

6. Being aggrieved of the same, the respondent approached the High Court by filing Writ Petition No.3652 of 2012 questioning the correctness of the order dated 10.04.2012 passed by the DRAT urging various grounds with a prayer to set aside the above said order. The High Court after hearing the parties vide its order dated 29.08.2012 has held that the order passed by the DRT-II in dismissing the application of the respondent without deciding the issue i.e. whether the public auction of the sale of the mortgaged property conducted by the Court Receiver as per the direction of the High Court, after the execution proceedings initiated by the appellant-Bank against the respondent stood transferred to the DRT in view of Section 31 of DRT Act as the DRT came into existence on 16.07.1999, as per the notification issued by the Central Government, is not legal and valid in law. The sale of the property of the respondent has affected his rights as the same is in contravention of the provisions of the DRT Act and the relevant rules applicable for sale of the property which go to the root of the matter and therefore, he has prayed to set aside the order dated 10.04.2012 passed by the DRAT along with the order passed by the DRT on the Misc. Application No.7 of 2012 seeking for

condonation of delay in filing Misc. Application(L) No.34 of 2012 and requested to restore the same to its original file of the DRT, Mumbai and also further directed it to decide the same on its own merits keeping in view the law declared by the High Court as well as this Court. The appellant-Bank was aggrieved by the above said judgment and order it has filed this appeal questioning the correctness of the same by urging various grounds in support of its case.

7. The learned Solicitor General Mr. Ranjit Kumar appearing on behalf of the appellant and Mr. Rafeeq P., the learned counsel appearing on behalf of the respondent, have made elaborate submissions in support of the respective claim and counter claim of the parties.

8. The learned Solicitor General has placed reliance upon Article 127 of the Schedule of Part I of the Limitation Act, 1963, in support of his contention that the period of 60 days is prescribed in Limitation Act, 1963 for filing Misc. application and a period of one year under Article 99 of the Schedule of Part IX of the said Act is stipulated for filing a suit from the date of sale of the property for setting aside the order of the sale of the mortgaged property. He submits that the provisions of the Limitation Act are applicable to the DRT proceedings as well, in view of the relevant provisions of Section 24 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "the Act of 1993"). The learned Solicitor General has made submission that the orders of the DRT and DRAT in dismissing the condonation of delay application and consequently, the Miscellaneous application are erroneously set aside in the impugned judgment and order passed by the High Court as they are barred by limitation under the aforesaid Articles of the Schedule referred to supra as the said applications are filed beyond the prescribed period of limitation under the aforesaid provisions of the Limitation Act. In support of his submissions, he has placed reliance upon the Constitution Bench judgment of this Court in *Dadi Jagannadham v. Jammulu Ramulu & Ors.*[1] which decision is followed by this Court in another case viz. *Annapurna v. Mallikarjun & Anr.*[2]. He has further contended that the decree was passed by the Bombay High Court in the original suit proceedings way back on 9.12.1996 in favour of the appellant-Bank against the respondent for recovery of the debt amount due from him. The sale of the property of the respondent was conducted by the Court Receiver, who was appointed by the High Court in the execution proceedings initiated by the appellant-Bank by issuing notices on 08.09.1998 and 07.12.1998 for conducting the sale in public auction of the said mortgaged property of the respondent. The DRT, Mumbai was established on 16.07.1999 pursuant to the notification issued by the Central Government under the provisions of the Act of 1993. Further, it has been contended by him that although, the DRT

was empowered to appoint the Court Receiver for conducting the sale of the mortgaged property in public auction, there was no adequate infrastructure provided by the Central Government to the DRT to take possession and charge of the properties from the Court Receiver of the High Court at the time the property was ordered to be sold in public auction by the Court Receiver. The jurisdiction of the High Court with regard to the recovery of debt has been transferred to the DRT in view of Section 31 of the DRT Act with effect from 16.7.1999, it was not in a position to take possession of the mortgaged properties from the Court Receiver of the High Court and manage the same as there was no infrastructure provided to it by the Central Government. Since the above assets which were in custody and possession of the Court Receiver in respect of which securities were created in favour of the banks and financial institutions and therefore, the same should not have been permitted to be dissipated by the High Court and therefore, the High Court has rightly permitted the Court Receiver to sell the mortgaged property of the respondent in public auction pursuant to the decree passed by it in favour of the appellant-Bank.

9. Further, it is contended by the learned Solicitor General that the power conferred upon the High Court, under Article 227 of the Constitution of India is exercised by it even after the DRT was established permitting the Court Receiver of the High Court to conduct the sale of the property of respondent in public auction to recover the decretal money in favour of the appellant-Bank in terms of the judgment and decree passed by it for the reason the DRT had no infrastructure to receive the possession of the property from Court Receiver and sell the same. Therefore, he has submitted that the High Court could not have found fault with its earlier order in permitting the Court Receiver to sell the mortgaged property in public auction to recover the decretal amount by the Bank by way of sale of the mortgaged property. The learned Solicitor General has further contended that the mortgaged property sold by the Court Receiver in the public auction as per the order passed by the Bombay High Court, could not have been interfered with by the DRT-II and the DRAT on the Misc. application filed by the respondent along with the condonation of delay application. Therefore, he has submitted that the impugned order passed by the High Court is liable to be set aside in this appeal as the same is not in accordance with law.

10. It has been further contended by him that the order dated 3.12.1999 passed by the learned Single Judge of the High Court of Bombay directing the Court Receiver to proceed with the sale of the mortgaged property of the respondent in the execution proceedings pursuant to the decree passed by it with the respondent's consent and therefore, it is not permissible for him at the belated stage to turn

around and contend that the execution of the decree and sale of the property by the Court Receiver in the public auction is not legal and valid. Further, the High Court has exercised its power in issuing the direction to the Court Receiver for conducting the sale of the property through public auction on the basis of the judgment of Bombay High Court in the case of Industrial Credit & Investment Corporation of India Ltd. v. Patheja Brothers Forgings And Stampings Ltd. & Ors.[3] in which it has examined the provisions of Section 3 of the Act of 1993, wherein it has held that after 16.7.1999, in several proceedings, the parties have challenged the power of the Court Receiver to manage the properties in view of the DRT Act and therefore, the Court Receiver had no authority to act in the matter. The High Court held that the Court Receiver, who is appointed prior to the cut-off date and pending proceedings before the High Court stands transferred to the DRT by virtue of the provision under Section 31 of the DRT Act as he had the power to sell the properties. It is urged by him that it has been held by the High Court in the above referred case that there is no question of conducting de novo proceedings. It is submitted by him that in view of the above said statement of law laid down by the Bombay High Court it has passed an order dated 03.12.1999 in exercise of its power traceable to Article 227 of the Constitution of India, in the execution proceedings, wherein it has directed the Court Receiver to take steps to recover the decretal amount from the respondent by selling the mortgaged property in public auction and therefore, the same cannot be interfered with by the DRT in the Misc. Applications filed by the respondent.

11. On the other hand, it has been contended by the learned counsel on behalf of the respondent that the Court Receiver had no jurisdiction to sell the property by way of execution of the decree after the DRT has come into existence by placing the reliance upon the above case. It has been further contended by him that the suit proceedings of the Bank stood transferred automatically to the DRT by operation of law. Further, reliance was also placed by him on behalf of the respondent upon the case of Raghunath Rai Bareja & Anr. v. Punjab National Bank & Ors.[4] in support of his legal contention that in view of Section 31 of the DRT Act, the Court Receiver had no jurisdiction to sell the mortgaged property by way of execution of the decree in the public auction as directed by the High Court after the DRT was established by way of notification, pursuant to the DRT Act. Thus, even if the direction was given by the Bombay High Court to the Court Receiver, to execute the decree and sell the mortgaged property, he should not have executed the same in view of Section 31 of the DRT Act, as the execution proceedings were automatically transferred to the DRT. Therefore, the learned counsel on behalf of the respondent has contended that the order dated 03.12.1999 passed by the High Court in directing the Court Receiver to proceed with the sale of the mortgaged

property in execution of the order/decreed dated 09.12.1996 is null and void ab initio in law and therefore, the same is wholly unsustainable in law. He has placed reliance upon the cases of this Court which will be adverted in the later portion of the judgment that the question of limitation does not arise at all in filing application for setting aside the sale as the same is vitiated and void ab initio in law.

12. The said rival legal contentions are examined by us very carefully with a view to find out as to whether the impugned judgment and order warrant interference keeping in view the interpretation of the provisions of the DRT Act and the constitutional validity of the Act of 1993, which has been upheld by this Court in the case of *George v. State of Kerala*[5] and the other decisions of this Court referred to supra upon which reliance is placed by the learned counsel on behalf of the respondent.

13. The learned Solicitor General appearing for the appellant has placed reliance on the following judgments of this Court, upon which the High Court has relied viz. *State Bank of Bikaner & Jaipur v. Ballabh Das & Co. & Ors.*[6] and *Punjab National Bank, Dasuya v. Chajju Ram & Ors.*[7] in holding that the High Court has no jurisdiction to pass orders and give directions to the Court Receiver for sale of the property in public auction after the establishment of the DRT Act. He has submitted that the said decisions are distinguishable from the facts of this case that the properties alongwith the property of the respondent were in possession and custody of the Court Receiver and the same could not have been transferred by him to the DRT for want of infrastructure, to be provided by the Central Government to it after it was established. With regard to the above legal contentions, it would be necessary for this Court to extract relevant paragraph 9 from the case of *State Bank of Bikaner & Jaipur vs. Ballabh Das & Co. & Ors.* (supra), for the purpose of examining the relevance and validity of the submissions made by the learned Solicitor General, as the same would be applicable to the fact situations of the respondent. The learned counsel for the respondent has also strongly relied upon the same which reads thus:

"9. ....As the suits were filed by the Bank before establishment of the Tribunal and were pending in the civil court when the Tribunal came to be established under the Act, Section 31 became applicable to those suits and they shall have to be treated as transferred to the Tribunal on and from the date the Tribunal was established. Section 31 of the Act makes it clear that the transfer is automatic because of the operation of law and, therefore, the Bank was really not required to file applications. Those applications should

have been really treated as applications for forwarding the records of the suits to the Tribunal...."

(emphasis laid by this Court) Further, it would be relevant for us to extract the paragraph 7 from the case of Punjab National Bank, Dasuya v. Chajju Ram & Ors. (supra), wherein this Court has held as under:-

"7. Learned counsel for the respondents submitted that the use of the words "cause of action" in Section 31 indicated that it is only pending suits which could be transferred. We are unable to agree with this submission. The words "cause of action" are preceded by the words "being a suit or proceeding". Section 31 contemplates not only the transfer of a suit but also transfer of a proceeding which may be other than a suit, like an execution application....."

(emphasis laid by this Court) In view of the law laid down by this Court in the above cases upon which strong reliance is placed by the learned counsel for the respondent, the submission made by the learned Solicitor General to distinguish the same on facts cannot be accepted by us as the same is contrary to the law laid down by this Court.

14. The other contention of the learned Solicitor General that the sale of the mortgaged property made by the Court Receiver in favour of the appellant- Bank by way of execution of the decree dated 09.12.1996 passed by the High Court and issuance of the sale certificate in favour of the appellant-Bank and handing over of the possession of the schedule property to it on 08.08.2000, and the Miscellaneous Application filed by the respondent before the DRT seeking the relief as stated above, cannot be entertained and accepted by us in view of the above referred cases upon which strong reliance placed by the learned counsel on behalf of the respondent. The contention urged on the question of limitation by the learned Solicitor General on behalf of the appellant-Bank placing reliance upon the decisions of this Court in the cases of Dadi Jagannadham and Annapurna (supra) are wholly inapplicable to the fact situation of the case on hand in view of the decision of the three Judge Bench judgment of this Court in Sushil Kumar Mehta v. Gobind Ram Bohra[8]. In this case, this Court has dealt with regard to the Limitation Act, in exercise of its power under Article 136 of the Constitution after examining the fact situation in the above said case in support of the proposition of law that a decree, which is passed by the court without jurisdiction is a nullity in the eye of law and the same cannot be allowed to operate and such decree is executed during pendency of the Special Leave Petition before this Court, in such

cases it would grant relief to the aggrieved party, who has suffered from injustice by setting aside the execution order and further held that defect of jurisdiction of the court cannot be cured by consent or waiver of the parties. In the said case this Court has elaborately considered the relevant factual and legal aspect of the case and has laid down the law at paragraph 10, after referring to its earlier decision of a Four Judge Bench of this Court speaking through Venkatarama Ayyar, J. in *Kiran Singh v. Chaman Paswan* (1955) 1 SCR 117, which would be worthwhile to be extracted as under:- "10.....It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non jure, and that its judgment and decree would be nullities."

(emphasis laid by this Court) Further, vide paragraphs 16 and 17 in *Sushil Kumar Mehta* (supra), this Court held as under:-

"16. In *Ledgard v. Bull*, (1886) 11 App Cas 648, the Privy Council laid down that where the original court in a suit was inherently lacking jurisdiction, and was incompetent to try the same, on its transfer by consent of parties, to a court with jurisdiction such consent did not operate as a waiver of the plea of want of jurisdiction.

17. In *Barton v. Fincham*, (1921) 2 KB 291, 299, wherein it was held that:

"... the court cannot give effect to an agreement whether by way of compromise or otherwise, inconsistent with the provisions of the Act."

15. In view of the aforesaid legal principle laid down by this Court after referring to its earlier decision, Privy Council judgment and also the Kings Bench decision, we are of the view that the decree which is sought to be executed by the Court Receiver as per the order dated 3.12.1999 passed by the High Court, giving directions to him to sell the mortgaged property of the respondent in the execution proceedings of the decree and the subsequent proceedings of the Court Receiver, including the confirmation of the sale and the issuance of the sale certificate in

favour of the appellant-Bank is void ab initio in law. In view of the law laid down by this Court in the cases referred to supra, the contentions urged by the learned Solicitor General on behalf of the appellant-Bank cannot be accepted and therefore, we have to hold that the impugned judgment and order cannot be interfered with by this Court.

16. We are of the view that the High Court has rightly found fault with the DRT and DRAT in rejecting the Misc. Application filed by the respondent, who has sought for rectification of the recovery certificate filed by him. Therefore, the High Court has rightly rejected the same after adverting to the judgments in the cases of State Bank of Bikaner & Jaipur v. Ballabh Das & Co. & Ors. (supra) and Punjab National Bank, Dasuya v. Chajju Ram & Ors. (supra). The exercise of jurisdiction by the High Court for giving the direction to the Court Receiver to sell the mortgaged property even after the DRT was established at Mumbai and in view of the fact that the proceedings before the High Court were automatically transferred to it in view of Section 31 of the DRT Act and therefore it was impermissible in law for the High Court to direct the Court Receiver to sell the property of the respondent in public auction by executing the Court decree, which action of the Court Receiver is void ab initio in law. Therefore, the order of the DRT and the DRAT, in dismissing the condonation of delay application by the respondent holding that the same is barred by limitation and consequently dismissing Misc. Application to set aside the sale is untenable in law and therefore, the High Court has rightly answered the legal contentions in favour of the respondent by giving valid and cogent reasons in the impugned judgment in exercise of its Judicial Review power.

17. The provisions of the Limitation Act are applicable to the proceedings of the DRT in view of Section 24 of the Act of 1993 and therefore, the provisions of Section 5 of the Limitation Act are applicable to the provisions of the said Act. The same has not been examined and considered by the DRT-II and the DRAT at the time of passing the impugned orders in the writ petitions. Therefore, the High Court has rightly exercised its discretionary power keeping in view the rights of the respondent upon the immovable property involved in this case and it has condoned the delay in filing Misc. Application and accordingly the orders of the DRT-II and the DRAT impugned in the writ petition are set aside by allowing the same.

18. In view of the foregoing reasons, the legal contentions urged on behalf of the appellant-Bank have no substance in the matter for the reason that the recovery certificate issued on 29.11.2004, was sought to be modified by the appellant-Bank itself by filing an application before the DRT-II and the same has not been

modified, which is another strong ground for the respondent to file Misc. application for the cancellation of the sale of the property in favour of the appellant-Bank, along with condonation of delay application urging tenable grounds.

19. The issue raised by the respondent in the present case strikes at the very authority of the High Court in permitting the Court Receiver by its order dated 3.12.1999 to auction the mortgaged property of the respondent in public auction pursuant to the decree passed by the High Court in favour of the appellant-Bank. The above said important aspect of the case is required to be examined and considered by the DRT-II in the Miscellaneous application which is remitted back to it in the impugned judgment of the High Court.

20. Further, we make it clear that we have recorded our reasons in this judgment on the basis of the rival legal contentions urged on behalf of the parties. Nonetheless, the DRT-II is required to examine the Miscellaneous application of the respondent independently on its own merit and in accordance with law without being influenced by our observations made in this judgment.

21. For the above stated reasons, the impugned judgment and order passed by the High Court by setting aside the orders of DRT-II and DRAT and further remanding the matter to DRT-II for its re-consideration of the Miscellaneous application, is in accordance with the provisions of the Act and the law laid down by this Court in this regard and the same cannot be found fault with by this Court. Hence, there is no merit in this appeal, and the same is liable to be dismissed. Accordingly, the appeal is dismissed with costs of Rs.1,00,000/- payable to the respondent.

22. The parties are directed to maintain status quo of the property involved in these proceedings which exists as on today till the disposal of the Miscellaneous Application by the DRT-II.

- [1] (2001) 7 SCC 71
- [2] (2014) 6 SCC 397
- [3] (2000) 2 BOMLR 567
- [4] (2007) 2 SCC 230
- [5] (2002) 4 SCC 475
- [6] (1999) 7 SCC 539
- [7] (2000) 6 SCC 655
- [8] (1990) 1 SCC 193