

DEBTS RECOVERY APPELLATE TRIBUNAL, DELHI

Appeal No.244/2024

Arising out of OA No.37/2023 (DRT-III, Delhi)

Item No. 4

Canara Bank

V.

Nishita Mall Management Company Private Limited and others

20.07.2026 Hon'ble Dr. Justice Sudhir Kumar Jain

Present: Sh. P.B.A. Srinivasan, Advocate for the appellant through VC

This matter is taken up through Hybrid hearing.

I.A. No.880/2024 (application for condonation of delay filed by appellant)

1. There is a delay of 11 days in filing the present appeal due to the reasons as stated in the application. After considering all facts and the reasons stated in the application, the delay of 11 days in filing the appeal is allowed to be condoned and the application is decided accordingly.

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2. The appellant filed O.A. bearing no.37/2023 titled as **Canara Bank V. Nishita Mall Management Company Private Limited & others**. It is stated in the O.A. that Syndicate Bank sanctioned a loan to M/s Ritsika Business Ventures Pvt. Ltd. situated at Mumbai vide Sanction Letter dated 07.03.2015. However, the said Company and Genuine Asset Operation Private Limited were merged with Nishita Mall Management Private Limited, i.e. defendant no.1 in the O.A. DRT-III, Delhi vide order dated 25.09.2023 returned the O.A. by holding that the DRT at Delhi did not have jurisdiction to entertain that O.A. The relevant portion of the order dated 25.09.2023 is reproduced as under:-

6. Apart from this, all the defendants in this case are residents of Mumbai, and none of the defendants reside in the jurisdiction of Delhi. As far as the cause of action is concerned, as per the citation

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of Hon'ble High Court, Delhi presented by the applicant, the cause of action, which action has been taken by declaring any loan of the applicant as non-performing assets, the applicant has defaulted in repaying the loan and the applicant has not maintained his loan account regularly. As the learned counsel for the applicant has stated that all the documents for issuing the loan have been executed within the jurisdiction of Delhi, execution of documents is a mere formality after sanction of loan by the banks.

7. After considering the argument advanced on behalf of the applicant, facts mentioned in the Original Application, and the law laid down by the Hon'ble Delhi High Court, this forum is of the view that this Tribunal has no jurisdiction to entertain the present Original Application. Present Original Application be returned to the applicant for filing before competent Debts Recovery Tribunal.

3. The appellant preferred appeal bearing no.22/2024 titled as **Canara Bank V. Nishta Mall Management Co. Pvt. Ltd. & others** which was decided by this Tribunal vide order dated 29.04.2024. This Tribunal considered the contentions of the appellant that the documents as referred in para no.9 of the order dated 29.04.2024 were not considered by the DRT while dismissing the O.A. bearing no.37/2023 and after considering all facts this Tribunal set aside the order dated 25.09.2023 and remanded the O.A. with a direction to DRT to decide afresh the issue of jurisdiction after considering the documents as mentioned in para 9 of the order dated 29.04.2024. The relevant portion of the order dated 29.04.2024 reads as under:-

9. **Ld. Counsel for the respondent no.5 then draws the attention of this Tribunal to Lease Rental Tripartite Agreement between Future Lifestyle Fashions Limited (Lessee), respondent no.5, and Nishita Mall Management Company Private Limited (Lessor), respondent no.1, where in para 11.2 the borrower and the lessee have agreed that the courts and tribunals at New Delhi and Mumbai would have exclusive jurisdiction to settle any dispute which may arise out of the contention with the Financing Documents and that accordingly any suit, action or proceedings (collectively referred to as "Proceedings") arising out of or in connection with the Financing Documents may be brought in such courts or the tribunals and the Borrower and the Lessee irrevocably submit to and accept for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.**

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10. It is submitted by Ld. Counsel for the appellant that aforesaid documents were not considered by the Ld. DRT while dismissing the OA vide its order dated 25.09.2023. In these circumstances, Ld. Counsel prays for setting aside the impugned order and directing the Ld. DRT to adjudicate the OA on merits.

11. Heard. In view of the submissions made by the Ld. Counsel for appellant and documents available on record, the impugned order is set aside and the matter is remanded back to Ld. DRT-III, Delhi with a direction to consider afresh the submissions of the Ld. Counsel for the bank in respect of jurisdiction of the Ld. DRT to try the OA keeping in mind the documents appearing on record. However, it is made clear that the DRT shall decide the matter uninfluenced by the observations made hereinabove by this Tribunal.

4. DRT-III, Delhi again vide the impugned order dated 14.06.2024 has returned the present O.A. bearing no.37/2023 by holding that no convincing reason has been given by the appellant with regard to the territorial jurisdiction of the DRT situated at Delhi. The relevant portion of the impugned order dated 14.06.2024 is reproduced as under:-

6. Heard and perused the record. Today, Ld. Counsel for applicant has drawn attention of this Tribunal to various agreements, as mentioned above, executed between the parties wherein address of Ambience Mall, Vasant Kunj; Select City Walk, Saket and Laxmi Nagar New Delhi have been given, however, none of address was mentioned in the memo of parties at the time of filing the OA nor the said addresses were mentioned in any Sanction Letter of the bank. Hence, this Tribunal is of the view that when no Delhi address was mentioned in any Sanction letter of the bank and moreover, applicant bank itself has not added the said addresses of Delhi in the memo of parties, hence, no convincing reason has been given by the bank with regard to jurisdiction of this Tribunal.

6.1 Now the crucial point for the determination of jurisdiction, we have to set out the provision of Section 19(1) of RDB Act 1993. From the perusal of said provision, it is crystal clear that the matter relating to RDB Act, the jurisdiction of the Tribunal shall be decided as per RDH Act and no one can create the jurisdiction by executing any agreement between the parties. Now, we have analyzed the facts and circumstances and documents submitted by the applicant bank in support of this OA that the document relating to the sanction of the loan were executed at Mumbai, the account is maintained at Mumbai branch and payment of loan is also done at

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Mumbai branch of the bank. Moreover, o address of Delhi has been mentioned in the memo of parties. However, after sanctioning of the loan, the aforesaid agreements were executed between the parties wherein the address of the defendant is given at Delhi, hence, same cannot be considered for the sake of deciding the issue of jurisdiction.

6.2 So far as, jurisdiction clause given in Framework Agreement dated 02.06.2021 is concerned, merely by agreeing to jurisdiction at any place does not amounts to jurisdiction of the Tribunal at particular place and as per the choice of the parties, the jurisdiction cannot be determined.

6.3. In the light of above discussions, this Tribunal is of the view that by mentioning addresses of defendants at Delhi in certain agreements executed between the parties, does not give any right to applicant bank for taking benefit of Section 19 of RDB Act. Hence, this Tribunal is of the considered view that this Tribunal has no jurisdiction to entertain this OA since same does not fall within the jurisdiction of this Tribunal.

7. With the above said directions / observations, Registry is directed to return this case file to the applicant bank along with certificate of court fees, as per rules for filling the same before competent Tribunal.

5. The counsel for the appellant stated that DRT-III, Delhi has not considered the documents as referred in para 9 of the order dated 29.04.2024 passed by this Tribunal and the impugned order dated 14.06.2024 was passed without considering those documents. It is argued that part of cause of action has been arisen within the territorial jurisdiction of DRT at Delhi as certain documents were executed in Delhi and in those documents Delhi address of the appellant was mentioned. It is further argued that as per the observation made by the DRT, if Delhi address has to be mentioned in the memo of parties, liberty may be given to the appellant to amend the memo of parties. It is prayed that the impugned order dated 14.06.2024 may be set aside and DRT-III, Delhi may be directed to take the O.A. bearing no.37/2023 in its file and proceed with the trial of the same.

6. Chapter IV of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) deals with the procedure of Tribunals. Section 19 deals with the application to the Tribunal. Section 19(1) provides that where a bank or a financial institution has to

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recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction the part of the cause of action has arisen. The perusal of the impugned order reflects that certain documents as mentioned in para 9 of the order dated 29.04.2024 have been executed in Delhi and were containing the address of Delhi. If the address of Delhi is not mentioned in the memo of parties, it does not necessarily take away the territorial jurisdiction of DRT at Delhi. It appears that part of cause of action has arisen within the territorial jurisdiction of DRT situated at Delhi. DRT-III, Delhi is having jurisdiction to entertain and try the O.A. bearing no.37/2023. The impugned order dated 14.06.2024 is, therefore, set aside. The appellant is directed to appear before DRT-III, Delhi on 12.08.2026 for further direction. It is, however, made clear that the plea of territorial jurisdiction shall be available to the defendants if taken in accordance with law.



(Dr. Justice Sudhir Kumar Jain)
Chairperson

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