DEBTS RECOVERY APPELLATE TRIBUNAL, DELHI

Appeal No.389/2015
[Arising out of order dated 05.01.2015 passed in O.A. No.67/2009 (DRT, Jaipur)]

Reserved on: 01.06.2026
Pronounced on :27.10.2026

1. **M/s Ghanshyam Lal Filling Station,**
Through its Proprietor,
Roop Kishore Mathur,
Village & Post – Kaparda
(Tehsil Bilara), Jodhpur
And
Village Arjunpurakhalsa,
On Ajmer-Beawar Highway,
Near MangliawasPostesarpura
(Distt.Ajmer).

2. **Roop Kishore Mathur**
S/o Late Ghanshyam Lal Mathur
Village & Post – Kaparda, Jodhpur
And
Village Arjunpurakhalsa,
On Ajmer-Beawar Highway,
Near MangliawasPostesarpura

3. **Ranjana Mathur**
W/o Roop Kishore Mathur,
C/o Lachu Memorial College of
Science & Technology,
Sector, Shastrinagar, Jodhpur
And
Lodhonkigali, Veer Mohalla,
Jodhpur.

.....Appellants

V.

UCO Bank
Through its Authorized Officer
Paota Branch
Jodhpur
Rajasthan

.....Respondent

Hon'ble Dr. Justice Sudhir Kumar Jain, Chairperson

Present: Rajeev Sagar, Advocate for appellants through VC

Ms. Ritu Chaudhary, Advocate for respondent through VC

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JUDGMENT

1. The respondent /UCO Bank filed O.A. bearing no.67/2009 titled as **UCO Bank Vs. Ghanshyam Lal Filling Station** against the appellants, who were impleaded as defendants, under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as '**the Act**') for recovery of Rs.16,85,471/- along with future interest @11.75 p.a. on monthly basis with effect from 17.07.2009, which was stated to be pending before DRT, Jaipur. The respondent pleaded that the appellant no.1 was sanctioned credit limit of Rs.10 lacs vide Sanction Letter dated 20.09.2001 and the appellant no.3 had given personal guarantee by executing Letter of Guarantee. The appellants also executed necessary loan documents. The appellant no.2 is the proprietor of the appellant no.1. The appellants were jointly and severally liable to pay the outstanding dues to the respondent. The Cash Credit Limit was enhanced to Rs.15 lacs vide Sanction Letter dated 01.01.2003. The appellants also accepted the terms and conditions as per Sanction Letter on execution of necessary documents. The appellant no.3 also executed Letter of Guarantee. The Cash Credit Limit was modified to Rs.9.50 lacs on execution of documents on 25.05.2004. The appellant no.3 also executed Letter of Guarantee on 25.05.2004. The appellants also sent Letter of Acknowledgement of Debt / securities on 24.07.2006 and as on 24.07.2006 the outstanding amount was Rs.9,14,058/- along with interest from 01.10.2004. The appellants also acknowledged said liability on 25.07.2006. The appellant no.1 also created equitable mortgage on 25.09.2001 in respect of immovable property to secure the credit facility and also delivered original documents of said property. The equitable mortgage created on 25.09.2001 was available to cover the enhanced facility to the extent of Rs.15 lacs. The appellant no.1 also executed confirmatory letter dated 01.01.2003 in favour of the respondent. The appellant no.1 could not stick to the financial discipline and as per the guidelines the loan account was classified as Non Performing Asset (NPA) and proceedings were initiated under Section 13 of the SARFAESI Act by sending demand notice dated 07.02.2006. The respondent also proceeded to take possession of the property vide auction sale notice dated 17.06.2006 and Sushma Soni and Urmila Siyota was declared as successful bidder in respect of the property. The sale confirmation letter dated 31.08.2006 was also issued. The property was leased out by the Government of Rajasthan for 20 years and as such

the appellant no.1 vide letter dated 26.09.2005 requested the respondent for sending the original lease deed to Collector, Jodhpur for further extension vide letter dated 26.09.2005. However, due to the violation of terms and conditions of the lease deed by the appellant no.2, the possession of the property was ordered to be taken immediately. The auction purchasers filed a civil suit for claiming the amount stated to have been paid to the respondent under auction. The respondent decided to make payment of Rs.14.01 lacs along with interest @8.25% per annum back to the auction purchasers as per the settlement recorded in *Lok Adalat*, Jodhpur vide order 05.05.2009. The respondent was not able to realize any amount by enforcement of security interest in the property as the lease deed was not renewed. The Authorised Officer also cancelled the Certificate of Sale issued on 31.08.2006. The respondent also appropriated an amount of Rs.5,32,870/- on 25.05.2004 in the Cash Credit account of the appellant no.1. As per the Statement of Account as on 16.07.2009 the outstanding amount in the Cash Credit account was Rs.9,75,234/- including interest up to 31.10.2004. The appellants were liable to pay Rs.16,85,471/- which included outstanding balance of Rs.9,75,234/- as on 16.07.2009 and unapplied interest for the period from 01.11.2004 to 16.07.2009. The respondent was also entitled to recover further interest @11.75% per annum on monthly rests basis w.e.f. 17.07.2009 till entire outstanding dues were paid. Accordingly, the respondent has filed the Original Application (O.A.).

2. The appellants 1 and 2 filed reply wherein they denied the contents of the O.A. and pleaded that the business of the appellant no.1 was destroyed due to misdeed of the official of the respondent. The appellants 1 and 2 are not liable to pay anything to the respondent. The respondent has already sold the mortgaged property for a consideration which was more than the outstanding dues which the respondent is liable to return to the appellants. The respondent is not entitled to charge interest from the date on which the possession of the subject property was taken. The appellants 1 and 2 also denied other allegations as stated in the O.A. The appellants 1 and 2 also demanded a compensation of Rs.10 lacs for loss of business, mental torture and harassment. The appellant no.3 also filed reply and did not dispute execution of guarantee agreement. The appellant no.3 also reiterated the defence as taken by the appellants 1 and 2.

3. DRT vide judgment dated 05.01.2015 (hereinafter referred to as '**the impugned judgment**') allowed the O.A. The relevant portion of the impugned judgement dated 05.01.2025 under challenge is reproduced as under:

> **"In the result, the O.A. is allowed and the Applicant Bank is entitled to recover an amount of Rs.16,85,471/- from the Defendants No.1 to 3 jointly and severally with cost and pendent elite interest @11.75% per annum with monthly rests from 17.07.2009 by sale of personal movable and immovable assets of the Defendants. The parties are directed to appear before the Recovery Officer on 06.2.2015.**
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> **The O.A. is disposed of accordingly. Recovery Certificate be prepared accordingly. Copy of the Judgment and Recovery Certificate be sent or given to all the concerned parties free."**

4. The perusal of the impugned judgment reflects that the DRT has framed the following issues for determination:

1. **Whether the Tribunal has pecuniary jurisdiction to adjudicate the O.A.**
2. **Whether the O.A. is filed by the applicant within limitation**
3. **Whether the applicant is entitled to recover Rs.16,85,471/- with pendente lite and future interest @11.75% with monthly rests w.e.f. 17.07.2009 from the defendants**
4. **Whether the defendants are entitled to counter-claim of Rs.10 lacs**

5. DRT vide impugned judgment held that the Tribunal was having pecuniary jurisdiction to adjudicate the O.A. DRT also held that the O.A. was within limitation. DRT on the issue no.3, after perusing the affidavits of evidence filed by the respondent and the appellants, observed that the appellants have not disputed availment of the loan and execution of security documents. DRT also observed that as per Statement of Account Exhibit A-32 there was outstanding dues in the CC account to the tune of Rs.9,75,234/- including interest charged up to 31.10.2004. The respondent has not charged interest from 01.11.2004 after declaring the account as NPA and as per the Mirror Statement of Account, the accrued interest was Rs.7,10,237/-. It was also observed that on the basis of contention of the respondent that a sum of Rs.16,85,471/- was recoverable from the appellants with future interest @11.75% per annum with monthly rests. DRT also considered the contentions of the appellants which were found to be devoid of any substance. Accordingly, DRT held that the respondent has sufficiently proved by documentary evidence that the respondent is entitled to recover a sum of

Rs.16,85,471/- with *pendente lite* and future interest @11.75% per annum with monthly rests from 17.07.2009 till realization by sale of personal movable and immovable assets of the appellants. DRT also held that the appellants are not entitled to recover counter-claim of Rs.10 lacs.

6. The appellants being aggrieved, filed the present appeal. The appellants challenged the impugned judgment on the ground as stated in the memo of appeal. The respondent filed reply to the appeal.

7. Sh. Rajeev Sagar, advocate for appellants and Ms. Ritu Chaudhary, advocate for respondent were heard. The respective counsels for the appellants and the respondent have filed written submissions which are perused and considered.

8. Sh. Rajeev Sagar argued that the impugned judgment suffers from serious factual and legal errors. He further argued that the appellant no.1 in the year 1986 was allotted leasehold property admeasuring 1 bigha at khasra no.291 at Village Kaparda, Tehsil Bilara, Distt. Jodhpur for a period of 20 years exclusively for the use of petrol pump under reserved and handicapped category and the leased property as per the terms and conditions of the lease could not be used for any other purpose and can be allotted to any other person. The appellant no.1 took Cash Credit facility from the respondent of Rs.10 lacs and leasehold property was mortgaged as security for the loan. The Cash Credit limit was enhanced to Rs.15 lacs in the year 2003. The loan account was declared NPA in April 2004 and an FDR of Rs.5 lacs was also adjusted in the loan account on 25.05.2005. It was further stated that the balance loan on 01.10.2004 was Rs.9.5 lacs and after adjustment of Rs.5 lacs, the due amount was reduced to Rs.5,32,870/-. The appellant no.1 on 14.02.2005 sought renewal of lease which was renewed vide letter 28.04.2005 subject to deposition of original lease deed. The appellant no.1 requested the respondent for deposition of original lease deed with DM for renewal but the respondent did not deposit the lease deed as a result of which the lease deed was cancelled on 24.06.2006. The respondent issued a notice under Section 13(2) of the SARFAESI Act, dated 07.02.2006, demanding a sum of Rs.10,37,000/- and in April 2006 the respondent took possession of the mortgaged property under Section 13(4) of the SARFAESI Act. It is further stated that the auction purchasers also settled with the respondent on 05.05.2009 and out of settlement, the Sale Certificate was cancelled on 30.09.2009 and the auction money was refunded to

the auction purchasers. The Authorised Officer was not having any power to cancel the sale. Sh. Sagar further argued that once mortgaged property had gone out of the appellants, thereafter they were not responsible for any act of the respondent or the auction purchaser. The respondent did not facilitate renewal of original lease deed resulting into the cancellation of the lease deed and closure of petrol pump of the appellant no.1. It was further argued that the O.A. was barred by limitation as the account was declared NPA on 01.11.2004 and SARFAESI notice issued 07.02.2006. O.A. was filed on 17.07.2009 after placing reliance on acknowledgment dated 25.07.2006 which was denied by the appellants. DRT also did not consider the counter-claim properly and did not frame appropriate issues for consideration. It was argued that the appeal be accepted and the impugned judgment be set aside. Sh. Sagar also cited case laws to support his arguments.

9. The counsel for the respondent argued that the appellants are jointly and severally liable to pay the decretal amount which as on 01.06.2006 is amounting to Rs.1,53,22,581/- as per the Statement of Account dated 01.06.2006. The counsel for the respondent also referred the factual position. It was argued that the appellants did not appear after filing of the written statement and did not lead evidence and were proceeded *ex parte* vide order dated 27.11.2014. It was further argued that if the appellants were having any grievance against the notice under the SARFAESI Act, then they should have resorted to appropriate statutory remedy as per section 17 of the SARFAESI Act. It is ultimately argued that the respondent is entitled to recover the outstanding dues as per impugned judgment.

10. It is reflecting that the appellant no.1 through appellant no. 2 had approached the respondent on 20.09.2001 for grant of Cash Credit facilities (CC Limit) to the tune of Rs.10 lacs which was sanctioned on execution of necessary documents on 20.09.2001. The appellant no.3 executed the guarantee agreement on 20.09.2001. The Cash Credit Limit was enhanced to Rs.15 lacs on execution of documents on 01.01.2003 and again appellant no.3 also executed guarantee agreement. The Cash Credit Limit was modified to Rs.9.50 lacs on execution of necessary documents executed on 25.05.2004. The appellants also acknowledged the debt on 25.07.2006. The appellant no.1 through appellant no.2 on 25.09.2001 also created equitable mortgage in respect of the property as detailed hereinabove to secure the Cash Credit facility. The appellants could not maintain financial discipline and accordingly demand notice dated 07.02.2006 under Section 13(2) of the

SARFAESI Act was issued. The respondent also took possession of the secured asset which was sold in auction to auction purchaser, namely, Sushma Soni and Urmila Siyota for Rs.14.01 lacs and Sale Certificate was issued on 31.08.2006. It is also reflecting that the secured asset was leased by the Government of Rajasthan for 20 years which was cancelled vide letter dated 26.02.2008 issued by the District Collector. Thereafter, auction money along with interest was refunded to the auction-purchaser and Sale Certificate was also cancelled. The respondent also adjusted / appropriated Rs.5 lac which was in the form of FDR in the name of appellant no.1. As per the Statement of Account a sum of Rs.9,75,234/- was due on 31.10.2004 besides interest of Rs.7,10,237/- for the period from 01.11.2004 to 16.07.2009. The respondent also placed and proved on record the necessary documents.

11. The main contention of the appellants is that the lease of the secured property could not be extended beyond 20 years due to negligence of the respondent. The appellant no.1 itself mortgaged the subject property as security for the Cash Credit facility and there is nothing on record which can reflect that the lease of the secured property could not be extended due to negligence of the respondent and accordingly the arguments as raised by the appellants does not inspire any confidence. It is on the record that the lease deed of the mortgaged property was cancelled by the District Collector, Jodhpur due to the reason that the appellant no.1 had stopped operation of the petrol pump for which the lease of the mortgaged property was granted. The appellants contended and also argued by their counsel that the mortgaged property was sold for Rs.14.01 lacs and as such the respondent was not entitled to recover any further amount from the appellants. However, the said arguments is meritless as the auction sale was cancelled during the legal proceedings and as per the settlement arrived at *Lok Adalat* at Jodhpur on 05.05.2009, the auction money was refunded to the auction purchaser along with interest. The respondent did not and could not realise any amount from the auction of secured asset towards the satisfaction of the outstanding dues. The appellants also could not prove that they have made any payment to the respondent and whatever payment was made by the appellants was accordingly adjusted. DRT in the impugned judgment has considered all the issues and objections raised and contended by the appellants in detail and in proper perspective. DRT has passed a reasoned judgment deciding all the issues as raised by the parties. The arguments

advanced by the counsel for the appellants are considered in right perspective on the basis of available record but the arguments are misconceived and ill-founded and do not appeal to the reasons. There is no infirmity and illegality in the impugned judgment passed by DRT, Jaipur which warrants any interference by this Tribunal.

12. There is no merit in the appeal. Hence, dismissed along with pending applications.

Sd/-

(Dr. Justice Sudhir Kumar Jain)
Chairperson

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