**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**
**NEW DELHI**

**REVISION PETITION NO. 329 OF 2020**

(Against the Order dated 08/11/2019 in Appeal No. 72/2019 of the State Commission Himachal Pradesh)

1. STATE BANK OF INDIA .....Petitioner(s)

Versus

1. RATTAN DASSI
W/O. HIRA BIR, VPO CHUNGLING, THEL KALPA,
DISTRICT-KINNAUR-172107
HIMACHAL PRADESH .....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER**

FOR THE PETITIONER : FOR THE PETITIONER :MR.ABHAY GUPTA & MS. SIMRAN GOEL, ADVOCATES

FOR THE RESPONDENT : FOR THE RESPONDENT: MR.RAJIVE R. RAJ, ADVOCATE

**Dated : 26 July 2024**

**ORDER**

1. This Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 ("the Act") against the order dated 08.11.2019, passed by the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla ('the State Commission') in MA Nos.653 and 654 of 2019 and R.P. No.72 of 2019 whereby the State Commission not admitted for hearing and upheld the interim order dated 29.05.2019 passed by the District Consumer Disputes Redressal Forum, Reckong Peo (H.P.) ('the District Forum') wherein the District Forum struck off the defence of the Petitioner/OP.

2. As per report of the Registry, there is a delay of 10 days in filing of the present Revision Petition. For the reasons stated in IA No.3252 of 2020, the same is condoned.

3. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum. State Bank of India is referred to as the Petitioner/Opposite Party whereas the Smt. Rattan Dassi is denoted as the Respondent/Complainant.

4. Brief facts of the case, as per the Complainant, are that the complainant, Dassi, an illiterate woman, owns land measuring 00-16-01 hectares (approximately 3 bighas or 60 biswas) in Up-Muhal Kashmir, Tehsil Kalpa, District Kinnaur, Himachal Pradesh. The current value of the land is around Rs. 70 lakhs, as per government rates (Rs. 1,04,000/- per biswa). She decided to construct a small hotel on part of her land (00-02-00 hectares or 4 biswas). Initially, the plan was for a 4-room hotel, later revised to 6 rooms. She approached the District Tourism Development Officer in Shimla for permission, which was granted on

08.03.2007. She approached the bank for a loan of Rs. 6.74 Lakhs. The bank required a project report and drawings of the proposed hotel, which she submitted. The bank officials took her signatures on some forms and granted her term loan on 01.04.2007. But, she never received any sanction letter or copies of the signed forms. She was verbally informed by OP Bank officials that the loan was to be repaid within seven years with monthly instalments of Rs.8,000, starting 12 months after the loan was granted. To secure the loan, she mortgaged her land bearing Khasra/ Khatuni No. 152/240 Khasra No. 532. The mortgage deed dated 10.04.2007, covered only the land and not the proposed hotel structure. The loan amount was credited to her loan Account No. 11552886474 in April/May 2007. She started the hotel construction immediately, which progressed until October/November 2008 when it had to stop due to severe weather conditions. Construction resumed in April 2008 and continued till October/November 2008. In May 2009, she requested an additional loan of Rs.3.25 lakhs due to financial constraints. The bank officials inspected the site and sanctioned the additional loan, opening another loan Account No. 30769066191 in her name. The OP Bank granted the additional loan amount of Rs. 3.25 lakhs in May/June 2009. Similar to the first loan, she did not receive any documents regarding the sanctioning of the additional loan or its repayment terms, which she claims is an unfair trade practice by the bank. The first instalment of the initial loan Rs. 6.74 lakhs was due in April/May 2008, but she was unable to pay as the construction was ongoing. The bank was aware of this and even granted the additional loan in May 2009. She made several deposits towards the loan. The OP Bank, however, informed her that penal interest would be charged for the delayed payment. While she made some delayed payments, the OP Bank initiated proceedings for recovery of the loan under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). Being aggrieved, she filed a Consumer Complaint before the District Forum challenging the SARFAESI action taken by the OP Bank after already having arrived at a compromise and availing the benefit of reduction/waiver of the interest portion.

5. Upon notice, the Petitioner/OP Bank appeared before the District Forum. However, the Petitioner/OP did not file their Written Version despite several opportunities granted to it and resultantly, the District Forum vide order dated 29.05.2019 defence of the Petitioner/OP was struck off. Being aggrieved, the Petitioner/OP filed a Revision Petition No.72 of 2019 along with M.A. Nos.653 and 654 of 2019 against the order dated 29.05.2019 passed by the District Forum before the State Commission. The learned State Commission, vide order dated 08.11.2019 did not admit for hearing the said Revision Petition in view of the fact that the Petitioner/OP did not file written version before the District Forum continuously for two years.

6. Being dissatisfied, the Petitioner/OP filed the instant Revision Petition No.329 of 2020 against the Order dated 08.11.2019 passed by the State Commission.

7. In his arguments, the learned Counsel for the Petitioner/OP reiterated the grounds taken in the present Revision Petition. He contended that the objection regarding jurisdiction can be raised at any stage of the proceedings, including at the stage of execution or in collateral

proceedings. Since the Petitioner/OP has already initiated proceedings under the SARFAESI Act, the Consumer Complaint preferred by the Respondent/Complainant is not maintainable before the District Forum. Section 34 of the SARFAESI Act completely bars the jurisdiction of Civil Courts and any other authority, including Consumer Forums, from entertaining any matters concerning actions taken under the SARFAESI Act. The learned Counsel sought to set aside the impugned orders of the District Forum as well as the State Commission and dismiss the complaint filed before the District Forum. He has relied upon the following judgments:

***A. Jagmittar Sain Bhagat & Ors. Vs. Director, Health Services, Haryana & Ors., (2013) 10 SCC 136;***

***C. Chief Engineer, Hydel Project & Ors. Vs. Ravinder Nath & Ors., (2008) 2 SCC 350;***

***C. Harianandan Prasad Vs. State Bank of India, (2012) SCC OnLine NCDRC 299.***

8. In his arguments, the learned Counsel for the Respondent/ Complainant has asserted in favour of the impugned orders passed by the Fora below. He sought to dismiss the present Revision Petition. He has relied upon the following judgments:

**A**. ***New India Assurance Company Limited vs. Hilli Multipurpose Cold Storage Private Ltd & Ors. (2020) 5 SCC 757;***

***B. Dr. J.J. Merchant & Ors. Vs.Shrinath Chaturvedi (2002) 7 SCC 273.***

9. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned Counsels for both the Parties.

10. The primary issue in this case is whether the District Forum has the jurisdiction to entertain the consumer complaint after proceedings have been initiated against the complainant under the SARFAESI Act before the Debt Recovery Tribunal (DRT).

11. Admittedly, the Petitioner/OP took possession of the mortgaged property on 26.12.2012 under Section 13(4) of the SARFAESI Act after obtaining orders from the District Magistrate under Section 14 of the SARFAESI Act on 22.11.2011. The Respondent/Complainant challenged the bank's action by filing SA No. 265 of 2012 before the Debt Recovery Tribunal (DRT), Chandigarh under Section 17 of the SARFAESI Act. It is also admitted position that an amicable settlement for Rs. 7,56,189/- was arrived as regards outstanding amount of Rs. 9,56,189/-. The settlement amount was deposited by the Respondent/Complainant. The Respondent also filed a Consumer Complaint before the District Forum on 13.01.2014,

challenging the SARFAESI Action taken by the bank, even after the compromise and availing benefit of interest reduction/waiver. The Petitioner/OP contended that once proceedings under the SARFAESI Act have commenced, the jurisdiction of Civil Courts and other authorities, including Consumer Forums, is barred under Section 34 of the SARFAESI Act. The Petitioner further contended that since the SARFAESI proceedings were initiated and resolved, the District Forum should not entertain the Consumer Complaint. On the other hand, the Respondent/ Complainant argued that the Consumer Protection Act provides a separate remedy for deficiencies in service and that the complaint pertains to unfair practices and service deficiencies by the bank. He further argued that the settlement under the SARFAESI Act does not preclude her from seeking redress for service deficiencies and unfair trade practices under the Consumer Protection Act. In this regard, the following issues are relevant:

A. The Consumer Protection Act, 1986 which is now repealed by the Act, 2019 provides a remedy for consumers who have grievances regarding deficiencies in services provided by banks, among other service providers.
B. The SARFAESI Act, 2002, provides banks and financial institutions with a legal framework for the recovery of non-performing assets without the intervention of courts. It includes provisions for enforcement of security interests, the management of assets, and the resolution of disputes through the DRT.

**C.** Section 34 of the SARFAESI Act enunciates that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under the SARFAESI Act to determine. This implies that once proceedings under the SARFAESI Act have commenced, other courts or forums may be barred from adjudicating on matters that fall within the purview of the SARFAESI Act.

D. While consumer forums can entertain complaints relating to matters that are also covered under other laws, which has been upheld, the SARFAESI Act provides for exclusivity of the DRT's jurisdiction once SARFAESI proceedings have been initiated. The Complainant had participated in the same and obtained the benefit of settlement.

12. In a recent judgment of the High Court of Orissa at Cuttack in the case of ***The Chief Manager-Cum-Authorized Officer, Union Bank of India, Jharsuguda Vs. Rajesh Kumar Agrawal & Anr., WP. (C) No.41680 of 2023, decided on 01.07.2024*** it has been held:

> ***"22. On a conspectus of materials on record in view of the provisions contained in the SARFAESI Act as discussed and unambiguous repeated pronouncement of the Apex Court referred to herein above since the District Consumer Commission lacked inherent jurisdiction as noted, this Court is left with no other alternative but to quash the entire proceeding i.e. C.C. No.91 of 2023 pending before the District Consumer Commission, Jharsuguda as also the order dated 14.12.2023 at Annexure-8 passed in Misc. Case No.31 of 2023 arising out of said C.C. No.91 of 2023.***

***23. The CP Act, 2019 was enacted repealing the Act of 1986 inter alia on the ground that "it has became inevitable to amend the Act to address the myriad and constantly emerging vulnerability of the consumers" and while so doing, the pecuniary jurisdiction for the district commission has been enhanced up to Rs.1 crore and that of the State commission from Rs.1 crore to up to Rs.10 crores.***

***24. An onerous duty has been cast on the President and Members manning the Consumer Commissions while considering the reliefs sought under the Special Acts and to act and function within the orbit provided thereunder. The maxim "ignoratia juris no excusat" applies in equal measure to all including the Consumer Commissions. The least that can be expected from the learned President and the Members of the District Commissions that before passing any order relating to any alleged violation vis-à-vis the provisions of any Special Act they will test the propositions claiming the reliefs on the touchstone of law governing the field which would enable them not to embark upon a journey which will lead to avoidable litigation and denude the faith of the common man in the fairness and effectiveness of the redressal mechanism and which will also not render otiose, the intent of the legislature in enacting Special Statues.***

***25. This Court fervently hopes that while dealing with such Special Acts, the Consumer Commissions will refrain from judicial adventurism of the present nature which we strongly disapprove."***

13. In view of the foregoing discussions, I am of the considered opinion that the learned District Forum has no jurisdiction to entertain the Consumer Complaint No.05 of 2014 after proceedings have been initiated against the complainant under the SARFAESI Act before the Debt Recovery Tribunal (DRT) and the Complainant had participated in the same. Therefore the Consumer Complaint is hereby dismissed and all such orders passed therein or such orders in miscellaneous proceedings arising therefrom also stand set aside. Accordingly, the Revision Petition No.329 of 2020 is allowed.

14. Needless to say, the Respondent/Complainant has right to approach appropriate legal fora to seek relief in respect of their grievances against the Petitioner/ OP Bank. She may also seek benefit of the provisions of Section 14 of the Limitation Act, 1963 in doing so.

15. There shall be no order as to costs. All pending Applications, if any, also stand disposed of accordingly.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)**
**PRESIDING MEMBER**