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CONSUMER COMMISSION LACKS JURISDICTION OVER CASES FALLING UNDER DRT

The Chief Manager-cum-Authorized Officer, Union Bank of India, Jharsuguda v. Rajesh Kumar Agrawal & Anr.

Hon'ble High Court of Orissa clarified that Consumer Commissions lack jurisdiction over matters adjudicated by the Debt Recovery Tribunal or Appellate Tribunal under the SARFAESI Act, 2002. In the case of *The Chief Manager-cum-Authorized Officer, Union Bank of India, Jharsuguda v. Rajesh Kumar Agrawal & Anr.*¹, petitioner-bank's e-auction sale notice was challenged by the first opposite party at the District Consumer Commission, Jharsuguda under Section 35 of the Consumer Protection Act, 2019, which led to an ex-parte stay order on the auction.

Hon'ble Court while emphasizing on Section 34, 35 and 37 of the SARFAESI Act, 2002, observed that Section 34 prescribes the jurisdictional bar for entertaining any suit or proceeding which can be entertained by the Debt Recovery Tribunal or the Appellate Tribunal and specifically it has been mentioned that no injunction shall be granted by any Court or other authority in respect of any action in present day or in future to be taken under the SARFAESI Act. Furthermore, it observed that Section 35 of SARFAESI Act read with Section 37 thereof is put side by side with Section 100 of the Consumer Protection Act, 2019, the irresistible conclusion is that any action that is taken or contemplated under the SARFAESI Act or Recovery of Debts and Bankruptcy Act, 1993 (RDDB Act) has to be governed by the SARFAESI Act or RDDB Act alone and all other laws save and except those as find mentioned in Section 37 of SARFAESI Act have to yield to the same.

Accordingly, Hon'ble Court held that Consumer Commission could not have granted the ex-parte stay on the e-auction notice. Hence, impugned order was quashed.

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¹ W.P.(C) No.41680 of 2023

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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.41680 of 2023

(An application under Articles 226 & 227 of the Constitution of India).

The Chief Manager-cum-Authorized Officer, Union Bank of India, Jharsuguda ***Petitioner***

-versus-

1. Rajesh Kumar Agrawal ***Opposite Parties***
2. District Consumer Redressal Commission, Jharsuguda

For Petitioners : ***Mr. B.C. Panda, Advocate***

For Opposite Parties : ***Mr. S.K. Jethy, Advocate***

CORAM:

MR. JUSTICE D. DASH

MR. JUSTICE V. NARASINGH

DATE OF JUDGMENT: 01.07.2024

V. Narasingh, J.

Plenary jurisdiction of this Court under Article 226 and 227 of the Constitution of India has been invoked by the Chief Manager-cum-Authorized Officer, Union Bank of India (Opposite Party No.1) assailing order dated 14.12.2023 at Annexure-8 passed in



Misc. Case No.31 of 2023 arising out of C.C. No.91 of 2023 by District Consumer Commissioner, Jharsuguda in exercise of its power U/s.38(8) of the Consumer Protection Act, 2019 (hereinafter referred to as “C.P. Act”) thereby directing the Petitioner-Bank not to proceed for the auction of secured assets which was being undertaken in terms of the provisions contained in Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read with Rule 8 of the Security Interest (Enforcement) Rules, 2002.

1. Heard learned counsel Shri B.C Panda for the Petitioner and learned counsel Sri S.K. Jethy for the Opposite Party No.1.
2. The brief facts germane for just adjudication are indicated as under;

I. The present opposite party No.1 is one of the guarantors & mortgagors for the credit facilities availed by the Company M/s-Tulshyan Storeware Pvt. Ltd. Apart from the Opp.Party No.1 there are other guarantors & mortgagors for the credit facilities availed by the said company. The said company had availed a term loan to the tune of Rs. 280.00 Lakhs and cash credit facility to the tune of Rs.35.00 Lakhs from the erstwhile Corporation Bank, Jharsuguda in the year 2015. Thereafter, the said loan was renewed in the year 2016 and 2019 and another loan facility was sanctioned being working capital term loan for Rs.20.20 lakh in the year 2019. In the said loan the present Opp.Party No.1, his wife and other persons were stood as guarantors & mortgagors.



II. In order to secure the loan dues, the Opp.Party No.1, his wife and other persons had mortgaged landed properties.

III. As, the borrowers did not repay the loan amount in time and consequently the loan account turned to NPA as per RBI guidelines. Therefore, the petitioner bank i.e the secured creditor, recalled the loan and issued demand notice under section 13(2) of SARFAESI Act 2002 on 09.12.2021 and 18.04.2022 calling upon the borrowers, guarantors and mortgagors to pay the dues within the time stipulated there. Copy of the said notice U/s-13(2) of SARFAESI Act, 2002 is annexed to the Writ Petition at Annexure-1.

IV. It is stated that as no steps were taken to comply with the said demand notice, further notice U/s.13(4) of SARFAESI Act, 2002 read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 for possession of the property were taken and the same was published in daily newspaper. Copy of the said notice is on record at Annexure-2.

V. Admittedly, assailing such action of the Petitioner-Bank, the Opposite Party No.1 along with his wife filed Securitisation Appeal No.66 of 2022 in the DRT, Orissa Cuttack U/s.17(1) of the SARFAESI Act, 2002 and the relief sought for and the interim relief prayed for in the said S.A. are extracted hereunder for ready reference;

“6. Relief(s) sought for:-

(a) To declare the e-auction notice for sale of the schedule properties of the applicants as illegal and quash the same.

(b) To declare the e-auction scheduled to be held 29.04.2022 as illegal, arbitrary and null and void.

(c) To set aside/quash the notices U/s.13(2), 13(4) as well as all actions taken under SARFAESI Act being illegal.



(d) Cost of the proceeding be awarded in favour the applicants.

(e) Any other relief/reliefs which the applicants may be entitled to.

7. Interim relief, if any, prayed for:

Pending final adjudication of the application the applicants pray for the following interim reliefs:

(a) Defendant No.1 be restrained from auctioning, or creating any third party interest or change the nature or character of the schedule properties.”

VI. It is apt to note that there is no dispute that in the said Securitization Application, no interim order has been granted and the same is pending.

It is stated by the Petitioner-Bank that E-Auction sale was published in daily newspapers initially fixing the date to 29.04.2022 and thereafter, though several dates were notified the E-Auction did not fructify.

Therefore, the Petitioner-Bank published E-Auction sale notice afresh on 29.11.2023 in Vernacular Daily and English Newspaper on 30.11.2023 and the E-Auction was fixed to 16.12.2023. The said E-Auction notice is on record at Annexure-4.



VII. It is stated that as per such E-Auction sale notice, the outstanding as on 10.10.2023 is to the tune of Rs.3,76,58,321/- (Rupees Three Crores Seventy Six Lakhs Fifty Eight Thousand Three Hundred Twenty One only) excluding interest and other expenses.

And, it is submitted on behalf of the Petitioner that such E-Auction sale notice dated 29.11.2023 was also sent to the Opposite Party No.1 as well as the borrowers and other guarantors and mortgagers by Registered post with AD and the same has been duly received and in evidence thereof, notice with postal receipts have been placed on record vide Annexure-5.

VIII. It is stated that at this stage, the Opposite Party No.1 filed C.C. Case No.91 of 2023 U/s.35 of the CP Act inter alia assailing the E-Auction scheduled to be held on 16.12.2023 by imploding the Petitioner as one of the Opposite Parties along with the Chief-Manager, Union Bank of India, Jharsuguda.

IX. For convenience of ready reference the prayers in the Consumer Case No.91 of 2023 on the file of the District Consumer Redressal Commission, Jharsuguda at the behest of Opposite Party No.1 are extracted hereunder;



- “i. The opposite parties may be directed to furnish up to date account statement of the principle borrower to the complainant so as to enable him to settle the account and to redeem the mortgaged property.
- ii. To declare the publication of auction notice dated 30/11/2023 published in Sambad Odiya newspaper is illegal and in violation of provision of law of land.
- iii. To direct the opposite parties not to proceed with the auction on 16/12/2023 as published in the Sambad Odiya newspaper dated 30/11/2023 without leave of the commission.
- iv. To direct the opposite party to pay compensation of Rs. 5,00,000/- to the complainant for causing mental and physical harassment.
- Any other reliefs deem fit and proper.”

X. And, along with the C.C. Case, a petition U/s.38(8) of the CP Act was filed seeking an interim ex-parte order restraining the Petitioner (Opposite Parties before the Consumer Commission) from proceedings with the auction scheduled for 16.12.2023 and by the impugned order at Annexure-8 dated 14.12.2023 in effect the auction has been stayed.

3. It would be apposite to quote the reasoning of the District Consumer Redressal Commission in granting the ex-parte interim order;

“xxx xxx xxx

As the property (movable or immovable) of the petitioner has been repossessed by the O.Ps without any prior notice duly unserved (sic) is bad in the



eye of law and if the said property will be sold the complainant will be in much hardship, hence in the eye of natural justice, it appears us to pass necessary interim order U/S-38(8) of the C.P. Act, 2019 as it seems to be just and proper.

xxx xxx xxx”

4. Learned counsel for the Petitioner, Mr. Bhaskar Ch. Panda, assailing such order of the Consumer Commission submits that it is settled law that SARFAESI Act, 2002 is a Special Act and a Code in itself and the steps taken in terms of the said Act cannot be called in question in a proceeding under the CP Act and to fortify his submission, he banked upon the provisions as contained in Section 34 and the overriding clause U/s.35 of the SARFAESI Act, 2002.

5. He also relied on the judgment of the Apex Court in the case of **United Bank of India vs. Satyawati Tandon and others** reported in **(2010) 8 SCC 110** and also in the case of **Indian Bank vs. M/s. Blue Jagers Estates Ltd. and others** reported in **2010 (II) CLR-(SC) 589 = (2010) 8 SCC 129**.

6. Learned counsel Mr. Panda submitted with vehemence that notwithstanding the wide amplitude of unfettered powers conferred on the High Courts in terms of Article 226 and 227 of the Constitution of India, the Apex Court has always sounded a caution that even the High Courts ought not to issue prerogative writs in matters relating to securitization.



7. It is submitted that since the impugned order passed is ex-facie illegal being wholly without jurisdiction and malafied this Court should exercise its plenary powers in entertaining the Writ Petition notwithstanding that statutory remedy as provided under the CP Act.

8. Per contra, learned counsel for the Opposite Party, Mr. Jethy relying on the counter affidavit submits that the Writ Petition is not maintainable that since admittedly the Petitioner has effective alternative remedy and in this context, he relies on the provisions contained in Section 35 of the CP Act and Regulation 17 of the Consumer Protection (Consumer Commission Procedure) Regulations, 2020.

9. It is his further submission that on a bare perusal of the impugned order, it can be seen that while passing the same, liberty was granted to the Bank to seek for modification/alteration in terms of Regulation 17 of the Consumer Protection (Consumer Commission Procedure) Regulations, 2020 (for short 'the Regulations'). Hence, it is stated that without taking the recourse to such statutory redressal provisions, it is not open for the Petitioner to invoke the Writ jurisdiction of this Court.

10. Learned counsel for the Opposite Party, Mr. Jethy, further draws the attention of this Court to Section 100 of the CP Act and submits that since the provision of this Act are in addition to or not in



derogation of the provisions of any other law, there is no embargo to move the consumer forum relating to any matter falling within the domain of SARFAESI Act.

11. For convenience of ready reference, Sections 35 and 100 of the CP Act and Regulation 17 of the Regulations is quoted hereunder.

“35. Manner in which complaint shall be made.-(1) A relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by-

(a) the consumer, -

(1) to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or

(ii) who alleges unfair trade practice in respect of such goods or service;

(b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government, the Central Authority or the State Government, as the case may be:

Provided that the complaint under this sub-section may be filed electronically in such manner as may be prescribed.

Explanation. For the purposes of this sub-section, "recognised consumer association" means any voluntary consumer association registered under any law for the time being in force.



(2) Every complaint filed under sub-section (1) shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.

100. Act not in derogation of any other law.- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Regulation 17 of the Consumer Protection (Consumer Commission Procedure) Regulations, 2020

17. Ex parte interim order.-If an application for vacating or modifying or his discharging the ex parte interim order is filed by any of the parties, it shall be decided within forty-five days and the Commission shall have the discretion to extend the ex parte interim order if such application is not decided within forty-five days

12. And, to fortify his submission regarding non-maintability of the Writ Petition on the face of statutory remedy, Opp. Party No.1 relied on the judgment of the Apex Court in the case of **Cicily Kallarackal vs. Vehicle Factory** reported in **2012 (8) SCC 524**, **Vodafone Idea Cellular Limited vs. Ajay Kumar Agarwal** reported in **2022 (6) SCC 496**, **M/s. Imperia Structures Limited vs. Anil Patni and another** reported in **AIR 2021 SC 70** and the judgment of the Madras High Court in the case of **I R Prakash and Hema Prakash vs. The District Consumer Disputes Redressal Forum and another** reported in **2014 SCC Online Madras High Court 11940**.

There is no cavil relating to the proposition of law that on the face of statutory remedies the Writ Court should be slow in



interfering. The same is a time tested principle based on the doctrine of self-restraint as it is commonly known but it is equally trite that there is and cannot be any fetter, keeping in view the “basic structure doctrine”, on the Constitutional Courts in exercising Writ jurisdiction when the order passed by a sub-ordinate authority shocks the conscience of the Court, as in the present case.

13. In this context, it is apt to refer to one of the recent judgment passed by the Apex Court in the case of **PHR Invent Educational Society vs. UCO Bank and others** reported in **2024 SCC Online SC 528** wherein, the concern expressed by the Apex Court in the case of **United Bank of India vs. Satyawati Tandon and others** reported in **(2010) 8 SCC 110** Paragraph 55 thereof was reiterated and the same is extracted hereunder;

“55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.”

[(2010) 8 SCC 110]



14. The provisions contained in Section 34, 35 and 37 of the SARFAESI Act, which have a bearing on the point at issue are culled out hereunder for convenience of ready reference;

34. Civil Court not to have jurisdiction.- No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and **no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act** or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

(Emphasized)

35. The provisions of this Act to override other laws.- The provisions of this Act shall have effect, notwithstanding anything in consistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law

37. Application of other laws not barred. -The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

15. On a close reading of the aforementioned provisions of SARFAESI Act, it is evident that Section 34 prescribes the jurisdictional bar for entertaining any suit or proceeding which can be



entertained by the Debt Recovery Tribunal or the Appellate Tribunal and specifically it has been mentioned that no injunction shall be granted by any Court or other authority in respect of any action in present day or in future to be taken under the SARFAESI Act. Even if the reference to “Civil Court” in heading of the Section 37 of SARFAESI Act as well as in the narration of the sections is interpreted and understood in the context of section 9 of the CPC, the expression “other authority” must be given its full play, otherwise the legislative intent of Section 37 would be set at naught. There cannot be any iota of doubt that the expression “other authority” will encompass the “Consumer Commissions”.

16. It is settled principle of interpretation that heading of the section, which is also otherwise known as “internal aid” to construction does not necessarily reflect the import of the provisions thereof. It is trite that only in case of ambiguity one has to fall back on the internal aid. Once a language of the section is clear, the internal aid “heading” “could not be used for cutting down the wide application of the clear words used in the provisions”. In this context reference can be made to the decision of the Apex Court in the case of **Frick India Ltd. v. Union of India** reported in **AIR 1990 SC 689** more particularly paragraph-8 thereof which is extracted hereunder;



“8. It is well settled that the headings prefixed to Sections or entries cannot controlled the plain words of the provision; they cannot also be referred to for the purpose of construing the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such case it could not be used for cutting down the wide application of the clear words used in the provision. Sub-item (3) so construed is wide in its application and all parts of refrigerating and air-conditioning appliances and machines whether they are covered or not covered under sub-items (1) and (2) would be clearly covered under that sub-item. Therefore, whether the manufacturer supplies the refrigerating or air-conditioning appliances as a complete unit or not is not relevant for the levy of duty on the parts specified in sub- item (3) of Item 29A.”

On the same aspect said decision has also been followed in the case of **Forage & Co. v. Municipal Corporation of Greater Bombay** reported in **AIR 2000 SC 378**.

Hence, the submission of the learned counsel for the Opposite Party, Mr. Jethy, relying on the heading of Section 34 of the SARFAESI Act, that only Civil Court’s jurisdiction is barred/ousted have to be negated.

17. As already quoted Section 35 of SARFAESI Act has the overriding effect Section 37 of said Act specifically deals with the laws, application of which are not barred.



18. If the provisions of Section 35 of SARFAESI Act read with Section 37 thereof is juxtaposed with Section 100 of the CP Act the irresistible conclusion is that any action that is taken or contemplated under the SARFAESI Act or RDDB Act has to be governed by the SARFAESI Act or RDDB Act alone and all other laws save and except those as find mentioned in Section 37 of SARFAESI Act have to yield to the same.

19. For the discussion as made herein above, the submission of the Shri. Jethy, learned counsel for the Opposite Party No.1 relying on Section 100 of the CP Act in the light of the judgment passed by the Apex Court in the Case of **Cicily Kallarackal (supra)** has no application in the factual matrix of case at hand. So also, the other judgments relied on by the learned counsel for the Opposite Party are of no significance in the given facts and circumstances.

20. In citing these judgments, the cardinal principle of interpretation of judgments has been lost sight of. Law relating to interpretation of judgments have been set at rest by the Apex Court in the case of **Islamic Academy of Education and another vs. State of Karnataka and others** reported in **(2003) 6 SCC 697** wherein the Apex Court has reiterated its dictum in the case of **Haryana Financial Corporation V. Jagdamba Oil Mills** reported in **(2002) 3 SCC 496** that a judgment is not to be read as a “Euclid’s Theorem.”



21. The conduct of the Contesting Opposite Party is worth noting which also impelled this Court to entertain this Writ Petition.

21-A. Admittedly, assailing the E-Auction the Opposite Party had moved the DRT, Orissa Cuttack by filing S.A. No.66 of 2022 as noted above.

21-B. On perusal of the complaint petition before the Consumer Commission (Consumer Case No.91 of 2023) at the behest of Opposite Party No.1, it can be seen that reference to such Securitisation Application is conspicuous by its absence.

21-C. In the counter affidavit, the pendency of such Securitisation Application is not controverted but a vague stand has been taken that the ground of challenge before the Consumer Commission is different. For ready reference, Para-14 of the counter affidavit is quoted hereunder;

“14. That as regards the averments and allegations made in the para 7 it is humbly submitted by the opp party No 1 is admitted to the extent that the guarantor has challenged the proceedings under the SARFAESI Act, 2002 in the appeal bearing number S.A. 66 of 2022 before the DRT, Cuttack.

The main ground of the appeal is that as the account was not an NPA, publication of auction notice under SARFAESI Act and the subsequent proceeding is illegal.”



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 become 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.

26. This Court cannot be oblivious of the conduct of the Opposite Party No.1 in suppressing material facts relating to pendency of Securitization Application before the Debt Recovery Tribunal, while seeking impugned interim order to that cannot be lightly brushed aside as it clearly appears to be purposeful to serve the mischievous end.

27. Hence, this Court imposes a cost of Rs.1,00,000/- (Rupees One Lakh), to be deposited by the Opposite Party No.1 in the Welfare Fund of Jharsuguda District Bar Association within a period of four



weeks hence failing which it shall be taken as violation of the order of this Court entailing the legal consequences thereof.

28. The proceeding i.e. C.C. No.91 of 2023 pending before the District Consumer Commission, Jharsuguda is hereby quashed and it is held that all such orders passed therein or such orders in miscellaneous proceeding arising therefrom would stand nullified.

29. Accordingly, the Writ Petition stands allowed with cost as aforesaid.

(V. Narasingh)
Judge

D. Dash, J. I agree.

(D. Dash)
Judge

Orissa High Court, Cuttack
Dated the 1st of July, 2024/Santoshi

Signature Not Verified

Digitally Signed
Signed by: SANTOSHI LENKA
Designation: Senior Stenographer
Reason: Authentication
Location: High Court of Orissa
Date: 01-Jul-2024 18:45:26

