

**Neutral Citation No. - 2023:AHC-LKO:84138-DB****A.F.R.****Reserved****Court No. 3****Case :-** WRIT - C No. - 3820 of 2019**Petitioner :-** Union Bank Of India**Respondent :-** M/S. D.V. Poultry Farm Thru Prop. Mr. Dharamvir  
Sharma And Ors**Counsel for Petitioner :-** Maneesh Pandey,A K Saxena,Samarendra  
Kumar,Vishwas Saraswat**Counsel for Respondent :-** Ratnesh Chandra,Gautam Kumar,Girish Kr.  
Srivastava,Pradumn Shukla,Radhey Krishna Tiwari,Vinay Kant  
Shukla,Vinod Kumar Singh**Hon'ble Vivek Chaudhary,J.****Hon'ble Manish Kumar,J.**

1. Present petition has been preferred by the petitioner-Bank for quashing of the impugned order dated 23.10.2018 passed by the respondent no. 3-Mediator/Assistant Housing Commissioner/Assistant Registrar, Avas and Vikas Parishad, 104, Mahatma Gandhi Marg, Lucknow under Section 70 of the U.P. Co-operative Societies Act, 1965 hereinafter referred to as ( the Act,1965) by which the respondent no. 3 had directed the respondent no. 1-Shri Dharamveer Sharma, the proprietor of M/s D.V. Poultry Farm (Mortgagor) to contact the Bank (present petitioner) for payment of loan in accordance with law. It was further directed to the respondent no. 2/ Bank (present petitioner) to release the Plot No. C-120 and give physical possession to Shri Dharamveer Sharma-proprietor of respondent no. 1 in the present writ petition.

2. The brief facts of the case are that Mr. Dharamveer Sharma, the proprietor of respondent no. 1 purchased a plot no. C-120 admeasuring

area 248.33 Sq. Yards from respondent no. 2- Air Force Hindon Co-operative Housing Society Limited, Defense Colony Bhopura, Ghaziabad.

3. The respondent no. 1 approached the petitioner-Bank for cash credit facility of Rs. 30 Lac for working capital requirements of running a poultry unit and Term Loan of Rs. 110 lac for construction of poultry shed and installation of machinery. The request of respondent no. 1 was considered by the petitioner-Bank and the aforesaid limits were sanctioned to the respondents on certain terms and conditions stipulated in C.S.I. dated 25.10.2011.

4. The respondent no. 1 had again approached the petitioner Bank for another Term Loan Facility of the Rs. 24 lac for the purpose of construction of poultry shed at Village Pelokhurd, Tehsil Behat, District Saharanpur, U.P., which was sanctioned by the petitioner-Bank on 13.09.2012.

5. The aforesaid Cash Credit Limit Facility and Term Loan Facility were secured by mortgage of properties i.e. land admeasuring area 0.646 hectare out of Khasra No. 280/282/292 and Rakba No. 0.779/0.287/0.041, Mauza-Pelokhurd, Tehsil Behat, District Saharanpur, U.P. and also House No. C-120 built on Plot admeasuring area 248.33 square yards, situated in Village Brahmpura(Bhopura), Pargana-Loni, Tehsil and District Ghaziabad known as Defense Colony (Hindon), Ghaziabad, U.P which is subject matter in present dispute.

6. The proprietor of respondent no. 1 made default in payment of loan amount due to which the loan account of the proprietor of respondent no. 1 was declared as Non Performing Assets on 13.10.2014.

7. The petitioner-Bank had proceeded against the respondent no. 1 by issuing a demand notice dated 28.11.2014 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as, the Act of 2002). The respondent no. 1 neither raised any objection nor made the payment

in the account due to which the petitioner-Bank had taken symbolic possession of the secured property i.e. C-120 situated in Village Brahmpura(Bhopura), Pargana-Loni, Tehsil and District Ghaziabad known as Defense Colony (Hindon), Ghaziabad, U.P on 21.02.2015.

8. The petitioner Bank had filed a Original Application No. 247 of 2015 for recovery of bank dues under Section 19 of the the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as, the Act, 1993) before the Debts Recovery Tribunal, New Delhi. During the pendency of O.A. No. 247 of 2015, the petitioner Bank had obtained an order dated 30.12.2015 for physical possession of the mortgaged property under Section 14 of the Act, 2002.

9. Against the demand notice dated 28.11.2014 issued under Section 13 (2) of the Act, 2002 and subsequently proceedings for taking possession of mortgaged property in terms of notice dated 04.03.2015 under Section 13 (4) of the Act, 2002, the respondent no. 1 had filed a SARFAESI Application No. 100 of 2016 (M/s D V Poultry Farm Vs. Corporation Bank before the Debts Recovery Tribunal, Lucknow, which was dismissed vide order dated 17.04.2017, against which the respondent no. 1 preferred an appeal bearing No. 59 of 2017 (M/s D V Poultry Farm Vs. Corporation Bank before the Debts Recovery Appellate Tribunal, Allahabad, which was dismissed for want of prosecution vide order dated 20.07.2018 and was however, restored on 20.09.2019, after the auction sale.

10. The O.A. No. 247 of 2015 preferred by the petitioner Bank was finally decided on 05.01.2019 and Recovery Certificate No. 24 of 2019 was issued. The Recovery Officer had issued the Sale Proclamation dated 30.06.2019 but the auction failed as no bid was received. The second Sale Proclamation was issued on 26.07.2019 and the property was sold to the highest bidder-respondent no. 4.

11. After the dismissal of the O.A. preferred by the respondent no. 1 by the D.R.T. vide its order dated 17.04.2017, the respondent no. 2 i.e. Society preferred an application dated 05.06.2017 before the respondent no. 3 under Section 70 and 71 of the Act, 1965.

12. Learned counsel for the petitioner has submitted that the impugned order dated 23.10.2018 is hit by the provisions of Section 34 of the Act, 2002 which bars the jurisdiction of the Civil Court or any other authority in respect of any auction or auction to be made in pursuance of any power conferred by or under the Act, 2002 or under the Recovery of Debts due to the bank and Financial Institutions Act, 1993.

13. It is further submitted that the respondent no. 1 had already assailed the SARFAESI measures against the petitioner Bank in a Securitization Application under Section 17 of the Act, 2002 before D.R.T., Lucknow and the same was dismissed vide order dated 17.04.2017. The property has already auctioned and the respondent no. 1 has no right to restore possession in terms of the impugned order.

14. On the other hand, the learned Counsel for the respondent no. 2-Society has submitted that the auction is bad since the petitioner Bank had auctioned the property without obtaining the permission/No Objection Certificate (*for brevity,' N.O.C.*) from the Society.

15. On being asked by the Court to show the provisions or the guidelines under which such prior permission or N.O.C. is required to the petitioner Bank to auction the mortgaged property, the learned Counsel for the respondent no.2-Society has failed either to show any such provision or disclose the same.

16. It is further submitted by the learned counsel for the respondent nos. 1 and 2 that the petitioner Bank has statutory alternative remedy to file an appeal against the impugned order under Section 98 of the Act, 1965 hence, the present writ petition is liable to be dismissed.

17. It is also submitted that the arbitration or mediation proceedings can be initiated for amicable and peaceful settlement of the dispute at any juncture of time and stage of pending litigation before Court of law.

18. It is also submitted that the proceedings under the Act, 2002 and the proceedings under the Arbitration can go simultaneously. In support of the said submissions, he drew the attention of this Court on the judgment rendered by Hon'ble Apex Court in the case of *M/s M.D. Frozen Foods Exports Pvt Limited. Vs. Hero Fin Corp. Limited reported in 2017 (16) SCC 741.*

19. It has also been argued by the learned counsel for the respondent no. 2 that the Bank has auctioned the land more than the mortgaged land. Even if this submissions is taken to be correct for the sake of argument, then too the remedy of the respondent no. 2 against the petitioner Bank would not be under Section 70 of Act, 1965. Such an issue therefore, cannot be decided in this writ petition which is not filed by the respondent no. 2 seeking any remedy in this regard. The respondent no. 2 could seek any appropriate remedy under the law as available to it.

20. Learned counsel for the respondent no. 1-borrower has submitted that the petitioner Bank has auctioned the property below the fixed price and evaluated it below its real value. The said statement made by him is not tenable in the present proceedings as the respondent no. 1 had never challenged the auction proceedings before any competent court of law.

21. After hearing learned counsel for the respective parties and going through the record of the case, the issue which is precisely to be decided in the present case is, as to whether the respondent no. 3 had jurisdiction to pass the impugned order under Section 70 and 71 of the Act, 1965 *vis-a-vis* the petitioner Bank.

22. It is an admitted case of the respondent no. 2-Society that on 20.09.2012, the N.O.C. was granted to mortgage the property i.e. Plot No. C-120 admeasuring area 248.33 square yards, situated in Village

Brahmpura(Bhopura), Pargana-Loni, Tehsil and District Ghaziabad known as Defense Colony (Hindon), Ghaziabad, U.P. So now to make a submission that N.O.C. was not granted for sale of property is not tenable in the eyes of law. Once the N.O.C. was granted to mortgage the property, all other legal consequences would automatically follow including the consequences for non payment of the amount of loan.

23. Apart from the aforesaid, the learned counsel for the respondent Society failed to show any provision/guidelines regarding requirement of N.O.C. while mortgaging the property or for auction of the property in default of payment. The property sold by the Society to Shri Dharamveer Sharma with a specific mention in the deed that "the aforementioned plot is conveyed, transferred and sold in full and on free hold basis to the aforesaid transferee and his successor, heirs or assigns by the said Transferrer Society under the Trust and Conditions."

24. For adjudication of the present case, certain relevant paras of the judgment rendered by Hon'ble Apex Court in the case of M/s M.D. Forzen Foods (supra) are reproduced hereinbelow:-

**7. The agreement inter se the parties contained an arbitration clause and thus, the matter went to arbitration (emphasized by us) on the lender/respondent invoking the arbitration clause on 16-11-2016. However, prior to this invocation, a Notification was issued on 5-8-2016 in exercise of powers conferred under sub-clause (iv) of clause (m) of sub-section (1) of Section 2 read with Section 31-A of the SARFAESI Act, specifying certain "non-banking financial companies" (hereinafter referred to as "NBFC") covered under clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (hereinafter referred to as "the RBI Act"), having assets of Rs 500 crores and above, as financial institutions and directing that, in public interest, the provisions of the SARFAESI Act shall apply to such financial institutions, with the exceptions of the provisions of Sections 13 to 19, which shall apply only to such security interest which is obtained for**

*securing repayment of secured debt with principal amount of Rs 1 crore and above. The respondent is at Sl. No. 68 of the said notification.*

26. A claim by a bank or a financial institution, before the specified laws came into force, would ordinarily have been filed in the civil court having the pecuniary jurisdiction. The setting up of the Debt Recovery Tribunal under the RDDB Act resulted in this specialised Tribunal entertaining such claims by the banks and financial institutions. In fact, suits from the civil jurisdiction were transferred to the Debt Recovery Tribunal. The Tribunal was, thus, an alternative to civil court recovery proceedings.

27. On the SARFAESI Act being brought into force seeking to recover debts against security interest, a question was raised whether parallel proceedings could go on under the RDDB Act and the SARFAESI Act. This issue was clearly answered in favour of such simultaneous proceedings in *Transcore v. Union of India* [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] . A later judgment in *Mathew Varghese v. M. Amritha Kumar* [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] also discussed this issue in the following terms: (*Mathew Varghese case* [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] , SCC pp. 640-41, paras 45-46)

“45. A close reading of Section 37 shows that the provisions of the SARFAESI Act or the Rules framed thereunder will be in addition to the provisions of the RDDB Act. Section 35 of the SARFAESI Act states that the provisions of the SARFAESI Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 together, it will have to be held that in the event of any of the provisions of the RDDB Act not being inconsistent with the provisions of the SARFAESI Act, the application of both the Acts, namely, the SARFAESI Act and the RDDB Act, would be

complementary to each other. In this context reliance can be placed upon the decision in *Transcore v. Union of India* [*Transcore v. Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] . In para 64 it is stated as under after referring to Section 37 of the SARFAESI Act: (SCC p. 162)

‘64. ... According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.’

46. A reading of Section 37 discloses that the application of the SARFAESI Act will be in addition to and not in derogation of the provisions of the RDDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws is not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956; the Securities Contracts (Regulation) Act, 1956; the Securities and Exchange Board of India Act, 1992; the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force.”

(emphasis in original)

28. These observations, thus, leave no manner of doubt and the issue is no more *res integra*, especially keeping in mind the provisions of Sections 35 and 37 of the SARFAESI Act, which read as under:

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

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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.”

30. The only twist in the present case is that, instead of the recovery process under the RDDB Act, we are concerned with an arbitration proceeding. It is trite to say that arbitration is an alternative to the civil proceedings. **In fact, when a question was raised as to whether the matters which came within the scope and jurisdiction of the Debt Recovery Tribunal under the RDDB Act, could still be referred to arbitration when both parties have incorporated such a clause, (emphasized by us) the answer was given in the affirmative.** [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] That being the position, the appellants can hardly be permitted to contend that the initiation of arbitration proceedings would, in any manner, prejudice their rights to seek relief under the SARFAESI Act.

31. The discussion in the impugned order [M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincrop Ltd., 2017 SCC OnLine Del 9190] refers

to a judgment of the Full Bench of the Delhi High Court in *HDFC Bank Ltd. v. Satpal Singh Bakshi* [*HDFC Bank Ltd. v. Satpal Singh Bakshi*, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] opining that an arbitration is an alternative to the RDDB Act. In that context, the learned Single Judge [*M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincrop Ltd.*, 2017 SCC OnLine Del 9190] has rightly held that this Full Bench judgment [*HDFC Bank Ltd. v. Satpal Singh Bakshi*, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] does not, in any manner, help the appellants but, in fact, supports the case of the respondent. The jurisdiction of the civil court is barred for matters covered by the RDDB Act, but the parties still have freedom to choose a forum, alternate to, and in place of the regular courts or judicial system for deciding their inter se disputes. All disputes relating to the “right in personam” are arbitrable and, therefore, the choice is given to the parties to choose this alternative forum. A claim of money by a bank or a financial institution cannot be treated as a “right in rem”, which has an inherent public interest and would thus not be arbitrable.

32. The aforesaid is not a case of election of remedies as was sought to be canvassed by the learned Senior Counsel for the appellants, since the alternatives are between a civil court, Arbitral Tribunal or a Debt Recovery Tribunal constituted under the RDDB Act. Insofar as that election is concerned, the mode of settlement of disputes to an Arbitral Tribunal has been elected. The provisions of the SARFAESI Act are thus, a remedy in addition to the provisions of the Arbitration Act. In *Transcore v. Union of India* [*Transcore v. Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] it was clearly observed that the SARFAESI Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Liquidation of secured interest through a more expeditious procedure is what has been envisaged under the SARFAESI Act and the two Acts are cumulative remedies to the secured creditors.

34. We are, thus, unequivocally of the view that the judgments of the Full Bench of the Orissa High Court in *Sarthak Builders (P) Ltd. v. Orissa Rural Dev. Corpn. Ltd.* [*Sarthak Builders (P) Ltd. v. Orissa Rural Dev. Corpn. Ltd.*, 2014 SCC OnLine Ori 75 : AIR 2014 Ori 83], the Full Bench of the Delhi High Court in *HDFC Bank Ltd. v. Satpal Singh Bakshi* [*HDFC Bank Ltd. v. Satpal Singh Bakshi*, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] and the Division Bench of the Allahabad High Court in *Pradeep Kumar Gupta v. State of U.P.* [*Pradeep Kumar Gupta v. State of U.P.*, 2009 SCC OnLine All 877 : AIR 2010 All 3] lay down the correct proposition of law and the view expressed by the Andhra Pradesh High Court in *Deccan Chronicles Holdings Ltd. v. Union of India* [*Deccan Chronicles Holdings Ltd. v. Union of India*, 2014 SCC OnLine AP 104 : AIR 2014 AP 78] following the overruled decision of the Orissa High Court in *Subhash Chandra Panda v. State of Orissa* [*Subhash Chandra Panda v. State of Orissa*, 2008 SCC OnLine Ori 10 : AIR 2008 Ori 88] does not set forth the correct position in law. SARFAESI proceedings and arbitration proceedings, thus, can go hand in hand.

25. Hon'ble Supreme Court has held in the judgment of *M/s M.D. Frozen Foods (supra)* relied by learned counsel for the respondent no. 2 that all disputes relating to the "right in personam" are arbitrable and therefore, the choice is given to the parties to choose this alternative forum. A claim of money by a bank or financial institution cannot be treated as a "right in rem". The provisions of Act, 2002 are a remedy in addition to the provision of Arbitration Act. The Act, 2002 was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith and the arbitration proceedings are for amicable settlement between the parties to the agreement.

26. The judgment in the case of *M.D. Frozen Foods (supra)* relied by the respondent Society is not applicable in the facts of the present case, as

the facts before the Apex Court in that case are that the mortgagor can opt for arbitration, as per the agreement and it is the mortgagor, who is to choose the remedy available with him whereas in the present case, the borrower has chosen the remedy under the Act, 2002 by filing the O.A. before the D.R.T. The borrower had not initiated any arbitration proceedings against the petitioner Bank. It is the society, who had chosen to file an application under Section 70 of the Act, 1965.

27. As per the facts of the case, the respondent no. 1 had taken a loan from the petitioner Bank and defaulted in repayment due to which his loan account had been declared as N.P.A. The O.A. No. 247 of 2015 preferred by the petitioner Bank had been finally decided on 05.01.2019 in favour of the petitioner Bank and the property was auctioned by the Sale Proclamation issued by the Recovery Officer.

28. The O.A. No. 100 of 2016 preferred by the respondent no. 1 was dismissed vide order dated 17.04.2017 against which an Appeal No. 59 of 2017 was preferred before the D.R.A.T., Allahabad which was dismissed in default on 20.07.2018 and the same was restored on 20.09.2019. The appeal of the borrower-respondent no. 1 was dismissed for non prosecution on 20.07.2018 and was restored on 20.09.2019 whereas the auction was held on 26.07.2019 i.e. prior to restoration of the appeal.

29. The another notable point in the present case is that after dismissal of O.A. preferred by the respondent no. 1-borrower on 17.04.2017, the Society preferred an application on 05.06.2017 under Section 70 and 71 of the Act, 1965 before the respondent no. 3. Section 70 pertains to the settlement of dispute which may be referred to the arbitration. For convenience, Sections 70 and 71 are quoted hereinbelow:-

*70. Disputes which may be referred to arbitration.  
(1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management of the business of a cooperative society other than a dispute regarding*

*disciplinary action taken against a paid servant of a society arises*

*(a) among members, past members and persons claiming through members, past members and deceased members; or*

*(b) between a member, past member or any person claiming through, a member, past member or deceased member, and the society, its Committee of Management or any officer, agent or employee of the society, including any past officer, agent or employee; or*

*(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society; or*

*(d) between a cooperative society and any other cooperative society or societies:*

*such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute:*

*Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the Registrar until after the declaration of the result of such election.*

*(2) For the purpose of subsection (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a cooperative society, namely*

*(a) claims for amounts due when a demand for payment is made and is either refused or not complied with whether such claims are admitted or not by the opposite party;*

*(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor or whether such debt or demand is admitted or not;*

*(c) a claim by a society for any loss caused to it by a member, officer, agent, or employee including past or deceased member; officer, agent, or employee, whether individually or collectively and whether such loss be admitted or not; and*

*(d) all matters relating to the objects of the society mentioned in the byelaws as also those relating to the election of officebearers.*

*(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute relating to the constitution, management or the business of cooperative society the decision thereon of the Registrar shall be final and shall not be called in question in any Court."*

*71A. Powers of creditor society against debtor society and its members. - (1) If a co-operative society is unable to pay its debts (hereinafter in this section referred to as the debtor society) by reason of its members defaulting in the payment of the moneys due to another Co-operative Society (hereinafter in this section referred to as the creditor-society), and the Committee of Management of the debtor-society omits or neglects to take necessary steps for recovery of money due from its members the creditor-society may, notwithstanding anything in this Act, direct the said committee by a notice in writing to proceed against the defaulting members in accordance with the provisions of [Section 70 Section 91, Section 92 or Section 95-A], as the case may be.*

*2) If the Committee of Management of the debtor-society fails to comply with the notice referred to in sub-section (1) within a period of thirty days from the date of service of such notice, the creditor-society may itself proceed against such defaulting members in accordance with the provisions of [Section 70, Section 91, Section 92 or Section 95-A,] as the case may be, as if they were members of he creditor-society, and in that event, the provisions of this Act and the rules made thereunder and the bye-laws of the debtor-society shall so apply as if all references to the debtor-society and its Committee of Management and officers in the said provisions were references*

*to the creditor-society and its Committee of Management and officers.*

*(3) Where the creditor-society has in respect of any money due from the debtor society, obtained an award or order referred to in Section 92, against the debtor-society, the creditor-society may proceed to recover such money in accordance with the provisions of the Act and the rules made thereunder, either from the assets of the debtor-society or from the members thereof to the extent of the debts due from them to the debtor-society, or from both*

30. From the perusal of the aforequoted sections, it is apparent that both the sections pertain to the adjudication of dispute between the Members, Past Members, Society, its Committee of Management, its past Committee of Management etc.

31. In the present case, there is no agreement much less for any arbitration between the petitioner Bank and the respondent no. 2 Society. The society initiated proceedings not in pursuance of any arbitration agreement but under Section 70 of the Act, 1965 which too is not applicable to the petitioner Bank, who is an outsider as discussed in the preceding paragraphs.

32. Section 70 does not empower the respondent no. 3/authority to adjudicate the dispute pertaining to loan taken by the borrower from the Bank. The borrower, who is the member of the respondent society had himself approached the D.R.T by filing an O.A. which was dismissed and against which the appeal was preferred before the D.R.A.T, which is still pending and there is no order in favour of the borrower.

33. Under Sections 70 and 71 of the Act, 1965, the authority is competent and empowered to decide the lis/dispute between the persons mentioned in Section 70 and the petitioner Bank is neither the member of Society nor the member of the Committee of Management and having no dispute with the society. The petitioner Bank is an outsider and he has

rightly initiated the proceedings against the respondent no. 1 under the Act, 2002.

34. The respondent no. 3 could not issue any order or direction against the petitioner Bank. The respondent no. 3 is empowered and having jurisdiction to decide the dispute between the society and its members. In the present case, the dispute is between the respondent nos. 1 and 2. Hence, the impugned order dated 23.10.2018 passed by the respondent no. 3 against the petitioner Bank is without jurisdiction.

35. The plea taken by the respondent society that the petitioner Bank has an statutory alternative remedy to file an appeal under Section 98 of the Act, 1965 is not applicable in the present case as the impugned order passed by the respondent no. 3 is without jurisdiction and provisions of the Act, 1965 are not applicable upon the petitioner bank, hence, there is no occasion for the petitioner Bank to avail the alternative remedy provided under Section 98 of the Act, 1965.

36. In view of the discussions and observations made hereinabove, it is held that the impugned order dated 23.10.2018 passed by the respondent no. 3 as far as directions issued against the petitioner bank are without jurisdiction, thus, it is hereby quashed.

37. Writ petition is *allowed*.

**(Manish Kumar,J) (Vivek Chaudhary,J)**

**Order Date :- 20/12/2023**

Ashish