

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CO 2235 of 2023

Rajesh Kumar Gupta & Ors.
Vs
High Rank Estate Advisory Pvt. Ltd. & Anr.

For the Petitioners	:	Ms. Noelle Banerjee, Mr. Yash Vardhan Deora.
For the Respondent No.1	:	Ms. Deblina Lahiri, Ms. Moumita Sharma, Mr. Mrinmoy Chatterjee.
For the Respondent No.3	:	Mr. Victor Dutta.
Judgment reserved on	:	25.03.2026
Judgment delivered on	:	04.05.2026

Shampa Dutt (Paul), J.:

1. The civil revision has been preferred challenging judgement/order dated 22nd June, 2023 passed by the Debts Recovery Appellate Tribunal at Kolkata in Appeal No. 112 of 2022 (High Rank Estate Advisory Private LimitedAppellant Vs. Rajesh Kumar Gupta & OthersRespondents).
2. Vide the impugned judgement, the Learned Debts Recovery Appellate Tribunal at Kolkata held as follows:-

“31. There is another aspect of the matter. When the Application before the Recovery officer was filed under Section 22 (2)(e) (g) of the Recovery of Debts and Bankruptcy Act wherein the order was passed by Recovery Officer on 10.01.2012 which was assailed before the Ld. DRT in Appeal under Section 30 of the Recovery of Debts and Bankruptcy Act. Legal provisions regarding inherent jurisdiction of the Recovery Officer should have been considered by the DRT at the time of deciding the Appeal, Ld. DRT did not make any effort to look into the legality of the petition filed under Section 22(2) (e) (g) of the Act before the Recovery officer whether it was legally maintainable or not. Hence, the basic issue of maintainability of the Application before the Recovery officer was not considered by the DRT despite directions issued by this Appellate Tribunal.

32. However, now on the basis of discussion made above, I am of the view that the Application filed by the Respondent Nos. 3 and 4 before the Recovery Officer was not legally maintainable.

33. Now, coming to another limb of arguments regarding under-valuation of the property as alleged by the Respondent Nos. 3 and 4 petition was filed under Section 22 (2) (e)(g) of the Recovery of Debts and Bankruptcy Act, I am of the view that since the application Itself was not legally maintainable, hence all the grounds taken in the Application could not be considered.

34. On the basis of discussions made above, I am of the view that the order passed by the Ld. DRT dated 05.10.2020 cannot sustain and is liable to be set aside. Order passed by the Recovery officer in R.P No. 44 of 2010 should be restored.”

3. It appears from the materials on record that vide the order dated 05.10.2020 passed by the **Learned Debts Recovery Tribunal – 3** passed an order is as follows:-

*“19. In view of the foregoing discussion and having regard to the ratio of the Judgements and orders cited above this appeal is deserved to be aligned. Accordingly the appeal is allowed. Order dated 10.01.2012 passed by learned Recovery Officer in R.P. 44 of 2010 is set aside. **Learned Recovery Officer is directed to proceed with the recovery proceeding, from the stage of obtaining fresh valuation report. He is further directed to obtain a fresh valuation report and intimate the value thereof to the appellants and respondent no, 2 and 3 and fix reserve price accordingly in a transparent manner after applying his mind and pass a reasoned order.** He is also directed to allow the appellants and auction purchaser, if they so like, to participate in the public auction to be held and they shall be allowed to participate without depositing EMD as would be fixed for the auction. In case auction purchaser is not willing to participate in the public auction or failed to bid at highest level, the sale price already deposited by them shall be remitted back with current savings bank interest rate within a month from the date of confirmation of sale. The incidental expenses and accrued Interest to remitting the sale price to the auction purchaser, if so happen, shall be borne by the appellants and respondent no.2 and 3. Since is an old case and recovery of public money is involved, Id. Recovery Officer is directed to complete the proceeding within three months from the date of receiving this*

judgement. Consequently, aforesaid I. A. is also disposed of. No costs.”

4. Order dated 10.01.2012 passed by the Recovery Officer in R.

P. No. 44 of 2009 is as follows:-

“43/10.01.2012

No one appears for the CDs. 4.

Ld. Adv. Shri N. K. Ray, the Receiver is present.

Ld. Adv. Ms P. Dutta is present, representing the CHB.

Shri N. Baid, the successful purchaser is also present.

It is seen from the record that today is set for issue of final order in the case.

On perusal of the affidavits of the CDs, the purchaser and the rebuttal of the CHB, I am of the opinion that sufficient time and opportunity has been given to the CDs to make payment for the debt, but they have not utilised the opportunity and repaid the dues till date. There is no reason to delay the sale process any longer. The plea of the CDs No. 3 & 4 is thus rejected and disposed off.

The Ld. Receiver and the CHB is directed to act as per Order No. 30 of 07/01/2011, 31 of 17/01/2011 & 32 of 01/02/2011, and take physical possession of the concerned property, arrange for transfer of ownership, registration of the property in the name of the successful purchaser and handing over of the title deeds to the successful purchaser through the Registry of this office.

The Deputy Commissioner of Police (North), Kolkata Police, is directed to assist the Ld. Receiver, Adv. N. K. Ray, for police assistance and necessary protection, through the Officer in Charge, Police Station Chitpur, Kolkata Police, for giving physical possession of the premises No. 23/1-A, Barrackpore Trunk Road, P.S. Chitpur, Kolkata - 700 002, within 29/02/2012.

A copy of this order be issued to the CLB, the CDs, the Ld Receiver, the successful purchaser and the above named police officials, through the Registry of this office.

(Devashish Ghosh)

Recovery Officer, Government of West Bengal, Kolkata Debts Recovery Tribunal.”

- 5. The petitioners' case** in short is that the petitioners being borrowers could not pay Bank's dues for which Bank obtained an ex-parte certificate in O.A. No. 13 of 2006 from Debts Recovery Tribunal Kolkata-3 and initiated Recovery proceedings in R.P. Case No. 44 of 2009, wherein the Recovery Officer held auction sale of the Mortgaged property to the auction purchaser at under value against which petitioners Nos. 3 and 4 being Co-borrowers moved applications before Recovery Officer in auction sale as sale was conducted by the R.O. at much below than market value, which was dismissed.
- 6.** The petitioners Nos. 3 and 4 against the order of Recovery Officer moved Appeal No. 1 of 2016 which was disposed of on 10.07.2012

against which two separate Appeal was filed by the petitioners and auction purchaser (Respondent No.1 herein) which, was disposed of on 28.04.2014 by Debts Recovery Tribunal with direction to D.R.T. 3 to adjudicate afresh and D.R.T. 3 adjudicated afresh by an order dated 8.12.2014 against which both the Respondents moved another Appeal which was disposed of on 12.05.2017 by the D.R.A.T with direction to Ld. D.R.T. 3, Kolkata again to adjudicate afresh.

7. DRT-3 again decided the Appeal No. 1 of 2012 filed by the petitioners and set aside order of Recovery Officer. Against the Respondent No.1 filed Appeal No. 112 of 2022 and the D.R.A.T. delivered Judgment therein on 22.06.2023 and allowed the Appeal of the Respondent No. 1, i.e. the auction purchaser against which the petitioners have filed this Civil Revisional Application for dismissal of the Judgment delivered by the D.R.A.T. on 22 June, 2023.
8. Parties have filed their respective lists of dates and written notes and have relied upon judgements in support of their case.
9. It is the contention of the petitioners herein that the application under Section 22(2)(e) & (g) of the RDDB Act, 1993 was made before the DRT-III and not before the Recovery Officer and it is absolutely maintainable. Nomenclature of an application cannot be a ground for rejection of an application. Nomenclature of an application is irrelevant. Case law in ***Pepsi Food Limited Vs. Special Judicial Magistrate (1998)5 SCC 749 paragraph 26*** is

relied upon. Such application was disposed of by the Learned Recovery Officer on merit by order of 10th of January, 2012 without questioning the maintainability.

10. It is further stated by the petitioners that the petitioners could not invoke the provisions of Rules 60(1) of Second Schedule of Income Tax as the same is inapplicable in the instant case. The petitioners further state that the Appellate Tribunal has wrongly held that no deposit was made in accordance with the Provisions of the Second Schedule. It is stated that the order of DRAT would reflect that Rs. 10 lakhs was transferred by DRAT to DRT III and since then the parties intentionally waived their objection with respect to applicability of rule 61(b) of second schedule as would appear from orders and record.

11. The petitioners further state that the Appellate Tribunal has wrongly not considered the previous orders passed by the Appellate Tribunal setting aside the sale with specific directions upon the D. R. A. T.

12. Following judgments have been relied upon:-

(a) F. C. S. Software Solution Ltd. V. La Medical Devices Ltd. Reported in (2008) 10 SCC 440.

(b) Navalkha & Sons Vs. Sri Ramanya Das reported in (AIR 1970 SC 2037) (Para 6).

(c) Swastik Agency & Ors. Vs. State Bank of India reported in (AIR 2009 Orissa 147) para 29.

(d) Ram Kishun & Ors. Vs. State of U. P. & Ors. reported in (2012) 11 SCC 511 (Para 17).

13. By relying upon the judgement in the case of ***United Bank of India Vs. Naresh Kumar (1996) 6 SCC 660***, the petitioners submit that substantive rights should not be allowed to be defeated on technical grounds of procedural irregularity.

14. The opposite party no.1 has relied upon the following judgments:-

- (i) (2013) 9 SCC 460, C.N. Paramasivam and Another vs Sunrise Plaza through Partner and Ors.***
- (ii) 2015 SCC Online Bom 3398:2015 (6) Mh.L.J.152, Hotel Paras Garden, Balapur and another vs Central Bank of India, Balapur and ors.***
- (iii) 2021 SCC Online Mad 2871, State Bank of India Rep. by its authorized officer vs P.K. Janardhanan and ors.***
- (iv) 2022 SCC Online SC 1554, Registrar of Assurances and Anr. vs ASL Vyapar Private Ltd. and Another.***

15. It is argued by the opposite party no.1 that the Hon'ble Division Bench of Bombay High Court, in ***Hotel Paras Garden, Balapur and Another – Vs. Central Bank of India, Balapur and Others, reported at 2015 SCC Online Bom 3398:2015 (6) Mh.L.J.152***, in the case before it, the petitioners had also not raised any objections to the proclamation of sale and also had not deposited the amount mandatorily to be deposited under the Second Schedule of the Income Tax Act, The Hon'ble Court had held that

statute under Rule 60 of the Income Tax Act gave one more opportunity to reclaim the property, provided the deposit as made under the said Rule was made.

16. The Hon'ble Court while dismissing the application, has also inter alia, held that:-

*“....They will have to plead and prove their diligence and also steps taken to warn the bidders of their grievances or of status of subject property. They must see that irregularity, if any, is cured at the earliest and **cannot indulge in fence-sitting or wait till the proceedings are over and then jump in, in an attempt to unsettle it or to frighten the bidders away.** When they want financial institutes like the Respondent No.1 Bank to give loan to them, they also owe an obligation to it and public to see that in the unfortunate event of forced recovery, it is not unnecessarily obstructed. **They must raise objections at the earliest possible opportunity and cannot take recourse to any roving tactics to indefinitely delay recovery forcing the buyer to back out.** Here the petitioners have revealed same attitude which is unbecoming on their part.....”*

17. It is pertinent to mention that the order of The Hon'ble Division Bench of Bombay High Court in the above referred matter was challenged in Special Leave to Appeal © No.23968 of 2015 before

the Hon'ble Supreme Court of India, and vide Order dated 31.08.2015, **the said Special Leave Petition was dismissed.**

The order of dismissal of the Special Leave Petition was also challenged by filing one Review Petition © No. 3439 of 2015, which **Review Petition was also dismissed** by the Hon'ble Supreme Court of India, vide Order dated 26.11.2015.

18. It is further stated that the question further framed by this Hon'ble High Court vide Order dated 06.09.2023, as to whether the money which was already deposited with the DRAT and sent back to the DRT-III after first order of remand, could be treated as a deposit in terms of the provision of the second schedule of the Income Tax Act. It is submitted that the same can by no stretch of imagination be treated to be a deposit under the Second Schedule of the Income Tax Act, in as much as:-

Firstly, the amount referred to as pre-deposit under Section 21 of the RBBBFT Act and lying in F.D of the DRAT which has been directed to stand transferred to DRT-3, is the amount which was required to be deposited by the Petitioners while filing the appeal before the DRAT and **the same is only a portion of the amount of debt,** and cannot be equated to the amounts mentioned in Rule 60 of the Second Schedule of The Income Tax Act, 1961.

Secondly, the stage at which the amount under Rule 60 of the Second Schedule of The Income Tax Act, 1961 is to be deposited is at the time of filing the application for setting aside the sale

and that too within 30 days from the date of the sale, whereas the amount which was deposited with DRAT at the time of filing the appeal, was way belated, i.e, when the order of the DRT-3, Kolkata, was challenged by the Petitioners before the DRAT.

Thirdly, there is nothing forthcoming to show that what was the amount of deposit and what is the status of the deposit as on this date. However, even if the said is disclosed it would be evident that the said amount is way less than the amount which was required deposited under Rule 60 of the Second Schedule of The Income Tax Act, 1961.

19. The opposite party no. 1 thus states that from the various judgments referred to herein above. It is seen that it has been repeatedly held that the deposit under Rule 60 of the Second Schedule of The Income Tax Act, 1961 is by a defaulter (which includes the guarantors herein) or any person whose interests are affected by the sale (which again are the Petitioners herein). The same was not done in the present case, which is an admitted position. Hence, the Petition filed by the Petitioners praying for setting aside and/or recalling the sale, could not have been at all entertained by the Recovery Officer, not to speak of the DRT-3, Kolkata, who has completely overlooked and/or deliberately failed to deal with in the orders passed by it, **which has on all the three occasions, been set aside by the DRAT, Kolkata.**

20. Finally, the opposite party no.1 submits that:-

(a) the petition filed by the Petitioners for setting aside the sale and/or recalling the orders passed for sale of property, is not maintainable in view of the non-deposit of the sums prescribed in Rule 60 of the Second Schedule of The Income Tax Act, 1961.

(b) The Learned DRAT, Kolkata, had rightly adjudicated on the point of the very maintainability of the petition filed before the Recovery Officer, which was the principal point required to be determined before proceeding further in the matter.

(c) The process of auction was completely transparent and fair and the valuation report is a detailed one, clearly indicating the reason for valuing the property at the said amount. **The Petitioners all along had knowledge of the valuation and the proclamation of sale, but they were fence-watching and never raised any objection to the same, unless one month after the sale was over.**

(d) There has been acquiesce and waiver on the part of the Petitioners in as much as they had consented to the sale of the property on 25.10.2010, if they would fail to pay the sum of Rs. 6 lakh. (Order dated 04.10.2010 passed by the Learned Recovery Officer).

(e) Thus, the Civil Revisional Application is liable to be dismissed with cost imposed upon the Petitioners, and directions to complete the sale procedure and handing over possession of the purchased property in favour of the Opposite Party No.1 in a time bound manner.

21. The opposite party no.2/Bank has also filed written notes of argument and argued that the Hon'ble Appellate court has rightly observed the conduct of the petitioners and even giving an opportunity to make payment of the amount by the recovery officer, the petitioners deliberately did not make any payment and after the sale was confirmed, the petitioners No 3 and 4, who are the wives of petitioners No 1 and 2 has come up with an application before the Recovery Officer stating that the property was under valued, inspite of the fact that the reserve price was fixed and no objection was raised within time by the petitioners. They deliberately did not attended the proceedings which shall be evident from the orders passed by the Recovery Officer and also from the proceedings of the Appeal before the Presiding officer, DRT – 3.

CONCLUSION:-

22. Heard the learned counsels for the parties. On perusal of the materials on record and considering the judgments relied upon, it appears that the property in the present case was mortgaged with the opposite party no.2 by the petitioners no. 1 & 2 with the petitioners no. 3 & 4 as guarantor in the year 2003. **23 years** have passed. The petitioners have not repaid the loan but have continued to move from one court to another to stall the sale proceedings on the ground that the property was under-valued and thus, the petitioners have suffered loss.

- 23.** The petitioners at the time of availing the loan had valued the property at Rs.33 lakhs in the year 2003. In the year 2009, the property was valued at Rs.12 lakhs 65 thousands, but the property in the auction was purchased by the opposite party no.1 being the highest bidder, for an amount of Rs.23 lakhs 61 thousands. Almost double the value in the year 2010.
- 24.** The contention of the petitioners is that the property valued at Rs.33 lakhs in the year 2003 could not depreciate to such an extent.
- 25.** It appears that in the year 2003, the premises was tenanted to some extent, which increased to 80 per cent of tenancy, thus leading to its depreciation, as argued by the opposite party no.1.
- 26.** Be that as it may, admittedly **the petitioners being the certificate debtors did not appear before the Recovery Officer in spite of sufficient opportunity** being granted and as such the Recovery Officer was pleased to proceed with the sale proceedings.
- 27.** Regarding the findings of the Appellate Tribunal in the impugned order under challenge this Court finds that the Appellate Tribunal has extensively dealt all the issues raised and the Appellate Tribunal has rightly set aside the order of the D. R. T.-3, by affirming the order of the Recovery Officer. As such this Court finds no reason for interference with the order passed by the Appellate Tribunal in the present revisional application.
- 28.** The petitioners herein, only to stall the total proceedings, in spite of having not made any payment, have not cooperated in any of the

proceedings before the authorities concerned, but have continued the litigations for 23 long years, on one pretext or the other and the opposite party no.1 being the bona fide auction purchaser is running from pillar to post in the last years for the sale process to be completed.

29. Accordingly, in the interest of justice, this Court directs that the sale process be completed by the authority concerned as directed in the order impugned within a period of sixty days from the date of this order.

30. CO 2235 of 2023 is thus dismissed.

31. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)