A.F.R.

Court No. - 8

Case :- WRIT - C No. - 1002680 of 2015

Petitioner :- Dinesh Kumar Tiwari

Respondent :- Bank Of Baroda A Body Corporate And Ors.

Counsel for Petitioner :- Rakesh K.Chaudhary,Ashutosh Shukla,Shreya Chaudhary

Counsel for Respondent :- Prashant K.Srivastava,Amar Singh,Avishesh Kumar Singh,Pradeep Dwivedi,Vaibhav Srivastava,Vishal Agarwal

Hon'ble Dinesh Kumar Singh,J.

1. Heard Ms. Shreya Chaudhary, learned counsel for the petitioner, Mr. Prashant Kumar Srivastava, learned counsel for respondent no. 1-Bank of Baroda (for short "BOB"), as well as Mr. Vishal Agarwal, learned counsel representing respondent no. 3, and gone through the record.

2. The present petition has been filed, invoking extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India for quashing of the order dated 12.05.2005 passed by the Debts Recovery Tribunal, Lucknow (for short "the Tribunal") whereby the Recovery Officer has ordered for taking forcible possession from the petitioner of the mortgaged property, being building constructed over land measuring 5000.00 sq. ft. of Khasra No.797/01, Bhillawan, Ward Geetapalli, Alambagh, Lucknow.

2. The petitioner had taken a loan of Rs. 12 lakhs for business purposes from the BOB on 06.11.2004 and mortgaged the property, being building constructed over land measuring 5000.00 sq. ft. of

Khasra No.797/01, Bhillawan, Ward Geetapalli, Alambagh, Lucknow.

3. The BOB had filed Original Application No. 154 of 2010 before the Tribunal for recovery of a sum of Rs. 14,34,234=00 against the petitioner.

4. The Original Application No. 154 of 2010 was decided ex-parte vide order dated 17.09.2010.

5. The petitioner came to know about the said order dated 17.09.2010 in the year 2011 and, he filed Appeal No.96 of 2011, which was dismissed vide order dated 18.01.2012.

6. In the meantime, the BOB had proposed to auction the mortgaged property and, the mortgaged property was auctioned in favour of respondent no. 3- on 31.01.2013.

7. The respondent no. 3 had deposited some token amount with the BOB. The petitioner filed statutory objection against the auction proceedings on 28.02.2013.

8. Ms. Shreya Chaudhaya, learned counsel for the petitioner, has submitted that before the confirmation of the sale, the petitioner had deposited the entire amount with up-to date interest with the BOB i.e. Rs. 19,50,000=00 through Bank Draft No.119413 dated 03.05.2003 issued by the Corporation Bank, Gomti Nagar, Lucknow and, the said bank draft was accepted by the BOB towards the full and final settlement of the loan amount.

9. The BOB had issued 'no dues certificate' to the petitioner and, also written letter dated 07.05.2013 to the Recovery Officer of the Tribunal

to the said effect.

10. An affidavit dated 10.05.2013 was also filed by the BOB before the Recovery Officer. The BOB had requested the Recovery Officer that prior to confirmation of the sale, the petitioner had deposited the entire amount with up-to date interest amount to Rs. 19,50,000=00 and, no other loan amount remained unpaid.

11. In view of above, the BOB had requested the Recovery Officer to drop the proceedings pursuant to auction sale. However, the Recovery Officer, who heard the matter on 17.05.2013, vide order dated 28.06.2013 passed in DRC No. 556 of 2010 rejected the request of the BOB for dropping the proceedings and ordered the BOB to refund Rs.19,50,000=00 to the petitioner. The Recovery Officer, thereafter, on the same day, confirmed the sale in favour of respondent no. 3.

12. The petitioner had filed Writ Petition No. 4407 (M/S) of 2013 against the order dated 28.06.2013, which was dismissed by this Court on 11.07.2013 with liberty to the petitioner for filing appeal under Section-30 of The Recovery of Debts Due to Bank and Financial Institutions Act, 1993 (for short "the Act, 1993").

13. The petitioner, thereafter, had filed an appeal before the Tribunal, which was numbered as Appeal No.05 of 2013.

14. During the pendency of the said appeal, the respondent no. 3 had moved an application in Case No. DRC 556 of 2010 before the Recovery Officer and the Recovery Officer passed the order

dated 24.03.2014 for providing police protection to the respondent no. 3 for taking over possession of the mortgaged property.

15. The petitioner had filed an application for recalling the order dated 24.03.2014 before the Recovery Officer inasmuch as against the order dated 28.06.2013 Appeal No.05 of 2013 was pending. The Recovery Officer, thereafter, passed order dated 25.05.2014 and recalled the earlier order dated 24.03.2014.

16. Though Appeal No.05 of 2013 remained pending before the Tribunal, the Recovery Officer had passed another order on 12.05.2015, directed the Senior Superintendent of Police, Lucknow for providing police protection to the respondent no.3 for taking forcible possession of the mortgaged property. Though earlier the Recovery Officer had passed the order dated 25.04.2014, recalling the order dated 24.03.2014 passed for taking over forcible posses ion of the property in question on the ground that till the pendency of the appeal before the Presiding Officer of the Tribunal, it was not proper to take possession of the property in question.

17. This Court, on 19.05.2015, noted the fact that the sole purpose of the Act, 1993 and The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act, 2002") is to ensure that the Bank, which offers loan to persons or institutions, are secured and the money so given by them is recovered by the Bank/institutions, as

the case may be, being the public money. This Court, had noticed the facts that the petitioner had deposited the entire amount along with interest due up-to date with the BOB on 03.05.2013, the BOB had accepted the amount and written letter dated 07.05.2013 to the Tribunal. The BOB clearly informed the Recovery Officer that the petitioner repaid the entire loan amount along with interest, however, the Recovery Officer, instead of stopping the wheels of process of confirmation, rejected the application of the BOB and, proceeded to confirm the auction on 28.06.2013. This Court, therefore, ordered that the possession of the property in question should not be taken from the petitioner.

18. Ms. Shreya Chaudhay, learned counsel for the petitioner, has further submitted that if borrower repays the loan amount with interest and settles the account before confirmation of the sale, the sale should not have been confirmed. It has been further submitted that the order dated 28.06.2013 passed by the Recovery Officer, confirming the sale process, is wholly illegal and the said action is against the several judgments passed by the various High Courts. In support of her submissions, learned counsel for the petitioner has placed reliance upon following judgments:-

i. Aniruddha v/s The Divisional Joint Registrar Co-operative Societies, Amravati & Others 2019 (2) Mh. L.J.;

ii. Ram Barai Prasad Vs. State of U.P. and others, 2007 SCC OnLine All 557; equivalent (2008) 1 All LJ 376;

iii. Vasant Mahadev Chavan Vs. State of Goa, through the Chief Secretary and Others 2021 SCC OnLine Bom 4132; and

iv. Jadeja Jitendrasingh Chandrasinh Vs. Tax Recovery Officer 2012 SCC Online Guj 4975;

19. Ms. Shreya Chaudhary, learned counsel for the petitioner has further submitted that in the year 2012, a settlement was arrived at between the petitioner and the BOB. The petitioner settled the amount as Rs.14,50,000/- for full and final settlement in respect of the loan taken by him. In pursuance of the said settlement, the petitioner had paid Rs. 4,00,000=00 on 08.05.2012, Rs. 1,50,000=00 on 02.07.2012 and Rs. 1,00,000=00 on 31.08.2012.

20. On the other hand, Mr. Prashant Kumar Srivastava, learned counsel for the BOB, has submitted that the writ petition is not maintainable inasmuch as the statutory appeal under Section-30 of the Act, 1993 is pending before the Tribunal against the order passed by the Recovery Officer and, instead of pressing the appeal, the petitioner has rushed before this Court. It has been further submitted that after receiving the amount of Rs.19,50,000=00 from the petitioner (total outstanding dues), the Recovery Officer was only informed and no request was made for dropping the proceedings. It has been further submitted that the auction was held on 31.03.2013. In proceedings of DRC No.556 of 2010, the petitioner had deposited Rs. 19,50,000=00 only on 03.05.2013 i.e. after more than two moths from the date when the property was put to auction on

31.03.2013. It has been further submitted that after the sale was confirmed on 28.06.2013, the petitioner had accepted the residual amount of Rs.10,73,391=00 and, therefore, the writ petition is not maintainable. It has been further submitted that the provisions of 2nd and 3rd Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962 as in force from time to time shall, as far as possible, apply with necessary modifications. Rule-60 of the 2nd Scheduled of the Income Tax Act, 1961 provides that where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within 30 days from the date of sale, apply to the Tax Recovery Officer to set-aside the sale, on his depositing the outstanding amount specified in proclamation of sale as that for the recovery of which the sale was ordered with interest thereon along with 5% purchase money. It has been further submitted that in the case in hands the petitioner had applied after two months i.e. beyond 30 days as prescribed under the Rules. It has been further submitted that since the petitioner has deposited the amount in question after more than two months of sale confirmation, the writ petition is even otherwise liable to be dismissed on merit.

21. Mr. Vishal Agrawal, learned counsel for the respondent no. 3, has submitted that the respondent no. 3 is a bona-fide purchaser, who had deposited the entire sale consideration, but he

has not got the fruit of his money, rather he has been dragged in litigation.

22. Ms. Shreya Chaudhary, in rejoinder, has submitted that the petitioner had accepted the residual amount of Rs.10,73,391=00, after the Recovery Officer confirmed the sale of the property in favour of respondent no. 3, having no other option, but the same would not dis-entitle the petitioner to challenge the confirmation of sale in favour of respondent no. 3. It has been further submitted that the petitioner is ready/willing to refund Rs.10,73,391=00, the residual amount, to the BOB with interest.

23. I have considered the submissions made by the learned counsels for the parties.

24. The Recovery Officer was required to act in accordance with law to recover the dues of the BOB and, when the BOB had written to the Recovery Officer that he should not proceed further with the auction-sale, the Recovery Officer had no right to reject such request of the BOB and, proceed for confirmation of the sale. Rule-60 of the 2nd Scheduled of the Income Tax Act, 1961, relied on by respondent no. 2, would mean that before 30 days, from the date of the auction-sale, the sale should not be confirmed and, if the debtor deposits the dues as provided under the Rules, then sale would not be confirmed and property would be released in favour of the debtor. However, even after 30 days before confirmation, if the defaulter/debtor pays the entire dues, and the Bank issues no dues certificate and writes to

the Recovery Officer not to proceed further with the auction to confirm the sale in favour of such purchaser, the Recovery Officer would be required to cancel the auction proceedings inasmuch as the Recovery Officer acts only for realizing the dues of the Bank/financial institution. In case Bank/financial institution is satisfied that its dues are paid before auction sale is confirmed, then the Recovery Officer would be required to cancel the auction sale, otherwise it would be travesty of justice to complete the sale of property of the borrower despite payment of entire dues and having been issued no dues certificate by Bank/financial institution.

25. In the present case, the BOB itself had written to the Recovery Officer not to proceed with the confirmation of sale as its entire dues were paid by the petitioner. The Recovery Officer had no right to ignore such a request of the BOB. It is also well settled that the auction purchaser has no right, title or interest over the immovable property till confirmation of sale of the said immovable property in his favour. The title of property passes to the auction purchaser with effect from the date of confirmation and not before confirmation of sale.

26. In the present case, the borrower had paid the entire amount of Rs. 19,50,000=00 to the BOB before the sale was confirmed and, the BOB had issued 'no dues certificate' to the borrower and, filed an application before the Recovery Officer for cancelling the auction process, but the Recovery

Officer had gone ahead to confirm the sale and rejected the application. The auction purchaser could claim refund of his money from the BOB with interest, but he did not have any right over the property before the sale was confirmed inasmuch as Recovery Officer had no right to confirm the sale after BOB wrote to him for cancelling the auction. The BOB had already received the entire amount and, written an application to the Recovery Officer for cancellation of the sale process, but despite that the Recovery Officer had proceeded to confirm the sale wholly illegally and unauthorizedly.

27. In view thereof, the present petition is **disposed of** with a direction to the Tribunal to decide the appeal filed by the petitioner expeditiously in accordance with law, preferably within a period of one month and, till the appeal is decided by the Tribunal, the interim order passed by this Court on 19.05.2015 shall remain in operation.

Order Date :- 9.2.2022

MVS/-