

HIGH COURT OF MEGHALAYA
AT SHILLONG

C.Ref. No. 1 of 2023

Date of order: 17.05.2023

Liwel Warshong vs The Meghalaya Rural Bank

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr K.S. Kharshiing, Adv. with
Mr C.H. Mawlong, Adv.

For the Respondent : Mrs T. Yangki B., Sr Adv. with
Mrs I.M. Lyngdoh, Adv.

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The reference here has been made by the Additional Judge of the Additional District Council Court, Khasi Hills, Shillong. Some basic facts need to be noticed before the questions raised by way of this reference are taken up for consideration.

2. According to the respondent bank, which claims to be a scheduled bank and to which the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 applies, it granted a loan to one Hamsarong Langwar in the

year 2012. According to the respondent bank, the loan was covered by the mortgage of an immovable property in Mawlai Iewrynghep.

3. It appears that the mortgagor subsequently purported to sell the property to the appellant herein and, in or about 2018, the appellant filed a civil suit before the relevant District Council Court for eviction of the mortgagor and possession of the property. A decree followed and eviction proceedings were levied.

4. In the meantime, according to the respondent bank, upon the mortgagor failing to repay the loan, a notice under Section 13 (2) of the said Act was issued to which the debtor did not respond. The bank claims that a further notice under Section 13 (4) of the Act was issued and the bank took measures thereunder for realisation of its secured asset. Indeed, the bank also approached the appropriate authority under Section 14 of the Act and, pursuant to the administrative directions issued thereupon, claims to have taken possession of the property in question.

5. There is no dispute that the property which was sold by the mortgagor to the appellant is the same property that was mortgaged by the debtor to the bank herein.

6. In the appeal before the District Council Court, upon the issue arising as to the rights of the purchaser, namely the appellant in that

court, vis-à-vis the bank, namely the respondent in that court, the District Council Court thought it expedient to frame the following legal questions for reference to this Court:

- a. Whether the Execution Warrant/Order of the Court should bend down before the Notice pasted by the Respondent Bank?
- b. Whether the Judgement and Decree passed by the lower Court or the Notice issued by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act has the supersession power over the other?
- c. Whether it is the Appellant/Decree Holder or the Respondent Bank should approach the Court of competent jurisdiction to adjudicate the matter? If so, which Court has the jurisdiction to adjudicate the same?
- d. In the event of no further adjudication is required any longer, in such a circumstance and in regard to the question of redemption/pre-emption, whether it is the Appellant/Decree Holder or the Respondent Bank has the right of redemption or pre-emption for recovery of the money to be realised from the properties of the Judgment Debtor?

7. Such questions were framed in an order for a reference to this Court passed on April 25, 2023. The order of reference reached this Court earlier this week and was assigned to the regular Division Bench by the Chief Justice's endorsement of May 16, 2023.

8. The said Act of 2002 is somewhat unusual and goes against the grain of the fundamental principles of law theretobefore established in this country. Under the jurisprudence that was in place, a claimant had

to approach a court of law to establish the claim before the claimant could pursue any property over which the claimant asserted rights.

9. However, since claims by banks, both in respect of money due and properties mortgaged to banks, remained embroiled in courts for years and the money was lost to the system or remained blocked, there was first a Tiwari Committee report followed by the Narasimham Committee report that resulted in an Ordinance being brought that later metamorphosed to the Recovery to Debts Due to Banks and Financial Institutions Act 1993. However, within less than a decade of such Act coming into effect, it was realised that the same process, even though exported from the court to exclusive tribunals by the name of Debts Recovery Tribunal, continued and the money blocked could not be expeditiously recovered.

10. In such circumstances, there were further reports, including a second report by the Narasimham Committee, that resulted in, in essence, Section 29 of the State Financial Corporations Act, 1951 to be invoked for the purpose of a secured creditor being conferred a right to proceed against the security even before the claim of such secured creditor was adjudicated by any forum.

11. Indeed, the complete answer to the issue has to be found in Section 34 of the said Act of 2002:

“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.”

12. The above provision has two limbs: the first limb is that no court shall entertain any matter which a Debts Recovery Tribunal or an Appellate Tribunal is empowered to adjudicate; and, the second limb is that no civil court or other authority shall issue any injunction in respect of any such matter which is capable of adjudication by a Debts Recovery Tribunal or an Appellate Tribunal. The aforesaid provision has passed muster and a challenge to the vires thereof was repelled in the Supreme Court judgment of *Mardia Chemicals Ltd v Union of India* reported at (2004) 4 SCC 311.

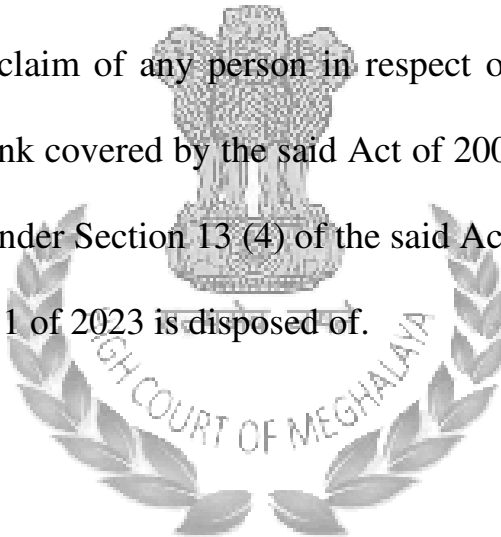
13. Thus, a Debts Recovery Tribunal or an Appellate Tribunal, as the case may be has primacy in a matter when there is a claim by a scheduled bank against a debtor or a secured interest or mortgaged property.

14. In any event, even without the said Act being in place, on the basis of the facts in the present case, the answer is simple. Once a mortgagor had mortgaged a property in favour of a mortgagee, the mortgagor has a limited right of redemption. Thus, any sale subsequent

to a mortgage being created is subject to the rights of the mortgagee and the subsequent purchaser cannot claim any rights in excess of the mortgagor qua the mortgaged property. Indeed, the only right the subsequent purchaser can claim is to exercise the right of redemption in place and instead of the original mortgagor.

15. Accordingly, the reference is answered by observing that in view of Section 34 of the said Act of 2002 and the very scheme of such enactment, no civil court or other authority will have a right to adjudicate on the claim of any person in respect of a secured interest against which a bank covered by the said Act of 2002 has proceeded by taking a measure under Section 13 (4) of the said Act.

16. C.Ref. No. 1 of 2023 is disposed of.



(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
17.05.2023
"Sylvana PS"