

Court No. - 6

Case :- WRIT - C No. - 30869 of 2023

Petitioner :- Deepak Singh

Respondent :- Bank Of Baroda And 3 Others

Counsel for Petitioner :- Ajit Kumar Singh

Counsel for Respondent :- Krishna Mohan Asthana,Ajal
Krishna,Anadi Krishna Narayana,Arif Ikbal

Hon'ble Mrs. Manju Rani Chauhan,J.

The present writ petition has been filed by the petitioner mainly for the following reliefs:

"i. Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 10.08.2023 passed by Presiding Officer, Debt Recovery Tribunal, Allahabad in Securitization Application (S.A.) No. 209/2021 (M/s Maa Sharda Rice Mill and another v. Bank of Baroda) (Annexure no. 1 to the writ petition).

ii. Issue a writ order or direction in the nature of mandamus commanding the respondent no. 1 to not interfere in the peaceful possession of the petitioner on the auction purchased property being Arazi no. 30 Sa, area 4075.00 sq.ft. situated at Mauza Kaula Jakhaniya, Shadiyabad, District – Ghazipur.

In alternative

iii. Issue a writ or direction in nature of mandamus commanding the respondent no. 1 to refund the deposited amount to tune of Rs. 19,00,000/- along with 24% interest per annum."

Heard Sri Ajit Kumar Singh, learned counsel for the petitioner, Sri Ajai Krishna, learned counsel for respondent no. 1 / Bank, Sri Arif Ikbal, learned counsel appearing for respondent nos. 2 & 3 and Sri K.M. Asthana, learned counsel who has put in appearance on behalf of respondent no. 4.

Learned counsel for the petitioner submits that the petitioner is an auction purchaser and the property in question has been purchased by him on the auction held on 16.03.2021. Accordingly, a sale certificate was issued on 12.04.2021. He described the aforesaid facts in the application filed by the borrower under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

(for short, "the SARFAESI Act, 2002). The petitioner has not been provided any opportunity of hearing, and physical possession of the property in question which was taken over by the auction purchaser / petitioner on 15.02.2023 has been set aside, which is in violation of the principles of natural justice.

On the other hand, Sri Arif Iqbal, learned counsel for respondent nos. 2 and 3 submits that a proper impleadment application was moved before the Debt Recovery Tribunal, permission of which was granted on 01.11.2022. The impleadment application, so filed, was allowed on 09.01.2023 and the applicants were directed to implead the auction purchaser as party respondent. Accordingly, notices were sent to the auction purchaser, i.e., the petitioner in the present writ petition and as per the tracking report the delivery of the notice sent to him was confirmed but the auction purchaser did not appear. Thus, it cannot be said that the petitioner has not been provided any opportunity as despite being notice served upon him, he did not appear before the DRT.

Sri Ajai Krishna, learned counsel for the respondent Bank submits that the entire money has already been returned back to the auction purchaser.

Learned counsel for the respondent nos. 2 and 3 submits that in case the petitioner is aggrieved by the ex-parte order, he may file Miscellaneous Application under Section 22(2)(g) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 or may file an appeal under Section 18(1) of the SARFAESI Act, 2002 before the Debts Recovery Appellate Tribunal.

In view of the above, proper opportunity has been afforded to the petitioner, this Court finds no illegality in the order

impugned. However, in the interest of justice and on the request of learned counsel for the petitioner, the writ petition is disposed of with a direction that the petitioner may avail proper remedy as available to him under law.

No order as to costs.

Order Date :- 29.11.2023

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