

Court No. - 52

Case :- WRIT - C No. - 38874 of 2023

Petitioner :- Kaptan Singh Chaudhary And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Sushil Kumar Srivastava

Counsel for Respondent :- CSC, Sanjay Kumar Srivastava

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Sushil Kumar Srivastava, learned counsel for petitioners and Sri Sanjay Kumar Srivastava, learned counsel for respondent no.5 i.e Bank as well as Sri Prabhakar Tripathi, learned Standing Counsel for State-respondents.

2. The present petition has been filed for seeking quashing of the order dated 09.10.2023 passed by learned Debts Recovery Appellate Tribunal, Allahabad (in short 'DRAT') in Regular Appeal No.876 of 2023 and order dated 19.06.2023 passed by Debts Recovery Tribunal, Allahabad (in short 'DRT') in Misc. Application No.18 of 2023 as well as order dated 30.09.2023 passed by Tehsildar Sadar, District Agra i.e. respondent no.4.

3. It is the case of petitioners that they had taken housing loan of Rs.7,75,000/- from Canara Bank, Kamla Nagar, Agra i.e. respondent no.5 in the year 2006, due to some unavoidable circumstances, petitioners could not deposited the same within stipulated time whereupon, respondent no.5 had taken action against petitioners. Being aggrieved with the same, petitioners preferred Securitisation Application No.541 of 2011, whereupon the DRT, Lucknow granted conditional interim protection in favour of petitioners vide order dated 25.04.2013, in pursuance of the same, petitioners deposited the amount and the same has been mentioned by the ADM (F/R), Agra during proceedings of Case No.22 of 2013. During pendency of the said case, respondent no.5 issued sale certificate dated 01.06.2013 in favour of respondent no.6 despite the fact that petitioners have deposited Rs.20,000/- on dated 12.04.2013 and Rs.2,71,000/- on dated 13.04.2013 to the Bank. Being aggrieved with the same, petitioners filed Case No.22 of 2013 before Additional District Magistrate (F/R), Agra, wherein the ADM passed order dated 16.07.2013 mentioned therein that Rs.7,00,000/- through Cheque No.070449 dated 11.06.2013, Rs.3,16,500/- through Cheque No.070660 dated 13.07.2013 and

Rs.2,71,000/- has been sent to the Bank and directed the Bank to take action for depositing the said amount in loan account of petitioners. Petitioners preferred impleadment application in S.A. No.541 of 2011 for impleadment of the auction purchaser i.e. respondent no.6 which was allowed. The DRT, Lucknow vide order dated 19.05.2014 dismissed the application for condonation of delay in filing S.A. No.541 of 2011 and consequently, S.A. No.541 of 2011 was also dismissed. Being aggrieved with the order dated 19.05.2014, petitioners preferred Appeal No.191 of 2014 before DART, Allahabad which was allowed on dated 03.12.2019 by setting aside the order dated 19.05.2014 and remitted the matter back to the DRT to decide the same in accordance with law.

4. In the meantime, jurisdiction of District Agra was transferred from DRT, Lucknow to DRT, Allahabad and in pursuance of the same, matter of the petitioners was also transferred to DRT, Allahabad from DRT, Lucknow which was registered as T.S.A. No.01 of 2021 and order for notices to be issued was passed on 13.01.2021 by the DRT, Allahabad. No notice was served upon petitioners regarding listing of T.S.A. No.01 of 2021 and the same was dismissed for want of prosecution on 19.09.2022. When the said order came into knowledge of petitioners, they preferred restoration application bearing M.A. No.18 of 2023 along with delay condonation application for seeking recall of the order dated 19.09.2022 before DRAT, Allahabad and the same was also dismissed vide order dated 19.06.2023 on the ground of delay. Being aggrieved with the same, petitioners preferred Regular Appeal No.876 of 2023 before learned DRAT, Allahabad and during pendency of the same, respondent no.4 passed order dated 30.09.2023 for taking physical possession of the property. Regular Appeal No.876 of 2023 was disposed of by learned DRAT, Allahabad vide order dated 09.10.2023 mentioning therein that there is a remedy open to the petitioners by filing appropriate application for redressal of their grievances before the Tribunal below which impugned the present petition.

5. Learned counsel for petitioners submitted that before passing the order dated 19.09.2022, no notice was served upon petitioners with regard to listing of T.S.A. No.01 of 2021 as directed vide order dated 13.01.2021. He further submitted that in the impugned order dated 09.10.2023, it has been mentioned that there is a remedy open to the petitioners by filing appropriate application for redressal of their grievances before the Tribunal below, but there is no statutory provision available against the order dated 19.06.2023

passed by DRT, Allahabad through which recall application bearing M.A. No.18 of 2023 has been dismissed and as such, the order dated 09.10.2023 is illegal. Petitioners have also deposited the entire amount in respect of housing loan and as per the provisions, petitioners are having right to redeem the property till transfer of the same.

6. Per contra, learned counsel appearing on behalf of the Bank vehemently opposed the prayer as made in the petition but could not dispute the fact that petitioners are having no alternative remedy against the order dated 19.06.2023 as mentioned in the order dated 09.10.2023 to avail the remedy for redressal of their grievances.

7. Arguments as advanced by learned counsel for petitioners seem to be forceful since there is no alternative remedy available before petitioners against the order dated 19.06.2023 and it has also been transpired from perusal of the records that no notice has ever been served upon the petitioners despite order dated 13.01.2021 passed by DRT, Allahabad.

8. In view of the aforesaid facts and circumstances, order dated 09.10.2023 passed by learned DRAT, Allahabad and order dated 19.06.2023 passed by learned DRT, Allahabad are quashed, the matter is hereby remitted back to the learned DRT, Allahabad for deciding Securitisation Application preferred by petitioners in shape of T.S.A. No.01 of 2021 afresh by way of affording proper opportunity of hearing to all concerned.

9. The abovementioned exercise shall be finalized by learned DRT, Allahabad as expeditiously as possible, preferably within a period of three months from the date of production of a certified copy of this order before it.

10. It is also made clear that all the consequential orders including orders dated 30.09.2023 and 01.11.2023 passed by respondent no.4 i.e. Tehsildar Sadar, Agra passed in pursuance of the orders dated 09.10.2023 and 19.06.2023, shall be inoperative.

11. The instant petition stands **disposed of** accordingly.

Order Date :- 6.11.2023

Vivek Kr.