

Gurbax Singh
2016.10.06 10:23

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 19186 of 2016
Date of decision: 20.09.2016**

Lalit Kumar

.....Petitioner

Vs.

The Punjab National Bank and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Chanderhas Yadav, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner through the present petition under Articles 226/227 of the Constitution of India prays for quashing the order dated 15.9.2015, Annexure P.6 passed by the Debts Recovery Appellate Tribunal, Delhi (in short, "the Tribunal") vide which appeal filed by him has been dismissed. Further prayer has been made for quashing the order dated 08.04.2015, Annexure P.5 passed by the Tribunal vide which just for an amount of ₹ 2 lacs, running shops of the petitioner have been put to auction. Direction has also been sought to the respondent authorities to cancel the sale of the shops of the petitioner after receiving total loss to the bank

exchequer which was ₹ 4.12 lacs out of which ₹ 2 lacs was already deposited before the Tribunal and the petitioner is ready to deposit the remaining amount with the bank alongwith the interest.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a guarantor for the firm namely M/s Shubham Sarees. The two shops of the petitioner which is the subject matter of the present petition were mortgaged with the bank i.e. each shop measuring 23' in length East West and 7'7" in North South situated at Katla Nambardar, Bajaja Bazar, Narnaul. Thereafter, the petitioner went to Hyderabad to earn his livelihood. At his back, the impugned orders were passed on 08.04.2015 and 15.9.2015, Annexure P.5 and Annexure P.6 respectively. According to the petitioner, a decree was passed in favour of his mother regarding the rents which were to be received from the tenants of the shop and were to be utilized for her livelihood. It was further mutually agreed that after using the above said rent for herself the remaining amount shall be utilized for repaying the loan. Therefore, one shop was given on rent to Rekha wife of Sunil Kumar and another to Vinod Kumar son of Ram Saran. The said tenants are still in possession of the shops but due to losses in the business of the firm and the whole rent utilized by the mother, the loan could not be repaid in time. After saving some money from Hyderabad, the petitioner returned to his hometown and approached the respondent Bank to liquidate the loan and demanded the details of the loan but the bank officials refused to intimate the same. Later, the petitioner came to know that the Bank wanted to sell the above said shops to his near and dear one. The petitioner made a complaint to the Regional Manager as well as General Manager of the Bank on 02.12.2010. Instead of providing intimation regarding outstanding loan amount, the

petitioner was handed over a copy of the sale certificate dated 25.11.2010, Annexure P.2 intimating that his two shops had been sold for an amount of ₹ 8,40,000/- whereas according to the petitioner, the actual market value of the same was approximately ₹ 40 lacs. From the sale certificate, it was found that recoverable amount from the firm was ₹ 4.12 lacs on 22.8.2009 and hence the loan amount could be satisfied by selling one shop only. Thereafter, the petitioner approached the Tribunal for redressal of his grievance. The respondent-Bank appeared and filed certain documents. The Tribunal passed interim order of status quo in favour of the petitioner subject to deposit of ₹ 2 lacs which was duly complied with by the petitioner. The respondent-Bank filed reply alongwith the documents regarding service of notices under section 13(2) and 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, “the SARFAESI Act”). The shops of the petitioner were alleged to be sold in the year 2010 but no record of the sale was produced before the Tribunal. The respondent Bank also filed demand notices under sections 13(2) of the SARFAESI Act claiming balance outstanding amount as on 31.3.2007. The petitioner filed rejoinder to the reply by denying all the averments taken by the respondent Bank. Vide order dated 8.4.2015, Annexure P.5, the Tribunal dismissed the application of the petitioner. Aggrieved thereby, the petitioner filed appeal before the Tribunal which was also dismissed vide order dated 15.9.2015., Annexure P.6. Hence the instant writ petition by the petitioner.

3. We have heard learned counsel for the petitioner.
4. It is the admitted position that the petitioner stood surety for the loan facility availed by M/s Shubham Sarees, a sole proprietorship concern of his wife. The petitioner had mortgaged his two shops to secure the said

facilities. Thereafter, he went to Hyderabad to earn his livelihood whereas a decree was passed in favour of his mother to the effect that the said shops will be given on rent and the income to be received therefrom will be utilized for her livelihood and after using the rent for herself, she will repay the loan amount if default was occurred due to the fault of the said firm. As the said firm had incurred losses, few installments were not given. When the petitioner returned from Hyderabad, he asked about the details of the loan account from the Bank. He came to know that the bank had sold the two mortgaged shops. He was instructed to receive the balance amount which was kept lying with the Bank. After considering the entire matter in detail, the Tribunal recorded that the petitioner was directed to deposit ₹ 2 lacs on or before 11.1.2011 and status quo order was granted in his favour. The petitioner had given his willingness to pay the outstanding dues but since 2011 after filing of the application in the year 2011, the matter was pending only for arguments. Despite opportunity, the petitioner failed to deposit the amount. The Bank also produced requisite documents to prove that before putting the property on sale, the possession notice was duly dispatched and received by the petitioner. Further, valuation of the property was duly obtained which was evaluated at ₹ 8.06 lacs. Even Panchnama and inventory were prepared while taking possession and thereafter publication of sale notice through tenders was also placed on record. Thus, the Bank had complied with all the provisions and the rules made under the SARFAESI Act. In view thereof, the Tribunal held that the respondent Bank was right in the action taken by it. Further direction was given to the Bank by the Tribunal to return the excess amount of sale proceeds which was lying with it after appropriation of the account. The relevant findings recorded by the Tribunal in its order dated 8.4.2015, Annexure P.5 read thus:-

“Before parting with the orders, I have gone through the proceeding sheet whereby applicants were directed to deposit ₹ 2 lacs on or before 11.1.2011 and status quo order was granted in their favour. Thereafter, after complying with the direction, the applicant has given his willingness to pay the outstanding dues. But since 2011 after filing of the SA in the year 2010, this matter is pending only for the argument for years together. Perusal of the record further shows that the property was sold for ₹ 8.40 lacs for which the sale certificate has duly been issued and sale consideration was duly appropriated in the account and the excess account is lying with the bank. The contention of the applicant can be judged from their pleadings whereby they themselves have admitted that they have shifted to some another city after getting CC limit for the firm M/s Shubham Sarees which was run under the sole proprietorship of the wife who is also guarantor. Despite even leaving the station, the Bank through Annexure R.1 to Annexure R.16 has proved that after declaring the account NPA on 31.3.2007, which was over and above sanctioned limit, recall notice was issued before initiating the process through Annexure R.10 and R.11 and it is clearly mentioned in this notice “parties not depositing any sale in the account for the last one year, Stock is not sufficient to cover Bank loan”. Thereafter, the bank has issued notice under Section 13(2) and date of NPA and the amount outstanding which was more than ₹ 6 lacs in the year 2007 was duly intimated to the applicant. Not only this even notices were duly acknowledged by the applicant as it is clearly reflected from Exh.R1 and Exh.R.2. The Bank has also duly proved through their documents that before putting the property on sale, the possession notice was duly dispatched which was duly received by the applicant and the same was also affixed on the property. Further, valuation of the property was duly obtained suggesting tenanted property which was evaluated at ₹ 8.06 lacs. Even Panchnama and inventory were prepared as per Annexure 14 while taking possession and thereafter publication for sale notice through

tenders is also on record. These are sufficient to prove that the Bank has complied with all the provisions and rules made under the Act. Merely saying by the applicant that one shop was sufficient to liquidate the dues is also not justifiable as the property was mortgaged by a common title deed which could not be segregated. Moreover, two shops were infact partition of a single unit, therefore the bank is totally justified in putting them to sale in a single lot which otherwise could not have been possible/feasible to be sold separately. The applicants have impliedly admitted their irregularity and it has been found from the record that sufficient time during the years has been given to the applicant even after declaring the account NPA before finalization of the sale. Therefore, the amount which was in excess and now lying with the bank should have to be repaid to the applicant by the authorized officer.

Having examined the averments made by the respective counsel of the parties and documents and evidence filed by them in support of their pleadings, I have come to the conclusion that the action taken by the Bank is absolutely in accordance with law just and proper and no irregularity/illegality has been found in the recovery process initiated by the Bank.

8. Accordingly, this SA is dismissed with the directions of the authorized officer of the bank to return the excess amount of sale proceeds which is lying with the bank after appropriation of the account. Any application pending stands disposed of.”

5. The appeal filed by the petitioner against the order dated 8.4.2015 passed by the Tribunal before the Debts Recovery Appellate Tribunal, Delhi (DRAT) was dismissed vide order dated 15.9.2015, Annexure P.6. The relevant findings of the DRAT are quoted as under:-

“During the course of arguments, the counsel has primarily pressed the plea that notice under Section 13(2) of the Act was not served upon the appellant and hence, he was deprived of an opportunity to represent against the same. The counsel for the

respondent has invited my attention to notice dated 31.5.2007 issued under Section 13(2) of the SARFAESI Act, which was addressed to Smt. Anju Devi Gupta with copy to the appellant. To acknowledge the receipt of this notice, the counsel would refer to the signature endorsed by the appellant on 8.6.2007, clearly indicating that he had received this notice. Counsel for the appellant would submit that the signature on this notice is not that of the appellant. No such plea was ever raised before the Tribunal below. It is also not so noticed in the impugned order. The Tribunal, rather, has noticed that on deposit of ₹ 2 lacs status quo order was passed in favour of the appellant. The appellant had expressed his willingness to pay the outstanding dues. The S.A. had been adjourned for arguments. Despite opportunity, the appellant apparently failed to deposit the amount.

The finding by the Tribunal below is that before putting the property to sale, possession notice was duly dispatched and received by the appellant. The same was also affixed on the property. The property being tenanted was valued at ₹ 8.06 lac. While taking possession Panchnama and inventory were prepared. The Tribunal accordingly found that the Bank had complied with all legal requirements.

Since the appellant's signature appears on the notice, his oral submission that he had not received the notice under Section 13(2) of the Act cannot be accepted. Similarly, the appellant was served with possession notice as well as sale notice. The copy of the possession notice dated 10.8.2007 is on record. This was received by the wife of the appellant on 14.8.2007. The possession notice dated 30.10.2007 also contains signatures of the appellant and his wife, which was statedly received on 5.11.2007 and 3.11.2007 respectively. On 25.6.2010, the appellant was served with the sale notice giving background of earlier notices that had been dispatched to him. In this background, the plea by the appellant that he was not served with the notice under Section 13(2) of the Act or that the sale notice was not served upon him or affixed on the property

concerned is just a bald assertion, without there being any proof in this regard. The sale was by way of auction, which was duly published in two newspapers, one in vernacular and the other in English newspaper. The sale was held after clear 30 days of publication of notice.”

6. Learned counsel for the petitioner has not been able to show that the findings recorded by the Tribunal are illegal or perverse. Today, before this court, though, learned counsel for the petitioner has produced a demand draft of ₹ 3 lacs to show bonafides of the petitioner, but in view of the findings recorded by the Tribunal, no ground for interference is made out. In any case, the auction of the shops is of the year 2010. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

September 20, 2016
‘gs’

(Kuldip Singh)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes