IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1321 of 2015
IN
Civil Writ Jurisdiction Case No. 25525 of 2013

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Maharana Pratap Singh, S/o Late Baudh Singh, R/o Village- Bhekha Chak, P/S-Gardanibagh, District- Patna

.... Appellant

Versus

1. Allahabad Bank through the Dy. General Manager, Zonal Office, Kotwali, Budh Marg, Patna 800001.
2. The authorized officer cum Chief Manager, Zonal Office Allahabad Bank Budh Marg, Patna 800001.
3. The Branch Manager, Allahabad Bank, Boring Road Branch, S.K. Puri, Patna 800001
4. The Presiding Officer, Debt Recovery Tribunal, 34, Bank Road, Opposite New Police line, Lodhipur, Patna 800001.
5. Samrat Chaudhary @ Rakesh Kumar, S/O- Sri Choudhary, R/o- Harding Road, P/S- Gardanibagh, District- Patna.
6. Sri Kedar Nath Ram, S/O- Late Sidheshwar Ram, R/o- Mohalla- Alkapuri, P/S-Gardanibagh, P/O- Anisabad, District- Patna.
7. Sri Rakesh Ranjan, S/O- Sri Rajeshwar Prasad, R/O- Mohalla Shivpuri P/S-Gardanibagh, P/O- Anishabad, District- Patna

.... Respondents

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Appearance :

For the Appellant : Mr. Anjani Kumar Singh, Advocate
For Respondents 6 & 7 : Mrs. Nivedita Nirvikar, Advocate
For Respondent Bank : Mr. Binod Kr. Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date: 28-04-2017

Heard the learned counsel for the parties.

2. The appellant was respondent no. 2 in the writ petition filed by Allahabad Bank (hereinafter referred to as the Bank) being C.W.J.C. No. 25525 of 2013, which was disposed of by the learned Single Judge on 03.11.2014.

3. The Bank had challenged certain orders of the

Presiding Officer, Debts Recovery Tribunal (respondent No. 4) and prayed for the following reliefs :

> *"That this petition is being filed for the issuance of writ, in the nature of certiorari for quashing the order dated 29.08.2013, passed in M.A. No. 320/2013 by the respondent no. 1 and also the order dated 26.06.2013 passed in M.A. No. 484/2012 which has arisen out of the order dated 13.09.2012, passed in S.A. No. 97/2012 by the Presiding Officer of the Debts Recovery Tribunal, Patna as contained in Annexures 4, 8, 9 of this petition, whereby and whereunder the learned Tribunal was pleased to reject the prayers of the petitioners and further directed them to comply the order dated 26.06.2013, passed in M.A. No. 484/2013."*

4. The Bank had assailed the impugned order basically on the ground that the appellant was a loanee of the Bank. A loan of Rs. 3 lakhs was sanctioned in the year 2005, but no substantial amount was deposited by the loanee for more than six years thereafter. The Bank thus, initiated proceedings under the SARFAESI Act (hereinafter referred to as the Act) and a notice under Section 13(2) of the Act was given to the appellant, but having not repaid the Bank's dues, proceeding under Section 13(4) of the Act was initiated by the Bank taking symbolic position of the property in question and thereafter auction sold.

The plea taken by the Bank was that the sale of mortgaged asset of the appellant had already been completed way back in the year 2011 and the successful auction purchaser, who is respondent no. 5, had thereafter sold the same to respondent nos. 6 and 7 in the year 2012, as such, a 4^{th} party right had already been created.

5. Against the said auction of the year 2011, the appellant moved the Tribunal in S.A. 97/2012 wherein the Presiding Officer by order dated 13.09.2012 directed the appellant to pay the entire amount within a specified period and also pay 9% interest and 5% penalty on the auction purchase money and Rs. 1 lac as additional compensation to the auction purchaser, **if 3^{rd} party is not created** (emphasis supplied).

6. It may be noted that already a 4^{th} party right had been created by the auction purchaser by execution of Sale Deed No. 17579 dated 09.06.2012 in favour of respondent nos. 6 and 7 much before the order came to be passed in SA 97/2012. Again an opportunity was given to the appellant by the Tribunal under order dated 26.06.2013, passed in M.A. 484/2012 wherein the appellant was again given liberty to pay the entire amount due to the Bank within a specified period, although, it was noticed by the Tribunal in its order dated 26.06.2013, passed in MA 484/2012, which arose out of SA 97/2012 dated 13.09.2012 that 3^{rd} party (purchaser) had already appeared. When the Bank

moved before the Tribunal in MA 320/2013 for recall of the order dated 26.06.2013, passed in MA 484/2012 and 13.09.2012, passed in SA 97/12, the Tribunal again rejected the same by order dated 29.08.2013. This is what brought the Bank before this Court by filing writ application.

7. Learned counsel for the appellant challenged the order dated 03.11.2014, passed in the writ application stating therein that there is violation of Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the Rules), as the notice for sale of immovable secured assets as per Section 13(4) of the Act and 8(1) of the Rules has not been followed and the possession notice has not been properly affixed. He further submits that there is violation of Rule 8(2) of the Rules also, which vitiates the entire auction proceedings. For this proposition, he relied on the judgment of the Hon'ble Supreme Court in the case of ***Mathew Varghese Vs. M. Amritha Kumar and others*** since reported in ***(2014) 5 SCC 610*** relying on paragraphs 29.4, 31, 33.3, 34, 35, 42, 53 stating therein that by non-observance of the provisions of Rules 8(1), 8(2) of the Rules, the Bank violated his right of redemption by denying him adequate opportunity and time to repay the borrowed sum and such action of the Bank acting surreptitiously in selling the property without informing them, has been set aside by the

Hon'ble Apex Court.

8. From perusal of the order of the Hon'ble Apex Court in the case of Mathew Varghese (supra), the contention of the appellant is of no avail as the order of the Hon'ble Supreme Court was passed on an entirely different set of facts where one day after the SARFAESI action was upheld by the Tribunal against the borrower, the Bank sold the property of the loanee the very next day without any intimation to the borrower. The facts of the present case is entirely different. The appellant had been given SARFAESI notice way back in the year 2010-11 and he had ample opportunity to save his property at the relevant time.

9. Yet another challenge was made that the property was undervalued as the valuer has valued the property for Rs. 9,52,000/- for land and building in the month of January, 2011 and being a six year old construction together with the land, the reserve price was Rs. 7,62,240/-, whereas the property was worth more than Rs. 30 lakhs.

10. The learned Single Judge has taken into consideration this aspect of the matter as well, because he has minutely examined the technical valuation report dated 10.01.2011 and has taken note of the fact that the property of the appellant has been sold to respondent no. 5 at Rs. 8.1. lakhs, which was the highest bid which took place way back in the year

2011, who had purchased the property in question, which was resold to respondent nos. 6 and 7 by a registered sale deed dated 09.06.2012 before the order dated 13.09.2012 was passed by the Tribunal in the first round of litigation in SA 97/2012 whereunder the Tribunal had given an opportunity to the appellant to pay the entire dues as well as the interest, penalty and compensation to the auction purchaser (respondent no. 4) **if 3rd party is not created**, which was already created. In fact, a 4th party right had also been created by that time.

11. All these aspects have been gone into by the learned Single Judge thoroughly and extensively, hence, the order of the learned Single Judge does not suffer from any error. Appeal is dismissed.

(Nilu Agrawal, J)

I agree.
Ajay Kumar Tripathi, J

(Ajay Kumar Tripathi, J)

Rajesh/-

AFR/NAFR	AFR
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