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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 10210/2016 & CM No.40335/2016**

Reserved on: 11th April, 2017

% **Date of decision : 20th June, 2017**

V.K. BHATNAGAR ..... Petitioner

Through: Mr. Ayush Choudhary, Adv. with petitioner

versus

CANARA BANK & ANR .... Respondents

Through: Mr. Premtosh Mishra, Mr. Mohit Sonkar and Ms. Anvesha Dwivedi, Advs. for R-1

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE

1. The instant case reflects an extremely sorry state of affairs with regard to the manner in which the Canara Bank has conducted itself. We first set out the factual matrix, to the extent necessary, and as is discernible from the documentation of the Canara Bank-respondent no.1 before us.

2. This writ petition has been filed by V.K. Bhatnagar, s/o Dr. Chander Bhan Bhatnagar a permanent resident of H-26/2, Sainik

Farm, Ward Deoli, Delhi-110062. The writ petitioner claims to be the owner in possession of this sole residential property.

3. We note the essential facts giving rise to this writ petition hereafter. A branch of the Canara Bank situated at 4, Sapru Marg, Lucknow, U.P. appears to have extended financial facilities to the following, either as principal debtors, or, as guarantors thereof :

(i) *M/s Elcee Education Pvt. Ltd.*
Registered Office at :
Chitrahar, 3, Naval Kishore Road,
Hazratganj, Lucknow, U.P.

(ii) ***Shri V.K. Bhatnagar***
S/o Shri P.P. Bhatnagar
R/o 2/3, Vishwas Khand, Gomti Nagar
Lucknow, U.P.

(iii) *Mrs. Urvashi Malik*
W/o Shri S. Malik,
R/o 6D, Shrinagar Nagar,
Alambagh, Lucknow, U.P.

(iv) *Mrs. Rekha Bhatnagar*
W/o Shri V.K. Bhatnagar
R/o 2/3, Vishwas Khand, Gomti Nagar
Lucknow, U.P.

4. On account of default in payments by these persons with regard to these facilities, proceedings by way of Original Application No.2000 were initiated under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('*the Act*'

hereafter) by the Lucknow Branch of the Canara Bank at the Debt Recovery Tribunal at Lucknow. The above four principal debtors/guarantors were arrayed as debtors. In these proceedings, in exercise of jurisdiction under sub-section 22 of Section 19 of the said Act, a certificate dated 7th March, 2006 was issued ordering that the applicant's bank i.e. Canara Bank at its said branch at Lucknow was entitled to recover Rs.12,00,099.48 together with *pendente lite* and future interest @ 19.25% per annum with quarterly rest from 19th January, 2000 till full realisation from the debtors. The certificate also permitted the Bank that in case the debt amount is not recovered from the sale of the "***mortgaged and hypothecated properties***", then the bank would be entitled to recover the same "*by selling the* ***<u>other personal assets/properties of the debtor nos. 1 to 4</u>***".

5. Having failed to recover the amount, it appears that the respondent no.1 thereafter sought attachment of the property of the judgment debtor no.2 i.e. the aforementioned Sh. V.K. Bhatnagar. We extract hereunder the specification of the property which the Canara Bank sought to be attached :

"***<u>SPECIFICATION OF UNCHARGED PROPERTY</u>***

> *Land & Building being Plot /* ***House No.H-26/2, Single Portion, Block – H, Plot No.26/2, Sainik Farm, Ward – Deoli, Delhi, owned by Sri Vinod Kumar Bhatnagar, the J.D.No.2***"

6. Based on this representation of the respondent no.1 - Bank, the Recovery Officer, DRT, Lucknow issued a warrant of attachment dated 14th September, 2015 attaching the said property towards recovery of the above debt of M/s Elcee Education Pvt. Ltd. and the aforedetailed persons. This warrant of attachment was executed by affixation at the said scheduled premises.

7. The petitioner has stated that apart from the affixation of the attachment, the respondent no.1 effected proclamation and announcement of the attachment using loudspeakers at the subject property, to the utter consternation and humiliation of the petitioner and his family who were occupying the said property. The petitioner learnt of the said attachment from these actions on behalf of the respondent No.1.

8. The petitioner was thereby compelled to file objections against the order of attachment before the recovery officer of the Debt Recovery Tribunal, Lucknow seeking vacation of the attachment and informing him that he had no connection at all with M/s Elcee Education Pvt. Ltd. and that he had no financial dealings and had never been involved in any transactions with the Canara Bank. The petitioner had declared that he had also no connection with the said Sh. V.K. Bhatnagar who was the debtor to the respondent-Bank.

9. In the objections, the petitioner disclosed the parentage and full details. He also disclosed that the name of his father was Dr.Chander Bhan Bhatnagar and that his wife's was Mrs. Komal Bhatnagar. It was made clear that the petitioner had no connection

with the judgment debtor Mr. V.K. Bhatnagar who was son of Sh.P.P. Bhatnagar and a resident of Gomti Nagar, Lucknow. The appellant also pointed out that the judgment debtor was married to Smt.Rekha Bhatnagar who was also JD No.IV.

10. Despite the said objections having admittedly been filed as back as on 14th September, 2015, no reply thereto was being filed by the Canara Bank to the utter dismay and difficulties of the petitioner who was a senior citizen, a resident of Delhi and was constrained to contest those proceedings in Lucknow from Delhi.

11. The petitioner additionally submitted a detailed representation dated 29th September, 2015 to the Canara Bank (respondent no.1 herein) as well as to the Recovery Officer, DRT, Lucknow (respondent no.2 herein) seeking relief which was also of no avail.

12. Completely harassed, the petitioner has as a result preferred the present writ petition arraying the Canara Bank as the respondent no.1 and the Recovery Officer, DRT Lucknow as respondent no.2. It was pointed out that the respondent no.2 was granting unwarranted adjournments to the Canara Bank without any cogent and plausible explanation and that the petitioner was being unfairly tormented due to the arbitrary actions of the respondent. The present writ petition came to be filed on 25th October, 2016 and seeks the following prayers :

> "*(i) issue an appropriate writ, order or direction in the nature of certiorari quashing the order for attachment dated 14.09.2015 passed by the Respondent*

No.2 i.e. the Ld. Recovery Officer, DRT, Lucknow, U.P. in DRC No.40 of 2006;

(ii) issue an appropriate writ, order or direction in the nature of mandamus commanding the respondents to release/discharge the petitioner's subject property being House No.H-26/2, Lane W-10, Western Avenue, Sainik Farms, New Delhi-110062, from the purview of the Recovery Proceedings in DRC No.40 of 2006, DRT, Lucknow"

13. Before us, the petitioner has submitted that he is a senior citizen of 68 years who has suffered unwarranted extreme tension on account of this harassment. The petitioner has placed on record details of the treatment which were necessitated and his hospital admission in the Saket Citi Hospital from 20th January to 29th February, 2016 during which period he had to be kept in the ICU even. The discharge summary of the petitioner notes the following serious ailments for which the petitioner was treated and thereafter discharged :

"***Hospital course (including initial examination) :*** *Patient was admitted to the hospital with above mentioned complaints. He was drowsy, tachycardiac, Tachypaeic at the time of admission for which he kept in ICU. Patient initially kept on SIPAP and treated with broad spectrum antibiotics. HRCT Thorax showed dense bilateral pneumonia with pleural effusion. Thereafter, after few days patient got incubated and ventilated in view of prolonged.* ***Respiratory failure and acute drowsiness and kept on ventilator****. Patient was tracheostomized after 10 to 15 days of prolonged* *ventilation and difficult weaning trails. Direct laryngoscopy and bronchoscopy done for BAL while patient was on ventilator and routine BAL reports grows klebsiella pneumonia for which patient treated with penam group of antibiotics and Colistin for two to three weeks. 20 ECBO showed normal systolic function, mild AS, mild PAH and small pericardial effusion.* ***Patient remained in ICU till the recovery of acute illness and later on excubated and shifted to the room after attainment of hemodynamically stable condition****. Patient discharged today with follows up advise."*

(Emphasis by us)

14. It is the submission of the petitioner before us that the trauma on account of the attachment of his residential property had grossly aggravated the stress with which he was suffering rendering his medical condition extremely fragile.

15. We find that the respondents have been represented before this court right from the first date. On 31st January, 2017 while issuing formal notice, in the present writ petition, this court had observed as follows :

"... It is the case of the petitioner that the petitioner has never borrowed any money from the respondent bank nor ever guaranteed any payment to the respondent bank. It is submitted that there has never been any transaction between the petitioner and the respondent bank. ***The only possible reason for issuance of the impugned order of attachment is the name of the petitioner, which is the same as the name***

of the Judgment Debtor No.2 in the proceedings before the Debt Recovery Tribunal, Lucknow.

It is true that the writ petition is directed against an order issued by the Recovery Officer of the Debt Recovery Tribunal, Lucknow, from outside the jurisdiction of this Court. ***However, the fact remains that the property sought to be attached is located in Delhi, within the jurisdiction of this Court. A substantial part of the cause of action has thus arisen within the jurisdiction of this Court****. If, as contended by the petitioner, the petitioner has even not transacted with the respondent bank, the petitioner cannot be refused the relief and relegated to proceedings in Uttar Pradesh, when the property under attachment is located in Delhi within the jurisdiction of this Court.*

In answer to the question asked by the Court to ***learned counsel appearing on behalf of the Respondent Bank, Counsel submitted that particulars of the property had been furnished by the respondent bank to the Recovery Officer of the concerned Debt Recovery Tribunal, on the basis of some report of some private investigating agency/detective agency. Prima facie, the petitioner has disclosed materials to show that the order of attachment is the result of mistaken identity. Prima facie, the petitioner is a resident of Delhi, whereas the concerned judgment debtor is a resident of Lucknow. The copies of the Voter's Identity Cards and the Aadhar Cards of the petitioner and his wife reveal that the petitioner's father's name is Chander Bhan Bhatnagar, whereas the concerned judgment debtor has been described as***

***the son of one P.P. Bhatnagar. It also appears that the wife of the concerned judgment debtor, Rekha Bhatnagar has been impleaded as Defendant No.4, whereas the name of the petitioner's wife is Kamal Bhatnagar**."*

(Emphasis supplied)

16. Our attention is drawn by learned counsel for the petitioner to the counter affidavit which has been filed on behalf of the Canara Bank (respondent no.1) on 10th April, 2017 wherein the above narration of facts has been placed before us. So far as attachment is concerned, the respondent no.1 has stated that its prayer for attachment was premised on a report dated 4th May, 2017 received by it from M/s Bright Detective Agency who had been appointed to ascertain the assets of Sh. V.K. Bhatnagar who was the son of Sh. P.P. Bhatnagar. It is stated that the respondent no.1 had submitted to the Recovery Officer, DRT, Lucknow that the house No. H-26/2, Sainik Farms, Ward-Deoli, Delhi belonged to Sh. V.K. Bhatnagar S/o Sh. P.P. Bhatnagar on the basis of this report.

17. We are absolutely appalled at the manner in which the respondent no.1 has proceeded in the matter. Even before us, the engagement of the private detective agency is being propounded as if this was *ipso facto* proof that the bank had taken sufficient care to ascertain the assets of its debtor or effected due diligence thereof. It is inconceivable as to how a financial institution could rely on a bald statement contained in a report without seeking copies of the title documents. Mere inspection of the records of the

Registrar of Documents (freely available to the public) or the Municipal Authorities could have enabled verification of the correct ownership of the said property. These basic steps were admittedly not undertaken by the Canara Bank.

18. Bare perusal of the inspection of the title documents would have also disclosed parentage of the petitioner and would have established that the petitioner was not the 'V.K. Bhatnagar' who was owing money to the respondent no.1-Bank.

19. This is certainly a serious matter where the residential property of a senior citizen has been attached. Not only was the owner of the property which was attached a senior citizen, but he appears to have been ailing with serious medical ailments as well. The action of attachment of its property has had extremely drastic consequences. It is providential that despite his fragile health, he has been able to fight for his rights.

20. It was not as if the respondent-bank stopped at obtaining the warrant of attachment or its pasting at the premises. The petitioner has informed that the same was followed up by declaration of the proclamation and announcement of the attachment by use of loudspeaker in the colony. The petitioner and his family must have suffered extreme mortification and loss of face in the community.

21. Despite the petitioner having filed objections in September, 2015 itself and having made representations to the Canara Bank on 29th September, 2015, no effort has been admittedly made by the bank, which has huge resources at its command, to have immediately ascertained the correct position regarding the

property.

22. It is obvious that having obtained the attachment, the bank exhibited its position of supremacy in taking no action at all to give some relief or succour to the distressed petitioner, which *per se* would have caused extreme insecurity in the mind of the petitioner as to what would be the possible fate and outcome of the objections which he had been compelled several hundred miles away in the city of Lucknow in the state of U.P. as well as the writ petition in this court.

23. In para 11 of the counter affidavit dated 1st April, 2017, the respondent No.1 - Bank has stated that it had appointed another detective agency namely M/s Daredevils which submitted its report only on 29th September, 2016 wherein it was confirmed that the petitioner (Sh. V.K. Bhatnagar S/o Sh. Chander Bhan Bhatnagar) and the judgment debtor no.2 (Sh. V.K. Bhatnagar S/o Sh. P.P. Bhatnagar) in the proceedings before the Debt Recovery Tribunal, Lucknow are two different persons who had no association with each other.

24. The counter affidavit dated 1st April, 2017 further discloses the callous disregard of the rights and trauma of the petitioner on the part of the Canara Bank. Despite receipt of the report on 29th September, 2016, we are informed in para 12 thereby that the Canara Bank filed an application as late as on 7th March, 2017 for withdrawal of the attachment order dated 16th September, 2015. It was only when this application was filed by the Canara Bank that the Recovery Officer has recorded an order of the same date which

has been also placed by the Canara Bank before us. Unfortunately, the application which was filed by the Bank before the Recovery Officer has not been placed before us. However, we deem it appropriate to extract the order dated 7th March, 2017 which was recorded by the Recovery Officer and reads as follows :

> *"Adv. Sh. S.K. Gupta BH of Sh. Vinay Shankar present for CH Bank and filed application dated 07/03/2017 for withdrawal of attachment order dated 14/09/2015 copy whereof supplied to Adv. Sh. Gaurav Bhatnagar who present on behalf of P.P.O. Sh. V.K. Bhatnagar Ld. counsel of P.P.O. also filed an application dated 07/03/2017 for disposal of its objection copy whereof supplied to the Ld. counsel of the CH Bank. CH Bank in its application dated 07/03/2017 annexed affidavit dated 07/03/2017 deposed by Alka Verma Mgr Law of the CH Bank* ***wherein it is admitted that the property attached vide order dated 14/09/2015 is not concerned to the JD No.-2 and hence attachment should be withdrawn****.*
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> *It is on the record that the CH Bank has filed and supporting affidavit F-16 relying thereupon undersigned attached* ***the property vide order dated 14/09/2015 now admitting that was done by mistake. In view of the above, property attached vide order dated 14/09/2015 is hereby released****. As an innocent person PPO suffered due to wrong attachment, CH Bank is directed publish the extract of this order that the property attached vide order dated 14/09/2015 was wrongly attached by mistake of facts provided by the CH Bank and is duly released by the undersigned. Further publication must contain clear specification of*

> *property attached and also regret to the P.P.O. Ch Bank is hereby warn to be cautious while filing any affidavit before the undersigned otherwise it will attract action as per law. List on 24/03/2017 by strict compliance by the CH Bank."*
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> *(Emphasis by us)*

25. It would, therefore, appear that so far as the prayer made by the petitioner for quashing of the order of attachment dated 14th September, 2015 and consequential reliefs/discharge of the property no. H-26/2, Sainik Farm, Ward-Deoli, Delhi from the purview of the recovery proceedings in DRC No.40/2006 in the Debt Recovery Tribunal, Lucknow is concerned, the same stands satisfied. However, the petitioner has prayed for such further orders as this court may deem fit and proper in the facts and circumstances of the case.

26. It has been pointed out that the petitioner's property has remained attached from 14th September, 2015 to 7th March, 2017 despite the petitioner having brought all the correct and complete facts regarding his ownership and occupation of the property to the Bank in the month of September, 2015 itself. The petitioner's submission is that the action of the respondent - Bank and its omissions were completely illegal and that extreme prejudice has resulted to the petitioner by this wrongful act of attachment and that he has been compelled to contest the litigation before the Recovery Officer attached to the Debt Recovery Tribunal in Lucknow as well as by way of the present writ petition which was

dragged and delayed by the respondent - Bank despite the filing of the present writ petition as back as on 25th October, 2016.

27. Learned counsel for the petitioner points out that the action of the respondents appears to be deliberate and malafide in as much as they have diverted their entire energy into the attachment of the present petitioner's property and thereby avoided recovery of any amount from the principal debtor and the real defaulters. As a result of their *mala fide* and deliberate action, they have enabled the real debtors to go scot free, thereby causing a huge public loss.

28. The counter affidavit states that in compliance of the order dated 7th March, 2012 of the Recovery Officer, the Canara Bank has caused a publication to be effected in the Financial Express dated 19th March, 2017 wherein it is stated as follows :

> *" Canara Bank*
> *ARM Branch Vipin Khand, Gomti Nagar, Lucknow-226010*
>
> *PUBLIC NOTICE*
>
> *It is submitted that property Land & Building Plot/House No. H-26/2, Single Portion, Block-H, Plot No. 26/2, Sainik Farm, Ward-Deoli, Delhi owned by Shri V.K. Bhtnagar S/o Late Chander Bhan Bhatnagar R/o H-26/2, Lane W-10, Western Avenue, Sainik Farm, New Delhi-110062 was wrongly attached vide order dated 14.09.2016 passed by Recovery Officer II, DRT, Lucknow in DRC case No.40/06 Canara Bank Vs ELCEE Education Pvt. Ltd. & Others which has been released vide order dated 07.03.2017.*

The CH Bank i.e. Canara Bank ARMB, Lucknow regret for the aforesaid mistake which was not intentional."

29. This is little solace for somebody like the petitioner as noted above. Would this tiny publication in a corner of the Financial Express restore the petitioner's loss of reputation and compensate the petitioner's loss of reputation and the humiliation which he would have suffered by the pasting of the order of attachment, its proclamation and its announcement using a loudspeaker-public addressal mode?

30. Given the above narration of facts, we are satisfied that the action of the Bank touted as a "*mistake*", was not a genuine mistake but was a deliberate act which they have stood by even after they were put to notice that they had illegally attached the petitioner's property. The respondents did not withdraw the attachment even when the petitioner filed objection on 14th September, 2015 against the order of attachment before the Debt Recovery Tribunal, Lucknow. The petitioner attempted follow-up with the detailed reminder dated 29th September, 2015 to the Canara Bank as well as the Recovery Officer, Debt Recovery Tribunal which was of no avail. Even the filing of this writ petition on the 25th of October 2016 did not persuade the respondent bank to seek cancellation of the attachment which was informed by the petitioner as being completely wrongful. The attachment was withdrawn only on 7th of March 2017 by the Recovery Officer.

31. It is evident that if the petitioner had not agitated before the Recovery Officer, the respondents may have very well proceeded with the attachment and may have even sold the property pursuant to the recovery certificate.

32. The act of attachment of the property is a serious matter. This attachment was effected without taking the basic care and effecting a title search. The attachment remained in force from 14th September, 2015 to 7th March, 2017. Undoubtedly, the present case is a fit case where the petitioner deserves to be compensated for the wrongful act of the respondents and the harassment, insecurity and the trauma which has been faced by 68 year old petitioner for over one and a half years.

33. It would appear that the compensation amount at the rate of Rs.15,000/- per month of the attachment i.e., from 14th September, 2015 to 7th March, 2017 (seventeen and half months) being a total of Rs.2,62,500/- would be a reasonable compensation for the petitioner.

34. We may note that the petitioner has been compelled to contest the attachment in Lucknow and by filing the present writ petition in this court. The petitioner is entitled to litigation costs as well which are quantified at Rs.1,00,000/-.

35. The above amounts in terms of para nos.33 and 34 of the present judgment shall be paid by the respondents to the petitioner within a period of four weeks from today.

36. The above narration of facts manifests utmost negligence on the part of the officials of the bank in proceeding against the

property of the petitioner thereby permitting the debtors to go scot free. Financial loss would have enured to the bank. The present case is a fit case in which the bank undertakes an inquiry and fixes responsibility for the failure of its employees in ascertaining assets of the debtors as well as wrongly proceeding against the property of the petitioner without a careful due diligence and without conducting basic title research/inspection of property and municipal records.

37. A further direction is therefore, issued to the Chairman, Canara Bank to cause an inquiry to be conducted into the issues noted herein to fix the responsibility for the wrongful and negligent acts and omissions set out above and proceed in accordance with law against the person(s) found culpable.

This writ petition and pending application are hereby disposed of in the above terms.

ACTING CHIEF JUSTICE

ANIL KUMAR CHAWLA, J

JUNE 20, 2017
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