IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 4172 of 2018

==

M/s Mangalam Automobiles, N.H. 19 Bye Pass Road, Near Pani Tanki, Shakti Nagar, Chapra Saran through its Proprietor Rajendra Prasad Singh, S/o Late Shivpujan Singh, R/o Chandmari Road, Chapra, P.S.- Chapra Mufassil, District Saran.

.... Petitioner

Versus

1. UCO Bank through its Zonal Manager, Zonal office, Mauryalok Complex, Dakbunglow Road, Patna- 800001.
2. Shri S.A. Hoda, Chief Manager, UCO Bank, Zonal Office, Mauryalok Complex, Dakbunglow Road, Patna- 800001.
3. Senior Manager, UCO Bank, Chhapra Branch, Town- Chhapra, District- Saran.
4. The Recovery officer-II, Debts Recovery Tribunal, Karpuri Sadan, 2nd Floor, 'A' 'B' and 'F' Wings, Near Rajeev Nagar Thana, Ashiana Digha Road, Patna- 800025.
5. Kameshwar Prasad Singh, S/o Late Suraj Singh, R/o Mohalla-Masumganj, P.S. Bhagwanbazar, District- Saran.
6. Shashi Kumari, W/o Ramnandan Singh, R/o Mohalla-Masumganj, P.s. Bhagwanbazar, District Saran.
7. District Magistrate, Saran.
8. Superintendent of Police, Saran.
9. The State of Bihar through Principal Secretary, Finance Department, Government of Bihar, Patna.
10. Union of India through Secretary, Finance Department, Government of India, New Delhi.

.... Respondents

==

Appearance:

For the Petitioner : Mr. Jitendra Singh, Senior Advocate
Mr. Harsh Singh, Advocate
For the State : Mr. Raghwendra Kumar -SC22
For the Bank : Mr. Ranjeet Kumar Pandey, Advocate

==

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 11-04-2018

Heard learned Senior Counsel for the petitioner and learned counsel for the respondent-bank.

2. The present writ petition has been filed for the following reliefs –

(i) For issuance of an appropriate writ, order or direction in

the nature of writ of certiorari for quashing the auction sale of the mortgaged property of the petitioner held on 11.10.2017 by the respondent bank under the aegis of Respondent no. 4 for a sum of Rs. 56,75,000/- (Rupees fifty six lakhs seventy five thousand only) and consequential sale certificate issued in favour of respondent no. 5, an ex-employee of the respondent bank, who had processed the loan of the petitioner in the first place, as the same was conducted in a collusive and clandestine manner, by grossly undervaluing the mortgaged property, which as per the valuation report of the respondent bank itself was assessed at Rs. 64,98,160.00 (Rupees sixty four lakhs ninety eight thousand one hundred sixty only) in January, 2014.

(ii) For issuance of an appropriate writ, order or direction in the nature of certiorari for quashing and setting aside order dated 07.10.2017 passed in R.P. Case No. 553/2016 by the Recovery Officer, (Respondent No. 4) whereby and whereunder the petitioner's objection with regard to the undervaluation of the mortgaged property has been rejected on the ground of the objection being belated.

(iii) For an appropriate writ, order or direction in the nature of writ of mandamus commanding respondent no. 4 to consider afresh the objections with regard to undervaluation of the mortgaged property and short pricing of the reserve price for the purposes of auction.

(iv) For an appropriate writ, order or direction in the nature of writ of mandamus commanding the respondent authorities to conduct de novo auction of the mortgaged property in a fair and transparent manner after revising the reserve price of the mortgaged property in terms of its current *valuation, in order to enable genuine buyers to participate in the same so that the optimum value of the mortgaged property could be realized.*

(v) *For an appropriate ad-interim writ, order or direction in the nature of writ of mandamus restraining the respondent authorities from dispossessing the petitioner from the mortgaged property and handing over the possession of the same to respondent no. 5 and for maintaining status quo during the pendency of the writ application.*

(vi) *Alternatively, if respondent no. 5 has already been put in possession of the mortgaged property, then an appropriate ad-interim writ, order or directions for restoring status quo ante and putting the petitioner back in possession of the mortgaged property during the pendency of the writ application.*

(vii) *For an appropriate ad-interim writ, order or direction restraining the respondent authorities from taking any other coercive steps against the petitioner during the pendency of the writ application.*

(viii) *For any other relief/reliefs that the petitioner may be found entitled to in the facts and circumstances of the instant case.*

3. Mr. Jitendra Singh, learned Senior Counsel appearing on behalf of the petitioner, has advanced detailed submissions to assail the action of the respondent-bank in having auctioned the petitioner's mortgaged property at a value far below the price which could easily have been fetched, through collusive means in favour of the respondent no. 5 at a price of Rs. 56,75,000/- only. It is stated that in the e-auction,

the only participants were the respondent no. 5, an ex-employee of the respondent-Bank, and his daughter-in-law (respondent no. 6). It is submitted that under-valuation of the property is manifest from a bare perusal of the two valuation reports dated 09.01.2014 and 12.07.2017 by which the property has been valued by the bank's valuer at Rs. 64,98,160/- and Rs. 66,39,000/- respectively. Considerable stress has been laid on an agreement dated 12.09.2017 (Annexure-11) entered into between the petitioner and one Dharmnath Singh for sale of the subject property for a consideration of Rs. 1,25,00,000/-, out of which an amount of Rs. 10,00,000/- was received by the petitioner as an advance, to submit that this was the fair market price of the property at which a genuine buyer had come forward to purchase it. It is therefore, submitted that the respondent-bank has entered into a collusive deal with one of its ex-employees to sell the petitioner's property for a price only marginally above the reserve price of Rs. 56,00,000/-.

4. Learned counsel for the respondent-Bank, on the other hand, vehemently opposes the writ petition. At the very outset it is submitted that the petitioner has not approached this Court with clean hands and the writ petition is liable to be dismissed on this ground alone. It is pointed out that the petitioner had earlier approached this Court in CWJC No. 14976 of 2017 which was filed on 10.10.2017 (page 164). The writ petition was subsequently permitted to be withdrawn on 21.02.2018 (Annexure-1) with liberty to file a fresh writ petition. It is

stated that the agreement dated 12.09.2017 which is heavily relied upon by the petitioner at the time of hearing to support his contention of under-valuation of the property, clearly makes a reference to the said writ petition in CWJC No. 14796 of 2017 though the same was filed almost a month later on 10.10.2017 as stated above. It is therefore, clear that the agreement in question is a fabricated and backdated document which has been prepared later on only after the property was auction sold on 11.10.2017 and the sale confirmed and sale certificate issued to the auction purchaser on 08.12.2017.

5. Learned counsel for the respondent-bank further submits that the petitioner has also suppressed the material fact of the Bank's O.A. No. 216 of 2016 having been allowed by order dated 11.11.2016 passed by the Debts Recovery Tribunal (DRT), Patna (Annexure-B to the counter affidavit), *inter alia*, directing as follows –

> *"Defendants are debarred from transferring, alienating, encumbering or otherwise dealing with or disposing of the mortgaged or hypothecated or any other properties and assets without paying the aforesaid adjudicated dues to the applicant bank to secure the ends of justice.*
>
> *Let a certificate of recovery be drawn up forthwith and put up for signatures in terms of provisions contained in Section 19(22) of the Act to be issued, on the basis of the order of the Tribunal to the Recovery Officer. The Recovery Officer shall realise the amount as per the certificate in the manner and mode prescribed under*

Section 25 and 28 of the Act from *the defendants."*

Consequent upon the aforesaid order of the DRT, Patna, the Recovery Officer passed order dated 28.03.2017 in R.P. No. 553 of 2016 (Annexure-C to the counter affidavit), by which the immovable property enumerated therein were ordered to be attached. Thereafter by order dated 05.08.2017 (page 140) the Recovery Officer further ordered that the immovable mortgaged properties attached by order dated 28.03.2017 were to be sold by auction sale on 11.10.2017 at a reserve price of Rs. 56,00,000/- and according to details enumerated therein. It is submitted that the petitioner instead of availing of the statutory remedy against such order, rushed to this Court firstly in CWJC No. 14796 of 2017 and upon its withdrawal, with the present writ petition, all of which are calculated merely to somehow obstruct and delay the recovery process by the respondent-bank.

6. It is therefore, submitted that the petitioner has acted in a contumacious manner by entering into the aforesaid agreement dated 12.09.2017 despite the specific prohibition by the DRT against the petitioner transferring, alienating , encumbering and otherwise dealing with or disposing of the mortgaged property, more so, when the mortgaged property had already been directed to be attached. In any event the e-auction has been conducted in a fair and transparent manner and for which the services were required to be provided by an outside agency, M/s e-Procurement Technology Limited, as stated in

the public auction notice dated 07.09.2017 itself (Annexure-6). It is also pointed out from the public auction notice that the bidders were required to register with the service provider well in advance upon payment of earnest money deposit, but no interested buyer other than the purchaser and his daughter in law had come forward to do so, nor had anyone made any complaint in this regard. The petitioner also did not produce any interested buyer to obtain a better price for the property at the auction sale.

7. Learned counsel for the petitioner, in reply, has sought to justify the date of agreement stated as 12.09.2017 as an inadvertent error which was wholly *bona fide*. It is submitted that the agreement was in fact entered into only for the purpose of demonstrating that the property was worth at least double the price for which it has been sold, without there being any intention to in fact transfer or alienate the property pursuant to agreement of sale. This is evident from the fact that the petitioner himself had brought the agreement of sale on record in order to rely upon the same. It is therefore, submitted that there is no question of suppression of any material fact as there was never any intention to contravene the orders of the DRT in OA No. 216 of 2016 aforesaid. It is submitted that in any event, even if a shadow is cast upon the agreement of sale dated 12.09.2017, the same has no bearing upon the main relief sought in the writ petition, and these two facets of the matter must be segregated. Reliance is placed on the following

decisions of the Hon'ble Supreme Court –

(i) *AIR 1969 Supreme Court 7 (Jyotish Chandra Chaudhary v. The State of Bihar)*

(ii) *(2007) 6 SCC 120 (Arunima Baruah v. Union of India and others)*

(iii) *(2012) 11 SCC 511(Ram Kishun and others v. State of Uttar Pradesh and others)*

(iv) *(2016) 11 SCC 378 (Uddar Gagan Properties Limited v. Sant Singh and others)*

8. Having heard the parties and on consideration of the materials on record, this Court is in agreement with the submissions made on behalf of the respondent-bank.

9. The submission made on behalf of the petitioner that the date on the agreement of sale was inadvertently stated as 12.09.2017 is too far-fetched to be accepted, more so, when such date has been written in hand not only by the intending seller-petitioner, but also by the intending purchaser, Dharmnath Singh, as well as the two witnesses, Shashi Shekhar and Shobha Singh. The submission that the document had been executed on 12.10.2017 and the error in stating the date as 12.09.2017 was wholly bonafide, is also not acceptable in absence of any corroborating material. The non-judicial stamp paper on which the agreement is printed bears the date as 29.11.2015 and affords little support to the petitioner's contention. So also, the date of any cheque or Demand Draft through which the advance of Rs. 10,00,000/- might have been accepted, has also not been stated. These aspects cast

serious doubt about the genuineness and authenticity of the agreement of sale (Annexure-6). Moreover, it is a rather extraordinary coincidence that the Petitioner entered into the agreement for sale on 12.10.2017 as claimed by him, just a day after the auction was held on 11.10.2017, but the intending purchaser did not participate with his bid in the auction. This prima facie supports the stand of the Respondent Bank that the agreement of sale is not a document worthy of reliance.

10. As regards the failure of the petitioner to bring the order of the DRT dated 11.11.2016 (Annexure-B to the counter affidavit) to the notice of this Court by which he had been prohibited from dealing with the subject property, the petitioner has little justification to offer save and except that he had never intended to actually go forward with the sale. This Court is not impressed with this submission, more so, when a substantial amount of Rs. 10,00,000/- was admittedly taken by the petitioner in the form of advance.

11. The judgments of the Hon'ble Supreme Court relied upon by the petitioner do not also come to his aid. In those decisions by far, the suspect documents would not have had much impact on the main question for decision of the Court. In Arunima Baruah's case (supra), it was held as follows –

> *"12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a*

> *discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question."*

In the present case, the petitioner has placed considerable reliance on the agreement of sale dated 12.09.2017 to submit that the mortgaged property was grossly undervalued. It cannot therefore, be said that taking the agreement of sale into consideration would not influence the decision on the main question of valuation of the property involved in the present writ petition. In other words, the dirt cannot be said to have been removed or the hands become clean.

12. In the above circumstances, this Court is not inclined to interfere in the matter in its extraordinary writ jurisdiction. The petitioner is at liberty to avail of any statutory remedy as may be available to it in accordance with law.

13. It is made clear that this Court is not expressing its opinion on the merits of the rival submissions of the parties and the statutory forum, upon being approached, would decide the matter on its own

merits without being influenced by any of the observations herein. It would also have regard to the present proceeding being pursued by the petitioner while considering any issue relating to condonation of delay, if applicable.

14. The writ petition stands dismissed.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.04.2018
Transmission Date	NA