

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WP NO. 17830 of 2017

ORDER: (Per Hon'ble Sri. Justice V. Ramasubramanian)

Challenging an order of the Debts Recovery Appellate Tribunal (DRAT), a tenant in occupation of a secured asset has come up with the above writ petition.

Heard Smt. N.S. Lakshmi, learned counsel for the petitioner and Mr. A. Satyanarayana, learned Standing Counsel for the respondents-bank.

As observed by the DRAT, the case has a chequered history. A notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 was issued on 16.6.2009 and possession notice under Section 13 (4) was issued on 13.10.2009. A sale notice was issued fixing the auction on 17.11.2009.

After the issue of sale notice, the petitioner herein moved an appeal before the DRT in SA No. 152 of 2009 along with an application for stay. The said application was dismissed by the DRT. It was confirmed by this Court in WP No. 24896 of 2009, by order dated 17.11.2009. In the same order, the petitioner was given liberty to participate in the auction.

The liberty granted to the petitioner to participate in the auction, arose under certain peculiar circumstances. The petitioner herein claimed to have taken the secured asset on lease from the borrower

with effect from 1.5.1988 and had been running an educational institution. The petitioner further claimed that they entered into an agreement with the owner for the purchase of property on 25.1.1996. But a suit for specific performance filed by the petitioner was dismissed by the trial Court and a suit for eviction filed by the owner was allowed. It appears that the petitioner has filed two appeals, one arising out of the dismissal of their suit for specific performance and another arising out of the decree of eviction. It is in these circumstances that this Court granted liberty to the petitioner in WP No. 24896 of 2009 to participate in the auction.

Instead of pursuing their remedies in the appeal filed against the dismissal of the suit for specific performance, the petitioner could have participated in the auction pursuant to the liberty so granted to them. Participating in the auction and getting the property, would have almost granted a decree for ownership though not on the same terms on which they wanted to purchase the property under the agreement of sale. But the petitioner himself missed the chance. They did not participate.

Subsequently SA No. 152 of 2009 filed by the petitioner was dismissed by the Tribunal on 27.9.2012. As against the said dismissal the petitioner filed an appeal in Appeal No. 130 of 2013 before the DRAT. The DRAT, after finding the long and chequered history of litigation, dismissed the appeal. It is against the dismissal of the appeal that the petitioner is before this Court.

The contention of the learned counsel for the petitioner is that as against the decree of dismissal of the suit for specific performance, the petitioner filed an appeal and that valuable rights of the petitioner in the first appeal, cannot be defeated. But we are unable to accept the said submission. When the borrower has lost his rights of redemption, he cannot convey to the petitioner under the agreement of sale, the rights that he has lost. If a person claims to be an agreement holder in respect of secured asset, all that he gets is only a right to claim redemption. Once the right to claim redemption is lost for the owner, the agreement does not convey anything to the agreement holder. Therefore, the success that the petitioner hopes to get in the appeal arising out of the dismissal of the suit for specific performance may not take them anywhere.

The next contention of the learned counsel for the petitioner is that they have already deposited more than Rs.15.00 lakhs before the Recovery Officer and that therefore the bank could have accepted the balance payment and allowed them to continue.

But what is in question before this Court in this writ petition is the order of the DRAT arising out of the order of DRT. What was challenged in those proceedings was the sale notice fixing the auction on 17.11.2009. The auction has already taken place and sale certificate issued and registered. It is fundamental to point out that no one can confer a better title than what he himself has. Even if any decree is obtained against the original owner, for specific performance, it cannot now be executed by them.

Therefore the writ petition fails and it is dismissed.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. No costs.

JUSTICE V. RAMASUBRAMANIAN

Dt. 19.11.2018
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JUSTICE J. UMA DEVI

