***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

*** HON'BLE SRI JUSTICE N. BALAYOGI**

+A.S.No.1100 of 2017

Date: 19-06-2018

#**Between**:

M/s. IDBI Limited, represented by its Authorised Officer, Retail Assets Centre, Balaji Management Chambers, 9/29/6-1, 5C, 4th floor, Siripuram, Visakhapatnam

… Appellant

And

Pydi Ramesh Naidu, S/o P. Annam Naidu, Hindu, Aged 33 years, Employee, R/o Flat No.B-II, D.No.54-11-44/9, Nightingale's Nestle Apartments, Near Dr. V.S. Krishna Govt. College, Visakhapatnam and another

… Respondents

! Counsel for the Appellant : Mr. Chitturu Srinivas

^ Counsel for Respondents 1 & 2: Mr. N. Ashwani Kumar

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> HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
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A.S.No.1100 of 2017

JUDGMENT: *(per V. Ramasubramanian,J)*

Aggrieved by a decree for refund of the forfeited amount to the auction purchaser, the Bank has come up with the above regular appeal.

2. Heard Mr. Chitturu Srinivas, learned counsel for the appellant and Mr. N. Ashwani Kumar, learned counsel for the respondents.

3. By an advertisement published in newspapers, in November/December, 2012, the appellant bank invited offers for the purchase of a property that was mortgaged to the bank by a borrower. The respondents submitted their bids along with the Earnest Money Deposit.

4. An auction was held on 19-12-2012 and the bid offered by the respondents/plaintiffs became the highest bid. The respondents deposited 25% of the bid amount on the very same day namely 19-12-2012. As per the terms and conditions of the auction, the respondents were required to pay the balance 75% of the bid amount, within 15 days. The last date for payment of the balance sale consideration expired on 03-01-2013.

5. However, on 19-12-2012 itself, the day on which the auction was conducted, the Debts Recovery Tribunal, Visakhapatnam,

granted an interim order at 2.30 P.M., in an appeal S.A.No.336 of 2012 filed by the borrower. Therefore, the respondents/plaintiffs were prevented from getting a confirmation of sale and making the deposit of 75% of the balance bid amount.

6. It appears that the interim order of stay granted by the Tribunal was conditional, upon the borrower depositing 20% of the dues, within 15 days. But the borrower failed to make the deposit and hence, the bank appears to have requested the respondents/ plaintiffs to make payment.

7. Subsequently, the appeal filed by the borrower under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in S.A.No.336 of 2012 itself was dismissed by the Debts Recovery Tribunal on 30-01-2013. This fact was also intimated by the bank to the respondents/plaintiffs, whoever the highest bidders, by a letter dated 04-02-2013.

8. In response, the respondents/plaintiffs requested the bank to wait till the expiry of the time limit for the borrower to file an appeal to the Debts Recovery Appellate Tribunal (DRAT). The period of limitation for the borrower to file an appeal to the DRAT was to expire on 04-03-2013. Therefore, the respondents/highest bidders made a request to the bank to wait till 04-03-2013.

9. However, the request was turned down by the bank and the bank directed the respondents herein to make payment of the balance amount on or before 21-02-2013.

10. The respondents again made a request on 19-02-2013, not only to wait till the time limit for filing the appeal for the borrower expired, but also to clarify certain discrepancies in the title. Therefore, the bank proceeded to issue a letter dated 25-02-2013 terminating the sale and ordering the forfeiture of the amount already deposited by the respondents/plaintiffs.

11. Challenging the forfeiture and seeking refund of the forfeited amount together with interest, the respondents filed a suit and the same was decreed, forcing the bank to come up with the above regular appeal.

12. Before the trial Court, the bank raised two defences namely (a) that in view of Section 34 of the SARFAESI Act, the Civil Court was barred from entertaining any suit of this nature and (b) that at any rate, the forfeiture was in terms of the Rules in the second Schedule to the Income Tax Act, 1961 and in tune with the terms and conditions of the auction.

13. The Court below framed the following five issues for consideration.

(1) There is no concluded agreement between the plaintiffs and defendants since there are no enforceable terms and conditions of the sale by auction of the plaint schedule property?

(2) Whether there is no cause of action for the plaintiffs to file the present suit?

(3) Whether the court has no jurisdiction to entertain this suit?

(4) Whether the plaintiffs are entitled for declaration and consequential directions as prayed for?

(5) To what relief?

14. The 2nd respondent/2nd plaintiff examined himself as PW.1 and filed 18 documents as exhibits. The authorized signatory of the bank examined himself as DW.1 and filed 3 documents as exhibits.

15. On the basis of oral and documentary evidence, the Court below came to the conclusion that the bank hurriedly forfeited the amount of deposit and that there was no fault on the part of the respondents.

16. Assailing the judgment and decree of the Court below, it is contended by Mr. Srinivas, learned counsel for the appellant that in view of the latest decision of the Supreme Court in ***Agarwal Tracom Private Limited v. Punjab National Bank***[1], the respondents ought to have gone only before the Debts Recovery Tribunal under Section 17 of the SARFAESI Act and that in any case, the Second Schedule to the Income Tax Rules permitted forfeiture in cases of this nature.

17. In response, it is contended by Mr. N. Ashwani Kumar, learned counsel for the respondents that the bar of jurisdiction of Civil Courts under Section 34 of the SARFAESI Act is not automatic and absolute and that in so far as an auction purchaser is concerned, he may not be entitled to go before the Tribunal. It is also his contention on merits that when the borrower filed an appeal under Section 17 of the SARFAESI Act and obtained a stay on 19-12-2012, it was but fair on the part of all the parties to wait for the borrower to avail the remedy of statutory appeal under Section 18 of the SARFAESI Act to the Debts Recovery Appellate Tribunal. It is

[1] (2018) 1 SCC 626

his contention that a request to the bank to wait for the expiry of the period of limitation should have been treated with an element of fairness by the bank.

18. We have carefully considered the above submissions.

19. Two points arise for determination in this appeal. They are:

(1) Whether the jurisdiction of the Civil Court was barred?

(2) Whether the forfeiture of the amount already deposited by the respondents, was fair and proper?

Point No.1:

20. In ***Agarwal Tracom Private Limited v. Punjab National Bank,*** the question that arose for consideration before the Supreme Court was whether an auction purchaser is entitled to challenge the forfeiture of the deposit before the Debts Recovery Tribunal in an appeal under Section 17 of the Act or not. Paragraph 17 of the decision of the Supreme Court, where the Supreme Court formulated the question reads as follows:

> "The short question that arises for consideration in this appeal is whether the High Court was justified in holding that the remedy of the appellant (auction purchaser) lies in challenging the action of the secured creditor (PNB) in forfeiting the deposit by filing an application under Section 17 of the SARFAESI Act before the DRT or the remedy of the auction purchaser is in filing the writ petition under Articles 226/227 of the Constitution of India to examine the legality of such action?"

21. Eventually, the Supreme Court upheld in paragraph 33, the judgment of the High Court in rejecting a writ petition filed by the auction purchaser challenging the forfeiture of the amounts paid by

him. Paragraphs 33 and 34 of the judgment of the Supreme Court read as follows:

> *"33. In the light of foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of SARFAESI Act before the concerned Tribunal to challenge the action of the PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment of the High Court.*
>
> *34. The appellant is, accordingly, granted liberty to file an application before the concerned Tribunal (DRT) under Section 17(1) of the SARFAESI Act, which has jurisdiction to entertain such application within 45 days from the date of this order. In case, if the appellant files any such application, the Tribunal shall decide the same on its merits in accordance with law uninfluenced by any of the observations made by this Court and the High Court in the impugned judgment."*

22. For coming to the conclusion that the auction purchaser/ highest bidder will have the right of appeal under Section 17 of the SARFAESI Act to the Debts Recovery Tribunal, the Supreme Court interpreted the words "***any person***" appearing in Section 17 (1) of the Act, to include even the persons, who participated in the auction.

23. Though the Supreme Court in ***Agarwal Tracom Private Limited*** was not concerned with the question of jurisdiction of the Civil Court vis-à-vis the availability of a remedy under Section 17 of the Act, the Court nevertheless interpreted the words "***any person***" appearing in Section 17 (1) to include the auction purchaser or the highest bidder. Once such an interpretation is given and the remedy under Section 17 of the Act is held to be available to an auction purchaser, then Section 34 of the SARFAESI Act would automatically come into play.

24. We are conscious of certain other rulings of the Supreme Court, where it is clearly held that the jurisdiction of the Civil Court is not completely ousted. But in so far as the case on hand is

concerned, the principles laid down in ***Agarwal Tracom Private Limited*** appear to apply in all force. Therefore, the Civil Court did not have jurisdiction, as rightly contended by the learned counsel for the appellant. Hence, the first point arising for determination is answered in favour of the appellant.

Point No.2:

25. The second point revolves around the merits of the case. If the Civil Court is held not to have jurisdiction to entertain the suit, the question of Civil Court going into the merits of the case would not arise. Therefore, the findings of the Civil Court on merits have to be set aside, if the Civil Court is held not to have jurisdiction. This is to ensure that the person aggrieved is able to move the forum having jurisdiction to address his grievance. Therefore, the findings on merits rendered by the trial Court are set aside, not on merits, but on the ground that they were rendered by a Court, which did not have jurisdiction.

Conclusion:

26. In the light of the above, the appeal is allowed, the judgment and decree of the trial Court are set aside and the suit filed by the respondents is dismissed on the sole ground that the Civil Court did not have jurisdiction, in the light of the law laid down by the Supreme Court in ***Agarwal Tracom Private Limited v. Punjab National Bank.*** It is now open to the respondents to move the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. The entire period during which the respondents were before the Civil

Court (trial Court and this Court) will stand excluded in terms of Section 14 of the Limitation Act, 1963. If an appeal under Section 17 of the SARFAESI Act is filed by the respondents, the Debts Recovery Tribunal shall consider the same without being influenced by the findings recorded by the trial Court, as we have set aside those findings also. In the light of the fact that the appellant was before the Civil Court from 29-04-2013 up to the date of the issue of the certified copies of the judgment and decree in this appeal and in the light of the fact that this period is to be excluded under Section 14 of the Limitation Act, any small delay that may have arisen with reference to the period prescribed under Section 17 of the SARFAESI Act, may be considered leniently by the Debts Recovery Tribunal for the purpose of looking into the grievance of the respondents on merits.

In the peculiar facts and circumstances, the parties are directed to bear their own respective costs throughout.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

Date: 18-06-2018

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