IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.570 of 2019
In
Civil Writ Jurisdiction Case No.25106 of 2018

Ashok Kumar Raut, S/o Late Pulkit Raut, Proprietor of M/s Modern Vaishnavi Auto Mobiles, at Mangrauni, near Gumti no. 13, Anchal Raj Nagar, P.O. Mangrauni, P.S. Raj Nagar, District- Madhubani. ... ... Appellant.

Versus

1. The State of Bihar through the District Magistrate, Madhubani, Collectorate, District- Madhubani.
2. The Authorised Officer Central Bank of India, Regional Office, Alalpatti, District- Darbhanga.
3. The Branch Manager Central Bank of India, Ganga Sagar Chowk, Bus Stand Road (Branch Code-53), District- Madhubani-847211.
4. Sri Aman Kunal, S/o Late Ashok Kumar Pangiyar Mohalla- Maharajganj, Ward No. 13, District- Madhubani-847211.

... ... Respondents.

Appearance :

For the Appellant	:	Mr. N. K. Agrawal, Senior Advocate.
		Mr. Santosh Kumar Singh, Advocate.
		Ms. Preety Kunwar, Advocate.
For the State	:	Mr. Ajay Kumar Rastogi, AAG-X.
		Ms. Shilpi Keshari, AC to AAG-X.
For the Central Bank of India	:	Mr. Ajay Kumar Sinha, Advocate.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 28-11-2019

Heard Mr. N. K. Agrawal, learned senior advocate for the appellant and Mr. Ajay Kumar Sinha, learned advocate for the respondent-Central Bank of India (for short 'the Bank') and Ms. Shilpi Keshari, learned Assistant Counsel to learned Additional Advocate General-X, for the State.

2. The present intra court appeal under Clause-10 of the Patna High Court Rules, 1916 has been preferred by the appellant against the order dated 30.04.2019 passed in C.W.J.C. No.25106 of 2018 by the learned Single Judge, whereby the writ petition seeking quashing of the order dated 14.12.2018 passed by the Debt Recovery Appellate Tribunal, Allahabad in Appeal No.156 of 2016 has been dismissed.

3. Mr. N. K. Agrawal, learned senior advocate appearing for the appellant submitted that the learned Single Judge failed to appreciate that the appellant never intended to back out from the commitment made before the learned Single Judge and due to his inability to arrange for the huge amount required for liquidating the loan within time fixed, the appellant had no option but to seek some more indulgence to deposit the closure amount with the Bank. He contended that, if an opportunity is given, the appellant would deposit Rs.25,00,000.00 (Rupees Twenty Five Lakhs) within a week. He has further contended that the learned Single Judge has failed to appreciate that the Bank has auction sold the property of the appellant without following the procedure as laid down under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). He has also contended that the learned Single Judge failed to appreciate that the valuation report was not proper.

4. Per contra, Mr. Ajay Kumar Sinha, learned advocate appearing for the respondent Bank contended that the appeal lacks merit. All the points available to the appellant were duly considered by the Debt Recovery Appellate Tribunal, Allahabad, which has rightly rejected his appeal. The learned Single Judge also finding no merit in the writ petition has rightly dismissed the same. He has further contended that the intention of the appellant to delay the matter has been noticed by the learned Single Judge in his order, which alone would be sufficient to show that the appellant has no intention to deposit the closure amount.

5. We have heard the learned counsel for the parties and carefully perused the record. It would be evident from the record that the appellant had taken loan from the respondent Bank and when the account was declared Non Performing Asset (for short 'NPA') action was taken by the Bank under SARFAESI Act against the security interest available with the Bank and, accordingly, after taking steps under the provisions of the SARFAESI Act and Security Interest Enforcement Rules, an e-auction notice dated 20.01.2017 was published in newspapers. In the auction sale on 23.02.2017, the property was sold to the highest bidder Mr. Aman Kunal (respondent no.4).

6. The appellant challenged the auction sale of the

Bank impleading the auction purchaser also as party by fling an appeal under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal, Patna Bench, Patna (for short DRT, Patna') in S.A. No.27 of 2017.

7. The aforesaid S.A. No.27 of 2017 was dismissed vide order dated 30.03.2017 holding that the Bank has followed the mandatory procedures as laid down under the SARFAESI Act and while taking possession of the property and its sale through e-auction.

8. Against the aforestated order of dismissal dated 30.03.2017, the appellant filed a writ petition before this Court vide C.W.J.C. No.6450 of 2018 making the following prayers:-

> *" (i) For issuance of the writ/writs for set aside the order dated 21.01.2017, published in daily Hindi Newspaper "Dainik Jagran" as well as the letter "छेका/ बसूली" 2016-17/397 dated 21.01.2017 whereby and whereunder the notice has been published/served with regard to auction of the property of the petitioner on 23.02.2017.*
> *(ii) For committing the respondents as to why without fulfilling the Rule & Regulation of Bank regarding auction of mortgaged property, the notice has been published/served to the petitioner.*
> *(iii) For commanding the respondents without any locus standee, they are ready to auction the properties of the petitioner."*

9. The appellant filed an interlocutory application in C.W.J.C. No.6450 of 2018 for directing the respondent nos.1 and 3 for not taking any coercive action against him during pendency of the writ petition.

10. However, the writ petition, bearing C.W.J.C. No.6450 of 2018, was dismissed as withdrawn vide order dated 21.06.2017.

11. Though, no liberty was granted to the appellant to file appeal under Section 18 of the SARFAESI Act, when C.W.J.C. No.6450 of 2018 was dismissed, the appellant challenged the order dated 30.03.2017 passed by the DRT, Patna by way of filing an appeal before the Debt Recovery Appellate Tribunal, Allahabad vide Appeal No.156 of 2017.

12. The said appeal was also dismissed vide order dated 14.12.2018 holding therein that it cannot be said that the Bank had sold any agriculture property and the appellant had failed to prove that the property was not sold at market price.

13. Being aggrieved by the aforesaid order dated 14.12.2018 passed by the Debt Recovery Appellate Tribunal, Allahabad in Appeal No.156 of 2017, the appellant filed a writ petition before this Court vide C.W.J.C. No.25106 of 2018. In the writ petition, vide order dated 30.01.2019, notice was issued to the respondent no.4 and in the meantime an order of status quo was passed. On 08.03.2019 when the matter was taken up before the learned Single Judge, the counsel for the appellant submitted that the appellant is ready and willing to deposit the entire loan amount with the Bank and the appellant would also be willing to pay some penal amount, which may be allowed to the auction purchaser, in case the Court finds that the auction purchaser to be refunded, in order to save the property in favour of the appellant.

14. On such submission made by th appellant, the learned Single Judge directed the learned counsel for the Bank to provide complete account showing the closure with the cost etc. as on 31st of March, 2019.

15. Thereafter, on 28.03.2019 when the matter was taken up before the learned Single Judge, learned counsel representing the Bank handed over a calculation chart showing the closure amount to the tune of Rs.86,42,160.05 (Rupees Eighty Six Lakhs Forty Two Thousand One Hundred Sixty and Five Paise) only as on 28.03.2019.

16. However, the case was adjourned to 15th of April, 2019. On 15th of April, 2019 once again, the case was adjourned to 22nd of April, 2019. On 22nd of April, 2019, the counsel for the appellant sought further adjournment to take steps towards payment to be made by the appellant. Thus, the matter was adjourned to 29th of April, 2019. When the writ petition was, ultimately, taken up on 30th of April, 2019, the counsel for the appellant sought three months' time to make payment of the closure amount.

17. Having noticed the conduct of the appellant, the learned Single Judge dismissed the writ petition with cost of Rs.10,000.00 (Rupees Ten Thousand) only against the appellant. The operative part of the order passed by the learned Single Judge reads as under:

> *Today, while the court was expecting that the petitioner would abide by his submissions made before this Court on 15.04.2019 as also on the subsequent dates by making payment of the entire closure amount and other amount to save the property but what has been submitted before this Court on behalf of the petitioner would lead to this Court to believe that the indulgence obtained by the petitioner giving a belief that the petitioner is seriously looking to liquidate the outstanding dues to save his property was a mere pretext.*
>
> *Learned counsel for the petitioner has come out with a new submission stating that now the petitioner be granted three months time to make payment of the closure amount. Till date the Court was given to understand that the petitioner is ready and willing to deposit the entire outstanding amount with some panel amount which may be allowed to the auction purchaser.*
>
> *This willingness of the petitioner was, thus, being recorded by this Court in its previous orders. It appears to this Court now that the petitioner has only wasted the time of the Court by seeking adjournment from time to time in the name of doing some exercise to liquidate the loan amount.*
>
> *On merit learned counsel for the petitioner has only submission that there was some defect in the valuation of the property. This Court finds from the record that the valuation report which has been brought on record by the petitioner with the writ application is dated 06.03.2017 which is post sale valuation report. The e-auction sale had taken place on 23.02.2017. The valuation report was never objected on behalf of the petitioner. As regards the valuation report, the only plea which was taken in the application filed vide S.A. No. 27 of 2017 before the Debts Recovery Tribunal at Patna (hereinafter referred to as 'the Tribunal') that the Bank has fixed the reserve price of the property for Rs. 71.63 lacs which is half of the valuation of the property. So far as valuation report is concerned, the pleading available at*

Annexure '11' to the writ application, at least, nowhere shows that the petitioner had ever challenged the valuation report on receipt of sale notice, by way of adequate pleading. The Tribunal has dealt with the submissions of learned counsel representing the petitioner before the Tribunal by taking note of the fact that the applicant before the Tribunal had admitted that the e-Auction sale notice has been received by the applicant but at that point of time the applicant had not raised any objection before the Bank regarding low valuation and further that the applicant had not filed any documentary proof by producing the valuation of the adjacent properties. The Tribunal, therefore, has refused to accept the oral submissions of learned counsel for the petitioner disputing the low valuation of the property.

When the order of the Tribunal was challenged before the appellate authority in Appeal S.R. No. 156 of 2017 again the appellate authority had considered the submissions in this regard in Paragraph 14 of its judgment which reads as under :-

> *"14. So far as the valuation of the property is concerned, there is no dispute on the settled proposition of law as laid down by the Hon'ble Supreme Court in Ram Kishun Vs. State of Uttar Pradesh (Supra) and I Gajraj Jain Vs. State of Bihar (Supra) and the Hon'ble Orissa High Court in Swastik Agency V. State Bank of India (Supra) that the Bank is required to fetch the highest value of the property strictly following the procedure, but in the instant case, there appears to be no procedural flaw in selling the property. The Bank obtained the valuation report from the authorized valuer. The appellant has not raised any objection on the reserve price after receipt of the sale notice and even no objection was raised at the time of sale, so the story of less reserve price seems to be prepared after thought. Secondly, the valuation as submitted by the appellant was prepared after the sale of the property and no proof has been placed on record that any other property adjacent to the property in question or in its vicinity has been sold at higher rates in the near past. Thus, the appellant has failed to prove that the property was not sold at proper market rate."*

It is a matter of record that the sale certificate has already been issued in favour of the respondent no. 4 who has deposited the entire consideration amount and has acquired a right to get executed and registered a sale deed. Neither the contention of the learned counsel for the *petitioner on merit nor the conduct of the petitioner shows that the petitioner is contesting this writ application with any bona-fide intention. The whole attempt is to delay the finality of the transaction which had taken place in the month of February, 2017.*

This writ application is, thus, dismissed with a cost of Rs. 10,000/- against the petitioner which will be realized by the Bank.

18. Having noticed the aforesaid admitted facts, we are of the view that apparently the entire steps taken by the appellant in proceeding with the matter were to somehow or the other delay the execution of the sale deed in favour of the auction purchaser. The account of the appellant was declared NPA as per the Reserve Bank of India norms and thereafter action was taken against him under the SARFAESI Act. There was no illegality in fixing auction sale of the security interest available with the Bank. The property was sold to the highest bidder. The challenge to the auction sale by the appellant failed before the DRT, Patna. The order passed by the DRT, Patna was challenged by the appellant by way of filing a writ petition. The said writ petition was dismissed as withdrawn after advancing some arguments by the learned counsel for the appellant. Admittedly, no permission was sought from the Court while withdrawing the writ petition for challenging the order passed by the DRT, Patna before the Debt Recovery Appellate Tribunal, Allahabad.

19. Though no liberty was given to the appellant to file an appeal before the Appellate Tribunal, he filed an appeal under

Section 18 of the SARFAESI Act before the Debt Recovery Appellate Tribunal, Allahabad, which was dismissed holding that there was no illegality in the sale of the property in question. The Appellate Tribunal also held that the appellant failed to prove that the property was not sold at the market price.

20. Though, the appellant had no case, the learned single Judge expecting that the appellant would abide by his submissions made before the Court by making payment of the entire closure amount in order to liquidate the outstanding dues to save his property granted him several adjournments, but he failed to avail of the opportunity and on 30.04.2019, he sought for an adjournment for three months time to make payment of the closure amount. Since the learned single Judge found that the appellant had no intention to liquidate the outstanding dues and he was seeking adjournment on false pretext, he has rightly dismissed the writ petition with cost.

21. Admittedly, the sale certificate was issued in favour of the respondent no.4, who has deposited the entire consideration amount. Thus, he has a vested right to get executed and registered a sale deed.

22. Keeping in mind the aforesaid aspects as also in the absence of any patent illegality in the order passed by the learned single Judge, we see no reason to interfere with the same.

The appeal, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
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