NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 449 of 2019

{Arising out of order dated 01.07.2019 passed by the learned Single Judge in Writ Petition (C) No. 1973 of 2019}

- Arun Agrawal, S/o Late Devkinandan Agrawal, aged about 43 years, R/o Village & Tehsil Manendragarh, District Koriya (C.G.)

---- Appellant

Versus

1. Chhattisgargh State Revenue Board, Through the Registrar, Bilaspur, District Bilaspur (C.G.)
2. The Collector, Koriya, District Koriya (C.G.)
3. Kaushal Arora, S/o Shri Karamchand Arora, aged about 43 years, R/o Village & Tehsil Manendragarh, District Koriya (C.G.)
4. Indian Overseas Bank, Old Bus Stand, Telipara, Bilaspur, District Bilaspur (C.G.)

---- Respondents

For Appellant	:	Shri Neeraj Choubey, Advocate.
For Respondents No. 1&2	:	Shri Amit Buxy, Panel Lawyer.
For Respondent	:	Shri Shaleen Singh Bhaghel, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

11.11.2019

1. Heard on I.A. No. 1 of 2019, which is an application for condonation of delay of 08 days in filing the writ appeal. For the reasons stated in the application, it is allowed and the delay in filing of appeal is condoned.

2. Also heard on admission.

3. The Appellant aggrieved by the order passed by the learned Single Judge declining to interfere with the order passed by the Board of Revenue, wherein

the Board of Revenue has set aside the order passed by the Additional Collector, wherein the order of mutation passed by the Tahsildar was set aside.

4. Declining to interfere with the order of the Board of Revenue by the learned Single Judge in writ petition made the appellant to file this appeal.

5. Brief facts in nutshell are that the Appellant obtained loan from Respondent No.4- Bank and against it he mortgage the property subject matter of the appeal. The description of the property is land bearing Kh. No.157/11, Kh. No.153/6 measuring 0.070 and 0.142 hectare situated at Purani Basti Road, Manendragarh, District – Korea.

6. That when the Appellant failed to make re-payment of the loan amount, Respondent No.4-Bank initiated proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'the SARFAESI Act') and the property mortgaged with Bank were subjected to sale under Section 13(2) of the SARFAESI Act after following the due process of law. The property was sold in favour of Respondent No.3 for a total consideration of Rs. 41 lakhs and the said Bank issued Sale Certificate to this effect.

7. After getting Sale Certificate executed in favour of Respondent No.3, he came into possession of the subject land. He, thereafter, filed an application for mutation of his name in revenue records, which was allowed by the Tahsildar in a Case No.44/A-6/2011-12 on 12.03.2012. The order of Tahsildar was challenged by the Appellant before Sub Divisional Officer (R), who taking into consideration provisions of Section 165(6-a) of Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code of 1959') referred the case to the Court of Additional Collector.

8. The Additional Collector considering the provisions of Section 165(6-a) of the Code of 1959 held that the transfer of subject land is in violation of the

provisions of Section 165(6-a) of the Code of 1959 and set aside the order of Tahsildar and further directed to restore the possession of land in question to the Appellant. Dissatisfied with the order of Additional Collector, Respondent No.3 preferred appeal before the Board of Revenue which was allowed. Challenging the order of Board of Revenue, a writ petition was filed in the High Court and learned Single Judge dismissed the writ petition taking into consideration provisions of Section 34 of the SARFAESI Act as also the law laid down by the Hon'ble Supreme Court in the matter of ***Mardia Chemicals Ltd. Vs. Union of India, (2004) 4 SCC 311*** and ***UCO Bank and another Vs. Dipak Debbarma and Others, (2017) 2 SCC 585***.

9. Learned counsel for the Appellant submits that the Bank committed fraud by transferring the entire property even which has not been mortgaged, the provision of Section 165(6-a) of the Code 1959 is mandatory and non-compliance of the same will made the transfer of property void. He submits that the Collector has rightly taken note of the provision of Section 165(6-a) of the Code 1959, but the Board of Revenue and the learned Single Judge erred in holding that the provisions of Section 34 of the SARFAESI Act is having overriding effect on provision of Section 165(6-a) of the Code 1959, which is not sustainable and the impugned order is liable to be interdicted.

10. Per contra, learned counsel for Respondent No.3 supported the impugned order.

11. We have heard learned counsel for parties.

12. Perusal of the writ petition would show that the Appellant has not taken any ground of fraud as argued by learned counsel for the Appellant, but the only ground taken was the pre-condition of permission before transfer under Section 165(6-a) of the Code 1959 and further that the mortgaged property cannot be transferred through Sale Certificate.

13. Object of the SARFAESI Act is to speedup the recovery of defaulting loans and to bring down mounting levels of non performing assest of Banks and Financial Institutions. To enable Banks and Financial Institutions to realize long term assets, manage problem of liquidity, assets liability mismatches and improve recovery by exercising powers take possession of securities, sell them and reduce non performing assets by adopting measures for recovery of reconstruction.

14. It is to achieve the object provision of SARFAESI Act has been given overriding effect over other laws by virtue of Section 35 of the SARFAESI Act.

15. Learned Single Judge taken note of the verdicts of Hon'ble Supreme Court on the issue while passing of the impugned order which reads as under:

> "12. The Supreme Court in the matter of **<u>Mardia Chemicals Ltd. v. Union of India</u>** while upholding the constitutional validity of the SARFAESI Act has made certain pertinent observations which state as under: -
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> > "36. … One of the measures recommended in the circumstances was to vest the financial institutions through special statutes, the power of sale of the assets without intervention of the court and for reconstruction of assets. It is thus to be seen that the question of nonrecoverable or delayed recovery of debts advanced by the banks or financial institutions has been attracting attention and the matter was considered in depth by the Committees specially constituted consisting of the experts in the field. In the prevalent situation where the amounts of dues are huge and hope of early recovery is less, it cannot be said that a more effective legislation for the purpose was uncalled for or that it could not be resorted to. It is again to be noted that after the report of the Narasimham Committee, yet another Committee was constituted headed by Mr. Andhyarujina for bringing about the needed steps within the legal framework. We are therefore, unable to find much substance in the submission made on behalf of the petitioners that while the Recovery of Debts Due to Banks and Financial Institutions Act was in operation it was uncalled for to have yet another legislation for the recovery of the

> mounting dues. Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have yet speedier legal method to recover the dues, such a policy decision cannot be faulted with nor is it a matter to be gone into by the courts to test the legitimacy of such a measure relating to financial policy."

13. In a recent pronouncement of the Supreme Court in the matter of **UCO Bank and another v. Dipak Debbarma and others**, the UCO Bank sold the property belonging to the Scheduled Tribes of the State of Tripura by sale notification dated 26-6-2012 under the provisions of the SARFAESI Act which was interfered with by the High Court in view of Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960 which contains legislative bar on sale of mortgaged property by bank to any person who is not member of Scheduled Tribe. Their Lordships of the Supreme Court considered the question, "whether the 2002 Act insofar as it provides for sale of immovable properties offered as security for a loan advanced, without any restriction as to the class or category of buyers, would prevail notwithstanding the restrictive provision in this regard under Section 187 of the Tripura Act, 1960" and came to a specific conclusion that the SARFAESI Act will prevail over the provisions contained in Section 187 of the Tripura Land Revenue and Land Reforms Act, 1960. Their Lordships observed pertinently as under:-

> "15. In the present case the conflict between the Central and the State Act is on account of an apparent overstepping by the provisions of the State Act dealing with land reform into an area of banking covered by the Central Act. The test, therefore, would be to find out as to which is the dominant legislation having regard the area of encroachment.
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> 16. The provisions of the 2002 Act enable the bank to take possession of any property where a security interest has been created in its favour. Specifically, Section 13 of the 2002 Act enables the bank to take possession of and sell such property to any person to realise its dues. The purchaser of such property acquires a clear title to the property sold, subject to compliance with the requirements prescribed.
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> 17. Section 187 of the Tripura Act, 1960, on the other hand, prohibits the bank from transferring the property which has been mortgaged by a member of a Scheduled Tribe to any person other than a member of a Scheduled Tribe. This is a clear restriction on what is permitted by the 2002 Act for the realisation of amounts due to the bank.

> 18. The 2002 Act is relatable to the entry of banking which is included in List I of the Seventh Schedule. Sale of mortgaged property by a bank is an inseparable and integral part of the business of banking. The object of the State Act, as already noted, is an attempt to consolidate the land revenue law in the State and also to provide measures of agrarian reforms. The field of encroachment made by the State legislature is in the area of banking. So long there did not exist any parallel Central Act dealing with sale of secured assets and referable to Entry 45 of List I, the State Act, including Section 187, operated validly. However, the moment Parliament stepped in by enacting such a law traceable to Entry 45 and dealing exclusively with activities relating to sale of secured assets, the State law, to the extent that it is inconsistent with the 2002 Act, must give way. The dominant legislation being the Parliamentary legislation, the provisions of the Tripura Act, 1960, pro tanto, (Section 187) would be invalid. It is the provisions of the 2002 Act, which do not contain any embargo on the category of persons to whom mortgaged property can be sold by the bank for realisation of its dues that will prevail over the provisions contained in Section 187 of the Tripura Act, 1960."

14. Reverting to the facts of the present case in light of the principle of law laid down by their Lordships of the Supreme Court in **UCO Bank** (supra), it is quite vivid that in the instant case, the State Revenue Law namely, the Chhattisgarh Land Revenue Code, 1959 in shape of Section 165(6-a) clearly prohibits transfer of nonagricultural land by Bhumiswami not belonging to Scheduled Tribe in a Scheduled Area to a person not belonging to aboriginal tribe without the permission of the Collector, but in view of the provision contained in Section 35 of the SARFAESI Act which gives overriding effect to the provisions contained in any other law for the time being in force i.e. including Section 165(6-a) of the Code by virtue of which under Section 13(12) of the SARFAESI Act read with Rules 8 and 9 of the Rules of 2002, the secured asset has been subject matter of sale in favour of respondent No.3 herein, that can be competently and validly sold by the bank in favour of respondent No.3 and thus, the provisions of the SARFAESI Act by virtue of Section 35 will prevail over the provisions contained in Section 165(6-a) of the Code."

16. Learned counsel for the petitioner could not able to point out as to how the finding recorded by learned Single Judge is erroneous infact he mainly raised a

ground of fraud. The ground of fraud was not raised in the writ petition and therefore, the Appellant cannot be permitted to raise this ground for the first time in appeal.

17. In view of the above discussion and the law laid down by Hon'ble Supreme Court, we do not find any error or infirmity in the order impugned passed by learned Single Judge. The appeal being devoid of any substance is liable to be and is hereby dismissed.

18. However, the Appellant will be at liberty to take recourse of any proceeding available to him under law.

Sd/- Sd/-

(P. R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

Brijmohan