

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

C.O. No.592 of 2021

**Sri Rudra Bhattacharya and another
Vs.
The Authorised Officer, Bank of India and others**

Petitioner no.1-in-person	:	Mr. Rudra Bhattacharya
For the opposite parties	:	Mr. Ramesh Chandra Prusti, Mr. Sanjib Das
Hearing concluded on	:	06.07.2021
Judgment on	:	15.07.2021

Sabyasachi Bhattacharyya, J:-

1. The present application under Article 227 of the Constitution of India has been filed, challenging the alleged illegal possession taken by the respondent-authorities in respect of the petitioner's property at 11, M.M. Feeder Road, Kolkata-700 057, from which a ladies' hostel was being run by the petitioner. It is contended by the petitioner, appearing in person, that such illegal dispossession of the petitioner and ouster of the residents of the hostel took place on February 14, 2015. Challenging such action, the petitioner moved the Debts Recovery Tribunal (DRT), Kolkata by filing S.A. No. 142 of 2015. Upon the said application being disposed of, an appeal was preferred and

the Debts Recovery Appellate Tribunal (DRAT) remanded the matter to the DRT and the Third Bench of the DRT, Kolkata took up the matter for hearing.

2. The petitioner had filed an interlocutory application bearing IA No.73 of 2019 for return of movable assets seized by the respondent-Bank from the said property at 11, M.M. Feeder Road and IA No.1360 of 2019 for judicial investigation into the alleged tampering of S.A. No.142 of 2015 in the DRT records.
3. IA No. 73 of 2019 was subsequently amended and thereafter disposed of *vide* order dated January 24, 2020 by DRT-III. However, the allegations of fraud and forgery made in IA No.1360 of 2019 were not considered on the ground that it was not the subject-matter of IA No.73 of 2019.
4. Subsequently, another application, bearing IA No. 162 of 2020, filed by the petitioner for expeditious disposal in terms of the DRAT order of remand, was dismissed by the DRT-III upon imposition of Rs.5,000/- as costs on February 24, 2020. An appeal was preferred against such order but subsequently withdrawn by the petitioner.
5. The order dated January 24, 2020, disposing of IA No.73 of 2019, was challenged by the petitioner before the DRAT in Appeal No.225 of 2020. Such appeal was disposed of on January 20, 2021 by the DRAT *vide* order dated January 20, 2021. The present challenge has been preferred against such order of the DRAT.

- 6.** By the order dated January 24, 2020, the Presiding Officer, DRT-III allowed IA No.73 of 2019 with the following directions:-

“(i) Respondent bank has submitted a valuation report of the items listed in the inventory, which was prepared by Ashok Kumar Baishya, Chartered Engineer & Approved Valuer of respondent bank. Respondent bank is directed to communicate the valuation report on affidavit forthwith to the applicant and applicant is directed to submit his comments on the valuation report before this Tribunal.

(ii) It is admitted fact that applicant was residing near to the mortgaged property. Applicant is directed to submit on affidavit the cause that prevented him to take back the inventories when the list of inventory and panchnama were handed over to him on the day of taking over physical possession.

(iii) Three gas cylinders were listed in the inventory. Respondent bank is directed to hand over the same to the applicant or hand over it to the LPG authority with proper receipt and the receipt thereof shall be handed over to the applicant.

(iv) Direction regarding return of inventories or in lieu thereof payment of valuation of the inventories prepared by approved valuer to the applicant will be considered at the time of disposing of main S.A.

(v) Above directions shall be carried out forthwith and a report thereof shall be submitted before this Tribunal.”

- 7.** The appellate forum, while deciding Appeal No.225 of 2020, directed the respondent-Bank to file the Valuation Report afresh in the DRT and the Presiding Officer of the DRT was directed to take up the Valuation Report and proceed to assess the value of the goods and at the same time proceed to take up the matter along with all other IAs and the S.A. itself and to dispose of the latter in accordance with law on or before March 31, 2021.

8. The petitioner, appearing in person with the leave of court, argues that the possession of the premises-in-question, which was a secured asset for the loan taken by the petitioner, was taken illegally, without any valid order of the concerned Magistrate. It is argued that no copy of any Magistrate's order under Section 14 of the SARFAESI Act, 2002 was produced by the Bank before the Tribunals at any point of time.
9. It is further contended by the petitioner that the removal of the movable assets, which were not part of the secured assets, was itself *de hors* the law. The purported notice sent to the petitioner in such connection was sent at the address of the property-in-dispute, although the petitioner had already been dispossessed therefrom by the Bank itself and was residing nearby at 12/1, M.M. Feeder Road, Kolkata-700 057, which was within the knowledge of the Bank. In this context, the petitioner places the bank's letter to the petitioner dated August 27, 2015. It is, thus, submitted that the movable assets were virtually stolen without appropriate notice to the petitioner. Moreover, the Bank also took possession of three gas cylinders which belonged to the Central Government and was not the petitioner's property, a locked almirah (wardrobe) containing movables worth Rs.16,72,762/- was also seized by the Bank, it is alleged. A list prepared by the petitioner, annexed at page 155 of the revisional application, though, indicates that the valuation of such movables contained in the almirah was worth Rs.4,82,082/-.

- 10.** The petitioner further submits that the purported notice dated May 11, 2015, allegedly served by the Bank on the petitioner and referred to in the notice dated June 4, 2015 of the bank, was never produced before any of the forums below.
- 11.** In the notice dated June 4, 2015, it was stated that the registered valuer of the bank had evaluated the movable property at a paltry sum of Rs.25,000/-, which was gross under-valuation according to the petitioner.
- 12.** Regarding tampering, the petitioner contends that the original S.A. filed by the petitioner, a purported copy of which is handed over to this court by the petitioner and kept with the records, contained, as annexures, a Panchnama, Possession Notice and Inventory, which were not found in the copy of the SA, the certified copy of which was subsequently handed over to the petitioner on his application. Apart from such removal of annexures, paragraph 5.23 at page 70 of the original S.A. had been replaced by paragraph 5.25 (at page 251 of the revisional application) and paragraph no. 21 at page 68 of the original was allegedly altered to paragraph 5.23 (at page 250 of the revisional application). In view of such interpolation and tampering, it is alleged, the complexion of the S.A. was changed. A comparison between the original S.A. of its certified copy would reveal such malpractice on the part of the respondents, the petitioner argues.

- 13.** The certified copy of the S.A., which is allegedly of a tampered copy at present on record before the tribunal, is annexed at pages 235 to 286 of the revisional application.
- 14.** Learned Counsel appearing for the respondent-bank, on the contrary, argues that there was a specific order passed by the concerned Additional District Magistrate under Section 14 of the SARFAESI Act, 2002, a copy which has been annexed at page 57 of the affidavit-in-opposition filed by the respondents. It is further contended that, pursuant to such order, physical possession of the property at 11, M.M. Feeder Road was taken on February 14, 2015 in the presence of the petitioner. The sale notice, annexed at page 51 of the affidavit-in-opposition, was published on March 19, 2015. Thereafter, the property was sold in public auction to one Shri Himangshu Das on April 21, 2015. Hence, the entire procedure was in accordance with law and the petitioner's allegation as regards such dispossession being illegal has no basis whatsoever.
- 15.** Secondly, it is argued by learned Counsel for the respondents, the petitioner has adopted dilatory tactics all along and sought for adjournments in the matter from April 8, 2019 to August 21, 2019, copies of orders pertaining to which are annexed at pages 27 to 38 of the affidavit-in-opposition.
- 16.** The petitioner, learned Counsel for the respondents submits, took various loan facilities from the respondent-bank under four group accounts. Cash credit worth Rs. 3 lakh, term loan of Rs. 1.5 lakh and

housing loan of Rs. 8 lakh was taken by the petitioner. As security for such loans, the property at 11, M.M. Feeder Road, was kept in equitable mortgage by the petitioner with the bank. The accounts of the petitioner were declared NPA (Non Performing Assets) on September 30, 2007 due to the petitioner having defaulted in repayment of the said loans/credit facilities.

- 17.** Consequently, a notice under Section 13(2) of the 2002 Act was issued by the bank on December 28, 2007, to which no reply was given by the petitioner. As such, after the expiry of 60 days, the bank took symbolic possession of the secured asset by affixing possession notice on the said property on January 9, 2015, subsequent to which physical possession was taken on February 14, 2015.
- 18.** It is next contended that the petitioner has been grossly inconsistent in his claims regarding the value of the movables seized by the Bank at the time of taking physical possession of the immovable property, which was the secured asset.
- 19.** In the notes of arguments filed by the petitioner before the DRT-III in connection with IA 73 of 2019 as well as in the present revisional application, such value has been alleged to be Rs. 16,72,762/-; however, Annexure A-2 of IA 73 of 2019 itself, filed by the petitioner before the Tribunal, evaluates such movables at Rs. 60,11,500/-. Hence, the petitioner's claim as regards the valuation of challenge to the report of the approved valuer of the bank has no legs to stand on.

- 20.** Notice was given to the petitioner *vide* letter dated May 11, 2015 to take back the movables. Thereafter, repeated reminders were given including on June 4, 2015, but the petitioner turned deaf ears to such requests. Hence, there was no other option before the Bank but to have the properties evaluated in accordance with law by its approved valuer and the valuation report dated June 1, 2015 puts the worth of the movables at a value of Rs. 25,000/-.
- 21.** Regarding the allegations of tampering with the S.A., learned Counsel for the respondents vehemently denies the same and submits that such allegations of tampering are beyond the pleadings of the petitioner in the present revisional application. Rather, the petitioner himself tampered with the documents and tried to give a false impression before this court, it is alleged. In fact, the Panchnama dated February 14, 2015 as well as the Inventory of movables, annexed respectively at pages 53 and 56 of the affidavit-in-opposition, were both signed by the petitioner. However, in the copy of the said documents, annexed at pages 94 to 99 of the revisional application, such signatures of the petitioner have been deleted.
- 22.** It is further contended by learned Counsel for the respondents that, since the DRT-III is in seisin of the matter pursuant to the DRAT direction and in view of the bar to the Civil Court's jurisdiction to take up matters concerning the jurisdiction of the DRT/DRAT, as incorporated in Section 34 of the SARFAESI Act, the present revisional

application under Article 227 of the Constitution of India is not maintainable and ought to be dismissed on such score alone.

- 23.** Upon considering the submissions of the parties, it appears from the copy of the order dated February 19, 2014 passed by the concerned Additional Magistrate under Section 14 of the SARFAESI Act, 2002, annexed at page 57 of the affidavit-in-opposition, it is *prima facie* evident that the possession taken by the Bank was not tainted by any illegality but was in accordance with law. Since the bank followed due process of law, as contemplated under Sections 13(2) and 13(4) of the 2002 Act, there cannot arise any apprehension of unlawful dispossession of the petitioner from the property at 11, M.M. Feeder Road, which was the secured asset given in equitable mortgage to the Bank by the petitioner.
- 24.** As regards the maintainability of the present revisional application, the bar envisaged under Section 34 of the SARFAESI Act applies to Civil Courts but it is arguable whether the same also prevents the High Court from exercising the power of judicial review under Article 227 of the Constitution of India, which is a Constitutional remedy and cannot curtailed by any subordinate legislation. However, the Bank is justified in arguing that since the DRT-III is in seisin of the issues involved in the present revisional application pursuant to the DRAT direction in the impugned order, there is little or no occasion to exercise such power by this court under Article 227 of the Constitution of India. The ratio laid down in *Jharu Ram Roy Vs. Kamjit*

Roy & Others, reported at (2009) 4 SCC 60, relied on by the petitioner, wherein the Supreme Court held that fraud vitiates all, is not applicable to the present case in view of not even any *prima facie* case of fraud having been made out by the petitioner from the material-on-record. Moreover, it is well-settled that particulars of fraud, as alleged, have to be specifically pleaded for any court to come to the finding of fraud. In the present case, such pleadings are conspicuously absent in the revisional application.

25. The judgments of the Supreme Court in *M/s Tripower Enterprises Pvt. Ltd Vs. State Bank of India*, reported at 2020 SCC OnLine SC 396, *United Bank of India Vs. Satyawati Tondon & Others.*, reported at (2010) 8 SCC 110 and *Rajkumar Shivhare Vs. Assistant Director, Directorate of Enforcement & Another*, reported at (2010) 4 SCC 772, all cited by the respondents, deal primarily with the self-imposed restriction of the High Court in exercising the power of juridical review, particularly when an equally efficacious alternative remedy is applicable. Although there is limited scope for interference under Article 227 in case of gross miscarriage of justice, patent illegality or procedural irregularity having been committed by a subordinate court or tribunal and the like, the impugned orders do not attract any such circumstance.

26. It is evident from the impugned order of the Appellate Tribunal that the valuation report submitted by the Bank was not specifically rebutted by the petitioner by any cogent evidence. Yet, in the ordering

portion of the tribunal's order, the respondent-Bank was directed to communicate the said report on affidavit to the petitioner for the latter to submit his comments on such valuation report before the tribunal.

- 27.** The Appellate Tribunal took care to direct that the three gas cylinders which were listed in the Inventory were to be handed over to the petitioner or to the LPG authority with proper receipt, which would be handed over to the petitioner.
- 28.** Even if the petitioner's contention, that the alleged notice dated May 11, 2015 was not produced by the Bank at any stage of the litigation, is correct, the tribunals below proceed on the premise that the publication of the notice on May 22, 2015 was sufficient notice to the petitioner. That apart, the notice dated June 4, 2015 was admittedly received by the petitioner. No plausible explanation has been give as to why the petitioner deliberately avoided collecting the movables from the concerned authorities of the Bank. Even irrespective of the requests made by the Bank, the onus was upon the petitioner to collect the valuables, since the petitioner does not deny knowledge of possession of the property at 11, M.M. Feeder Road being taken by the Bank on February 14, 2015. That apart, the sale notice dated March 19, 2015 was sufficient for the petitioner to act thereupon. Another factor which has to be considered is that, admittedly, the petitioner lives at 12/1, M.M. Feeder Road, which is in close proximity to the disputed property. As such, it is unclear as to what prevented the petitioner from taking possession of the movables by contacting the

Bank immediately after those were seized along with the immovable property.

- 29.** The Appellate Tribunal merely directed the Bank to file the Valuation Report afresh and to proceed to assess the value of the goods and to take up the matter along with all other I.A.s in the S.A. and to dispose of the S.A. in accordance with law, which cannot be faulted from any perspective. The allegation that the Valuation Report of the movables in the custody of the Bank had not been filed before the Tribunal, was sufficiently redressed by the DRAT in view of the direction on the Bank to file a fresh valuation report. In fact, the DRT-III also gave opportunity to the petitioner to comment on the Valuation Report, thereby keeping it open for any objection to be taken to such valuation by the petitioner, along with relevant documents to rebut the valuation arrived at by the approved valuer of the Bank, who is a chartered engineer as well.
- 30.** The DRT-III order left sufficient scope for consideration of the return of the moveable assets mentioned in the Inventory or, in *lieu* thereof, payment of the value of the movables as assessed by the approved valuer at the time of disposal of the main S.A.
- 31.** Hence, sufficient opportunity was given by the DRT to the petitioner to canvass and prove, by cogent evidence, the actual valuation, according to the petitioner, of the movables as well as to ventilate the other grievances raised before this Court. The Appellate Tribunal's order directing the bank to file a fresh Valuation Report could not be

faulted in any manner, since the same would take care of the grievance of the petitioner that no copy of the Valuation Report had been served on him.

- 32.** As regards the applicability of Rule 4 of the Security Interest (Enforcement) Rules, 2002, even if it is assumed that the movables seized by the Bank were not 'secured assets', thereby precluding applicability of the said Rule to such movables, there was no other option before the Bank than to take possession of the secured assets with whatever movable property was lying therein.
- 33.** Due process of law was followed at every stage by the respondents to obtain a valid order of recovery and an order of possession under Section 14 of the SARFAESI Act from the concerned magistrate. Even thereafter, despite the wilful refusal of the petitioner to take back the movable properties, although the petitioner knew about his dispossession and consequent seizure of the movables from the date thereof, the Bank took due care of the movables as befits any prudent owner of the property and kept it in its custody. The movables were also evaluated by a registered chartered engineer, who was an approved valuer of the Bank, after the petitioner exhibited his obstinacy in refusing to take back such movables.
- 34.** Since the directions issued in the impugned orders were sufficient to ensure that all the allegations made by the petitioner would be considered on merits by the DRT itself, there is no scope for exercising the power of judicial review under Article 227 of the Constitution in

the present case. There was no infirmity or material irregularity in the impugned orders of either the DRT or the DRAT justifying interference by this Court.

- 35.** Hence, the present revision fails.
- 36.** Accordingly, C.O. No.592 of 2021 is dismissed on contest by affirming the impugned orders of the Tribunals below without, however, any order as to costs.
- 37.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)