Pdp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9779 OF 2021

Saroj Anil Goyal .. **Petitioner**
Vs.
State Bank of India
(Erstwhile State Bank of Bikaner
and Jaipur) & Anr. .. **Respondents**

WITH
WRIT PETITION ST. NO. 1445 OF 2022

Pratik Kachru Repale & Ors. .. **Petitioners**
Vs.
State Bank of India
(Erstwhile State Bank of Bikaner
and Jaipur) & Anr. .. **Respondents**

Mr. Sidharth Samantaray i/by APS Law Associates for petitioner in WP/9779/2021.
Mr. M. S. Topkar i/by Pavitra Manesh for petitioners in WPST/1445/2022.
Mr. R. J. Singh i/by M/s. R. J. Singh & Co. for respondent no.1 (SBI) in both the WPs.
Smt. R. A. Salunkhe, AGP for State.

C0RAM: DIPANKAR DATTA, CJ &
ANIL S. KILOR, J.

DATE: JANUARY 21, 2022

PC:

1. Two writ petitions are on board. Since the writ petitions arise from common set of facts, we have heard them together and propose to dispose it of by this common order.

2. Writ Petition No. 9779 of 2021 is at the instance of the debtor of the State Bank of India (hereafter "the borrower" for

short), whereas Writ Petition Stamp No. 1445 of 2022 is at the instance of auction purchasers of the secured asset.

3. The secured asset was put up for auction by the secured creditor in terms of the provisions of Rule 8 of the Security Interest (Enforcement) Rules, 2002 (hereafter "the 2002 Rules", for short). The sale notice issued by the secured creditor was under challenge before the Debts Recovery Tribunal-III, Mumbai, (hereafter "the DRT-III", for short) in Securitisation Application No. 139 of 2019 at the instance of the borrower. There was an initial round of litigation before this Court, wherein certain interim orders passed by the DRT-III were under challenge. Such writ petition was disposed of by a coordinate Bench of this Court on 25th November, 2021 with a direction upon the Presiding Officer of the DRT-III to decide Securitisation Application No. 139 of 2019 expeditiously. The Presiding Officer by an order dated 2nd December, 2021 has allowed the securitisation application holding that the secured creditor while proceeding for sale of the secured asset did not comply with the statutory mandate in Rule 8 of the 2002 Rules; however, it was observed that the order allowing the securitisation application was without prejudice to the right of the secured creditor to initiate fresh action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "the SARFAESI Act" for short) in respect of the secured asset following due procedure.

4. The borrower in his writ petition claims that although the secured creditor had put up the secured asset for sale at a

reserve price of Rs.92,00,000/- (Rupees Ninety-Two Lakh only) and that the auction purchasers had offered such sum pursuant whereto their offer was accepted, the borrower identified a private buyer, who is willing to purchase the secured asset at Rs.1,20,00,000/- (Rupees One Crore Twenty Lakh only), and that the borrower sought to introduce such buyer to the secured creditor. The grievance voiced by the borrower in his writ petition is that while responding to his letter dated 28th December, 2021, the secured creditor by its letter dated 29th December, 2021 advised the borrower to obtain No Objection Certificate for private sale of the secured asset after repaying the entire dues of Rs.20,87,00,000/- (Rupees Two Crore Eighty-Seven Lakh only). This, according, to the borrower is quite absurd. If the entire dues could be paid by the petitioner, he would not have been drawn into this litigation. Be that as it may, it has been prayed in the writ petition that the secured creditor be directed to consider the substantial offer of the prospective private buyer of the secured asset and that till the time such consideration is effected, no action be taken to dispossess the borrower from the secured asset in pursuance of the notice dated 8th November, 2021 issued by the Tahsildar, Thane.

5. The notice dated 8th November, 2021 referred to above has been issued in pursuance of an order passed by the District Magistrate, Thane under section 14 of the SARFAESI Act. In terms of such notice, physical possession of the secured asset was to be taken over by the Tahsildar, Thane on 4th January, 2022. On 4th January, 2022 itself, the borrower

moved his writ petition and obtained an order restraining the secured creditor from taking physical possession of the secured asset till 7th January, 2022. The restraining order has since been extended by an order dated 7th January, 2022 till the next date of hearing.

6. The auction purchasers in their writ petition have challenged the order of the DRT-III dated 2nd December, 2021 allowing the borrower's securitisation application. According to them, they have obtained loan from a private bank upon creation of mortgage of the secured asset and the entire sale price has been deposited with the secured creditor; and although the title documents of the secured asset have been made over to them, they have been left without possession of the secured asset in the absence of the notice issued by the Tahsildar, Thane having been acted upon and possession delivered to the secured creditor.

7. It is noted that none of the petitioners (the borrower and the auction purchasers) have approached the Debts Recovery Appellate Tribunal, Mumbai [hereafter "the DRAT(M)", for short]. The vacancy in the office of the Chairperson of the DRAT(M) is cited as the reason therefor and benefit of the Supreme Court's order dated 16th December, 2021 passed in SLP (C) No. 10911 of 2021 **(State Bar Council of Madhya Pradesh vs. Union of India)**, requesting the High Courts to entertain matters which ordinarily would have been within the jurisdiction of the Debts Recovery Tribunals and the Debts Recovery Appellate Tribunals, is claimed.

8. We have proceeded to hear these writ petitions in view of such order of the Supreme Court or else the parties would have certainly been relegated to the appellate remedy available under section 18 of the SARFAESI Act.

9. Although we find that the borrower has succeeded in his securitisation application before the DRT-III, he has not laid any challenge to the order passed by the District Magistrate, Thane under section 14 of the SARFAESI Act. By mere reason of his identification and attempt to introduce a private buyer who is willing to purchase the secured asset by paying a sum higher than what the auction purchasers offered and as received by the secured creditor in course of the public auction conducted by it in 2019 cannot, in our considered opinion, be a ground for restraining the secured creditor from taking possession of the secured asset. It is not disputed by the parties that the secured asset was put up for sale on "as is where is" basis. At that stage and even today, the secured asset is occupied by the borrower. It does not require much argument to establish that a secured asset which is not vacant, since people are in occupation thereof, would fetch a much lower price than a secured asset which is burden or impediment free. This could be one of the reasons as to why the secured asset has not fetched a proper price commensurate with the market conditions.

10. In any event, we see no reason as to why the protection against dispossession granted by the earlier orders of the coordinate Bench should be continued in favour of the borrower. In the first place, there is no challenge to the order

of the District Magistrate, Thane under section 14 of the SARFAESI Act. Secondly, when the dues of the secured creditor are in excess of Rs.2,00,00,000/- (Rupees Two Crore only), it is not a matter of concern for the borrower at what price the secured asset is sold, whether at Rs.92,00,000/- (Rupees Ninety-Two Lakh only) or Rs.1,20,00,000/- (Rupees One Crore Twenty Lakh only). The dues of the secured creditor being far in excess of what the private buyer is willing to pay and there being no other security interest that could be enforced, the secured creditor would have to rest satisfied with whatever more it receives over and above the reserve price fixed by it. The secured creditor can expect a better deal if the secured asset is allowed to be put to auction once again, without being occupied.

11. We, thus, vacate the injunction earlier granted and direct that the Tashildar, Thane shall be at liberty to issue fresh notice of possession, within 10 (ten) days from date fixing any date thereafter, not beyond 7 (seven) days of such notice, for taking possession of the secured asset and handing over the same to the secured creditor. Once the possession is delivered to the secured creditor, the secured asset shall be put up for public auction once again in accordance with law and any party desirous of participating in the auction, including the private buyer who was sought to be introduced to the secured creditor by the borrower, may do so.

12. Insofar as the writ petition instituted by the auction purchasers is concerned, we find no reason to interfere with the order passed by the DRT-III in view of the submission

made by Mr. Topkar, learned advocate, that the auction purchasers would be approaching the DRAT(M) with an appropriate appeal and that all contentions be kept open.

13. For the foregoing reasons, both the writ petitions stand disposed of. The auction purchasers will be at liberty to explore their remedy in accordance with law. All contentions are kept open for them to urge before the DRAT(M). The secured creditor is granted liberty to proceed in accordance with the provisions of the 2002 Rules, while it puts up the secured asset for sale once again after taking over possession. The borrower shall also be at liberty to explore his remedy in accordance with law before the appropriate forum available in terms of the SARFAESI Act, if the occasion therefor arises.

14. We record Mr. Samantaray's statement that the borrower shall vacate the secured asset within 10 (ten) days. If the borrower does quit possession of the secured asset and the secured creditor obtains free, peaceful and vacant possession of the secured asset, the exercise of issuing notice by the Tehsildar, Thane, as directed above, need not be performed.

15. There shall be no order as to costs.

(ANIL S. KILOR, J.) **(CHIEF JUSTICE)**

PRAVIN DASHARATH PANDIT

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