IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.576 of 2019
In
Civil Writ Jurisdiction Case No.7167 of 2017

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Ram Awtar Singh Son of Late Raj Kumar Singh Resident of Village- Kothar, Police Station- Fatehpur, District- Gaya.

... ... Appellant/s

Versus

1. The Allahabad Bank Through its Chief Manager, Exhibition Road, Patna.
2. Authorized Officer Allahabad Bank Kotwali more Patna.
3. Shree Krishna Drugs Through Proprietor Manoj Kumar, S/o Late Nand Kishore Singh.
4. Manoj Kumar S/o Late Nand Kishore Singh Residence of Flat No.- 207 Gyan Apartment main Road Kankarbagh Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 575 of 2019
In
Civil Writ Jurisdiction Case No.21900 of 2013

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M/S Shree Krishna Drugs Through Proprietor Sri Manoj Kumar, Son of Late Nand Kishore Singh, R/O Flat No. 207, Gyan Apartment, Main Road, Kankarbagh, Patna- 800020

... ... Appellant/s

Versus

1. Authorized Officer cum Chief Manager Allahabad Bank, Zonal Office, Budh Marg, Patna
2. Presiding Officer Debt Recovery Tribunal, 34, Bank Road, Opp. New Police Line, Lodhipur, Patna-800001
3. Mr. Nand Kishore Poddar S/o Late Kailash Poddar Parivahan Bhawan, Veerchand Patel Marg, P.s.- Kotwali, Distt.- Patna
4. Mr. Suraj Kumar S/o Kedar Lal Bernval R/o 61 Devi Asthan, Paschim Gali, P.s.- Jakkanpur, Distt.- Patna
5. Ram Awatar Singh S/o Late Raj Kumar Singh Vill.- Kothar, P.s.- Fatehpur, Distt.- Gaya

... ... Respondent/s

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Appearance :
(In Letters Patent Appeal No. 576 of 2019)
For the Appellant/s : Mr. Mukund Kumar, Advocate
For the Respondent/s : Mr. Dr. Binod Kumar Jha, Advocate
(In Letters Patent Appeal No. 575 of 2019)
For the Appellant/s : Mr. Mukund Kumar, Advocate
For the Respondent/s : Mr. Dr. Binod Kumar Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)
Date : 09-10-2023

Heard the parties.

2. The two appeals have been preferred on behalf of the appellants against the order dated 10.4.2019 passed in C.W.J.C. No.7167 of 2017 (Ram Awtar Singh) which was heard alongwith C.W.J.C. No. 21900 of 2013 (Nand Kishore Poddar/Suraj Kumar) whereby and whereunder while C.W.J.C. No. 7167 of 2017 has been dismissed, the C.W.J.C. No. 21900 of 2013 stands allowed.

3. The matrix of facts giving rise to the two appeals are as follows:-

4. The Allahabad Bank, Patna issued notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (henceforth for short 'the SARFAESI Act', 2002) for default in T.L. availed by M/s Shree Krishna Drugs (owned by the Proprietor, Manoj Kumar) for outstanding dues of Rs. 10,32,687.64 as on 02.06.2010 with interest detailing out the particulars of secured assets as prescribed in 'the Act'.

5. As the Principal borrower (Manoj Kumar) failed to discharge his liability in full within the period specified in notice u/s 13(2) of 'the Act'; the respondent Bank took

possession of the secured assets.

6. The possession notice was challenged by Manoj Kumar (the borrower) in CWJC No. 16427 of 2011.

7. One Ram Awtar Singh (appellant in LPA No. 576 of 2019) claiming himself to be the mortgagor of same land also preferred CWJC No. 17983 of 2011.

8. Both the writ petitions were heard together and disposed of by the Writ Court on 24.11.2011 and the Hon'ble Single Judge chose not to interfere in the matter holding as follows:

> *"8. From the admitted facts of these cases, it is quite apparent that after the demand notice dated 08.06.2010 under section 13(2) of the Act, the petitioner filed an objection under section 13(3A) of the Act, which was rejected by the authorities on 26.07.2010, but against the said rejection the petitioner did not move this Court as no appeal has been provided against that order. Mere filing of applications before the authorities cannot be held to be valid and proper challenge. In the said circumstances, the authorities cannot be said to be unjustified in issuing the possession notice on 13.09.2011.*
>
> *9. Against such possession notice under section 13(4) of the Act, an appeal is provided under section 17 thereof before the Debt*

Recovery Tribunal and it was for the petitioners to move before the said authority and raise all objections including the challenge to the procedure adopted by the authorities. The said course of appeal being open to the petitioners, this Court does not find any justification to consider the merit of these cases. The petitioners are at liberty to challenge the said notice before the authority concerned.

10. Thus this Court does not find any reason to interfere into the matter as the questions of fact are also involved, which can be properly decided by the appellate authority. Accordingly, both the writ petitions are disposed of.”

9. Thus, the possession notice dated 13.9.2011 was upheld by the Writ Court with liberty to the borrower to approach before the Debt Recovery Tribunal (henceforth for short ‘the Tribunal’) under Section 17 of ‘the SARFAESI Act, 2002’ raising all the objections.

10. Thereafter, while the mortgagor, Ram Awtar Singh preferred S. Appeal 5 of 2012, the original borrower, Manoj Kumar preferred S. Appeal 32 of 2012 u/s 17 of ‘the SARFAESI Act, 2002’. It was disposed off on 09.02.2012 with a direction to the borrower to deposit 25%

amount on possession notice by 15.3.2012 and the rest amount was to be paid within a period of 6 months from 15.3.2012 in equal monthly installment.

11. In the aforesaid order dated 09.02.2012, it was also observed by 'the Tribunal' that if the borrower fails to pay any installment, the Bank will be free to take further action in accordance with law.

12. The admitted fact is that the borrower failed to pay the installment as per the direction of 'the Tribunal' dated 09.02.2012. However, later 'the Tribunal' upon petition of the borrower provided an extra rope by modifying the order dated 09.02.2012 by observing as follows:

> *"Applicant was directed to pay 25% amount of possession notice by 15.3.2012 and rest amount was to be paid within 6 months from 15.3.2012. In the meantime, five months lapsed and not a single amount has been deposited by applicant."*
>
> *'the Tribunal' in view of medical problem the applicant is directed to pay 50% of NPA amount on or before 18.7.2012 as per order dt. 9.2.2012 and the rest amount will be paid within three months thereafter in equal monthly installment.*
>
> *if the party failed to comply with order and any of the installments is not paid, then,*

the Bank shall be free to legal action in accordance with law.

13. As even after the extension of time given, the borrower failed to deposit the amount, the respondent-Bank in exercise of the power conferred under section 13 read with Rules 8 and 9 of the Security Interest (Enforcement Rules, 2002) sold the property to the two petitioners of CWJC No. 21900 of 2013 namely, Nand Kishore Poddar and Suraj Kumar.

14. The details of the plot as per the Sale Certificate dated 17.01.2013 is as follows:-

Plot No. 105 &188. P.O.-GPO under Mauza Arara, Tauzi No. 6, Khata No. 32, Circle No.- 8, Ward No. 3, P.S.- Kotwali, District- Patna, Title Deed No. 12208 dated 14.02.1974 (area 1 Katha 5 Dhur 0 Dhurki).

15. The case of the writ petitioners of CWJC No. 21900 of 2013 further was that after the expiry of forty five days from the issuance of sale certificate i.e. by 3rd March, 2013, the sale became absolute in view of Section 17(1) of 'the SARFAESI Act, 2002' which read as follows:

"17. Right to Appeal :- (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his

authorized officer under this Chapter, [may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken;

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower]."

16. However, no appeal was preferred under section 17 of 'the SARFAESI Act, 2002' and instead the borrower (Manoj Kumar) filed M.A. No. 261 of 2013 under section 22(2)(g) of the Recovery Tribunal of Debts Act, 1993.

17. 'The DRT, Patna' chose to act in the matter and vide an order dated 27.08.2013 allowed the said M.A. No. 261 of 2012 with further direction to the borrower to pay the entire dues of the Bank as per the agreement with 9 per cent simple interest and 5 per cent penalty on auctioned amount beside Rs. 1 lakh as compensation to the auction-purchaser.

18. This was challenged by the purchaser Nand Kishore Poddar and Suraj Kumar in the CWJC No. 21900 of 2013.

19. During the pendency of the CWJC No.

21900 of 2013, Ram Awtar Singh (Mortgagor) preferred M.A. No. 57 of 2016 before 'the DRT, Patna' with a request to direct the Bank to provide calculation sheet as per the order dated 27.08.2013 passed in M.A. No. 261 of 2013. The mortgagor, Ram Awtar Singh further complained that despite the order passed on 27.08.2013 in M.A. No. 261 of 2013; the respondent-Bank has not provided the calculation sheet and as such, the borrower/applicant could not deposit the amount as per the order.

20. The matter was taken up by 'the DRT, Patna' on 01.09.2016 and having gone through the entire facts, dismissed the said M.A. No. 87 of 2016 holding that despite knowledge of selling of the property prior to filing of M.A. No. 261 of 2013, the applicant failed to comply with the directions given and no reason has been explained for condoning the delay, the same is rejected.

21. Aggrieved by the said order, CWJC No. 7167 of 2017 came to be filed by the mortgagor, Ram Awtar Singh.

22. The writ petitioner in CWJC No. 7167 of 2017 complained that:

(i) Manoj Kumar, the Principal

borrower failed in his obligation to pay back the Debt amount as adjudicated by the Presiding officer DRT Patna. Further, he also failed to inform the petitioner about the development of the details of payment made by him to the Creditor Bank in terms of the adjudication as stated here in above.

(ii) even the creditor bank never communicated the said default on the part of the Manoj Kumar to him.

(iii) Manoj Kumar contested series of litigation with creditor Bank in order to protect the Land Mortgaged by the writ petitioner as collateral for the loan in question by not impleading him as party as a result he could not know about it.

(iv) it was only after conversation with Manoj Kumar that he came to know that the Creditor Bank has sold the Mortgaged property for a sum at Rs. 6.85 Lacks which ought to have been sold at Rs- 28 lakhs as per the market valuation rate published by the Govt. of Bihar.

(v) after passing of the order by the Presiding Officer DRT Patna, the Creditor Bank never

communicated him of the details of the due amount in order to make good either by borrower or by the guarantor jointly and severally.

(vi) he filed M.A. No.-87 of 2016 which came to be dismissed on 01.09.2016.

23. Both the writ petitions were taken up together by the Hon'ble Single Judge and after having gone through the facts of the case and perusing the records, vide an order dated 10.04.2019, it held that:

(i) the borrower had failed to abide by the order passed by the Tribunal in S.A. No. 05 of 2012 passed on 09.02.2012. The Tribunal having disposed of the Securitization Appeal could not have entertained M. A. No. 278 of 2012 at the instance of Manoj Kumar (principal borrower);

(ii) as order dated 09.02.2012 passed in S.A. No. 05 of 2012 was not complied with, the bank rightly proceeded with 'the SARFAESI' action;

(iii) further, even when the order dated 16.07.2012 in M.A. No. 278 of 2012 was not complied, the Sale Certificate was rightly issued on 17.01.2013 in favour of the auction purchaser;

(iv) however, the Presiding Officer was so generous towards the principal borrower that once again it entertained M.A. No. 261 of 2013 and passed a fresh order in effect

nullifying the whole sale process.

24. The Writ Court thus held the order dated 27.08.2013 to be wholly without jurisdiction and accordingly, allowed CWJC No. 21900 of 2013 while dismissing the CWJC No. 7167 of 2017 holding that the Presiding Officer of the Tribunal rightly refused to entertain the M.A. No. 87 of 2016 preferred by the mortgagor.

25. Still aggrieved, both the mortgagor, Ram Awtar Singh and the borrower, Manoj Kumar (proprietor of M/s Sri Krishna Drugs) have now preferred LPA No. 576 of 2019 and LPA No. 575 of 2019 respectively.

26. Heard learned Counsel for the parties.

27. The following facts emerge in the two appeals:

(i) a piece of land (Plot No. 105 and 188, Tauzi No. 6, Khata No. 32, Circle No. 8 under Ward No. 3, P.S. Kotwali in the District Patna) was mortgaged with the Allahabad Bank, Exhibition Road Branch, Patna;

(ii) Manoj Kumar, the appellant of LPA No. 575 of 2019 was the borrower while Ram Awtar Singh (LPA No. 576 of 2019) was the mortgagor;

(iii) as the amount taken by the borrower was not returned to the Bank, a demand notice was issued on 08.06.2010 under section 13(2) of 'the SARFAESI Act, 2002'.

28. This was challenged by the borrower, Manoj Kumar in CWJC No. 16427 of 2011 while the mortgagor, Ram Awtar Singh preferred CWJC No. 17983 of 2011.

29. The Writ Court took up both the matters on 24.11.2011 and declined to interfere with the orders thus disposing of the writ petition.

30. Both the borrower and mortgagor thereafter preferred S.A. No. 32 of 2012 and S.A. 5 of 2012 respectively before 'the DRT, Patna'.

31. It was taken up on 09.02.2012 and 'the DRT, Patna' directed the borrower to deposit 25% amount on possession notice and rest amount was to be paid within six months from 15.03.2012 in equal monthly installment.

32. Admittedly, the borrower once again failed to pay the installment and instead preferred M.A. No. 278 of 2012 before 'the DRT, Patna' which was disposed of on 16.07.2012 and 'the DRT, Patna' gave another extension to clear the amount.

33. The borrower however, once again failed

to catch the rope provided by 'the DRT, Patna'. Thereafter, the Bank initiated steps and got the land transferred to Nand Kishore Poddar and Suraj Kumar after receiving the amount and accordingly issued the Sale Certificate in their favour on 17.01.2013.

34. Despite the transaction already concluded, the borrower preferred M.A. No. 261 of 2013 which was disposed of on 27.08.2013 with a direction to the applicant to pay the entire dues as per the agreement with 9 per cent Simple Interest and 5 per cent penalty on auctioned amount and Rs. 1 lakh as compensation to auction purchaser.

35. This was challenged by the purchasers, Nand Kishore Poddar/Suraj Kumar in CWJC No. 21900 of 2013

36. Meanwhile, three years later, the mortgagor preferred M.A. No. 87 of 2016 which came to be dismissed on 01.09.2016 by 'the DRT, Patna' and has already been detailed out in earlier paragraphs. Aggrieved, he too preferred CWJC No. 7167 of 2017.

37. Both the writ petitions were heard together and vide an order dated 10.04.2019 while CWJC No. 21900 of 2013 (of the purchasers) was allowed, CWJC No. 7167 of 2017 (filed by the mortgagor) was dismissed. This

followed the present appeals by the mortgagor, Ram Awtar Singh (LPA No. 576 of 2019) and the borrower, Manoj Kumar (LPA No. 575 of 2019).

38. From the aforesaid facts, it is clear that 'the DRT, Patna' kept on accommodating the borrower/mortgagor who never followed the orders and were further not interested in paying back the amount to the Bank, the land was accordingly, transferred to Nand Kishore Poddar and Suraj Kumar and Sale Certificate was issued on 17.01.2013.

39. No step was taken by the borrower/mortgagor against the different provisions of 'the SARFAESI Act, 2002' to assail the said decision.

40. In that background, 'the DRT, Patna' had no business to pass the order dated 27.08.2013 in M.A. No. 261 of 2013 directing the borrower, Manoj Kumar to pay the dues of the Bank with 9 per cent simple interest and 5 per cent penalty on auctioned amount and Rs. 1 lakh as compensation to the auction purchaser.

41. It, however, corrected itself three years later by dismissing another M.A. No. 87 of 2016 on 01.09.2016 preferred by the mortgagor. Further, the claim of the mortgagor that the borrower failed to inform him as a result he could not

know about the happenings is fit to be rejected as in 2011, the mortgagor preferred CWJC No. 17983 of 2011 and later S. Appeal 5 of 2012 under ‘the SARFAESI Act’.

42. In the aforesaid circumstances, the Hon’ble Single Judge was perfectly justified in observing that the borrower and the mortgagor have been litigating the matter with the sole intention to keep the litigation pending which has otherwise achieved finality.

43. No interference is required in the reasoned order dated 10.04.2019 passed by the Writ Court.

44. Both the **LPA No. 576 of 2019** (Ram Awtar Singh vs The Allahabad Bank) and **LPA No. 575 of 2019** (M/s Shree Krishna Drugs vs Authorized Officer cum Chief Manager) stand dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Neha/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19.10.2023
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