IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1190 of 2018
In
Civil Writ Jurisdiction Case No.184 of 2016

==

1. Shri Ram Ashish Singh Son of Shri Kamla Singh Resident of Gram- Bhergawan, Post- Jitiya, Police Station- Gurichk, Bhergawan, Jaitia, Fatuha, District- Patna, at present resident of Ashok Nagar, Road No. 9 (Corner), Kankarbagh, East of Dwarika College, Patna- 20.
2. Smt. Shiv Dulari Singh, D/o Shri Gandhi Singh Resident of Gram- Bhergawan, Post- Jitiya, Police Station- Gurichk, Bhergawan, Jaitia, Fatuha, District- Patna, at present resident of Ashok Nagar, Road No. 9 (Corner), Kankarbagh, East of Dwarika College, Patna- 20.

... ... Appellant/s

Versus

1. Central Bank of India through Regional Manager Central Bank of India, Regional Office 'B' Block Maurya Lok Complex, Patna-1.
2. The Authorized Officer, Central Bank of India, Regional Office, Maurya Lok Complex, Patna-1.
3. The Branch Manager, Central Bank of India, Hawganj Branch, Patna City, Patna.
4. Rahamutullah, Son of Nabi Hassan Proprietor of M/s R.T. Enterprises, Resident of Kadam Kuan, Patliputra Building, Police Station- Kadam Kuan, Post Office Kadam Kuan, District- Patna.

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Sanjeev Ranjan, Advocate
For the Respondent-Bank	:	Mr. Ajay Kumar Sinha, Sr. Advocate
		Mr. Ajit Kumar Sinha, Advocate
		Ms. Dilkash Khan, Advocate
For the Respondent	:	Mr. Md. Kamil Akhtar, Advocate

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-07-2023

The appellant is aggrieved by the judgment in the writ petition rejecting his challenge against the order passed by the Debt Recovery Tribunal, Patna (for brevity DRT) and relegating him to the Civil Court of competent jurisdiction.

2. The controversy arose insofar as the respondent-Bank proceeding against a property comprised within 1 Katha appertaining to Khata No. 570, Khesra No. 172, Tauji No. 184, Thana No. 12 bounded by Mahavir Gope on north, east Kapildeo Yadav, west boundary Daud Bigha and south part of Plot No. 172. One Satish Kumar is said to have purchased an area of 6.38 decimals bounded by Thana NO. 12, Plot No. 570, part of Khata No. 169/172/158, Tauji No. 814, bounded by north, Mahavir Gope, south Devi Gope, east Sheikh Nasrul Haq, west Daud Bigha through a registered sale deed dated 03.05.1987. While the earlier land referred to was purchased by the petitioners by a registered sale deed dated 30.10.1985, Satish Kumar had created equitable mortgage of the property purchased by him and availed a loan from the respondent-bank; which became NPA and proceedings were taken by the Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (for brevity SARFAESI Act). The Bank put the property in auction which was purchased by the 4th respondent. The 4th respondent having not been given physical possession of the property filed C.W.J.C. No. 19421/2012. This Court directed the district

authorities to identify the property and eventually, after identification, the property was handed over to the purchaser, by the Bank.

3. The contention of the petitioner is that the part of the properties belongs to them and they approached the DRT with SA No. 101 of 2014 being an application under Section 17 of the SARFAESI Act. The DRT rejected the appeal by Annexure-9 produced in the writ petition. The DRT by Annexure-9 order found that since the delivery of possession as well as registration of sale deed was completed in pursuance of the order issued by the High Court of Patna, there cannot be found any illegality in the possession taken of the property and the S.A. was dismissed.

4. The learned Single Judge, who heard the writ petition, dismissed the same on the ground that the appropriate remedy would be before the Civil Court of competent jurisdiction, since the DRT could not have looked into the right title and interest over the property which was the subject matter of dispute in the appeal before the DRT. The learned Single Judge relied on **Nahar Industrial Enterprises Ltd. V. Hong Kong & Shanghai Banking Corporation, 2009(8) SCC 646** to uphold the order of the DRT and relegate the appellant to the

Civil Court.

5. Shri Sanjeev Ranjan, learned counsel for the appellant, argued that the DRT and the learned Single Judge fell into a gross error in rejecting the claim. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **M/S Sree Anandhakumar Mills Ltd. Vs. M/S Indian Overseas Bank & Ors., Civil Appeal No(s). 7214-7216 of 2012,** decided on 03.05.2018. It was argued that under Section 17 any person aggrieved with the action of the Bank can approach the DRT with an Appeal and he need not be a debtor, borrower, creditor or guarantor of the Bank. It is pointed out that in the cited decision even when a partition suit was filed with respect to a property on which the security interest was created, the Hon'ble Supreme Court relegated the party to the DRT under Section 17 and the suit was closed. The learned counsel would seek the setting aside of the order passed by the DRT and restoration of the appeal before the DRT.

6. Mr. Ajay Kumar Sinha, learned senior counsel for the Bank, however, stoutly opposed the prayers. It was argued that the question raised by the petitioner rests on the right, interest and title of the property and, in such circumstances, the ouster of power of Civil Courts under

Section 34 does not apply. The DRT, who is competent to look into the security interest created and the procedure to be followed under the SARFAESI Act for realisation of debts; cannot look into the right, interest and title of the property. The learned senior counsel seeks to uphold the order passed by the DRT and the learned Single Judge.

7. At the outset, we are not convinced that the DRT was correct in finding that it was under the orders of the High Court that the identification and delivery of possession was granted to the purchaser and hence the DRT is usurped of its jurisdiction. The High Court’s intervention was only insofar as C.W.J.C. No. 19421 of 2012 filed by the 4th respondent-the purchaser in the auction purchase. The prayer in the writ petition was to direct the bank to identify the property mortgaged and sold in auction under the SARFAESI Act so as to hand over possession to the purchaser. Though none of the district authorities were parties therein, with the intervention of the High Court, the property was identified through the district authorities and, on such identification, the Panchnama was produced before Court by which the auction purchaser had taken possession of the land on 13.12.2013. The said fact was recorded and the writ petition closed, as is seen from Annexure-

8, leaving liberty to the auction purchaser to approach the Bank for registration of sale deed in accordance with law. The High Court's intervention was only insofar as a mandamus issued to the appropriate authorities to identify the property and cause delivery of the same. The High Court by the said order has not approved the possession taken of the property or the auction sale made; which has to be agitated in appropriate forums provided under the Act.

8. In fact, as was informed to us, the borrower had filed an appeal against the auction sale before the DRT, Patna as S.A. No. 44/2017 which was allowed by order dated 14.02.2023. We have also been informed by the learned Senior Counsel appearing for the respondent-Bank that there is a further appeal filed by the Bank before the Debt Recovery Appellate Tribunal, Allahabad numbered as appeal 356 of 2023; which is pending consideration of the Appellate Authority. Hence, the High Court's intervention by way of orders passed in the writ petition, directing identification and delivery of possession to the auction purchaser does not give any stamp of approval to the action taken by the Bank under the SARFAESI Act. The DRT erred grievously in passing the impugned order; produced as Annexure-9.

9. Now, we come to the question of the dismissal of the writ petition and relegation of the petitioner/appellant to the Civil Court. We first looked at the decision of the Hon'ble Supreme Court in **M/S Sree Anandhakumar Mills**(supra). Therein, the property was proceeded against under the SARFAESI Act upon which the 2nd respondent before the Hon'ble Supreme Court approached the Civil Court and obtained an injunction against the action taken by the Bank and the subsequent sale made to the appellant before the Hon'ble Supreme Court. The suit before the Civil Court was one of partition, in which the injunction order was passed. Their Lordships looked at **Jagdish Singh v. Heeralal, (2014) 1 SCC 479** in which an identical issue had been raised before the Hon'ble Supreme Court, wherein it was held that when a security interest is created in favour of the secured creditor, who proposes to proceed against the secured assets under Section 13(4), there are various measures envisaged to secure the borrower's debt. One of the measures is to take possession of the secured asset including the right to alienate the same under Sub-section (4) of Section 13. Any action taken by the secured creditor is subject to an appeal to the DRT; a statutory right created under the SARFAESI Act. Referring to Section 34 of the

SARFAESI Act, it was found that any suit or proceeding 'in respect of any matter' which a DRT or an Appellate Tribunal is empowered of, under the Securitisation Act to determine, would be taken out of the jurisdiction of the Civil Court. The expression 'in respect of any matter' was found to encompass any 'measures' provided under Section 13 of the Securitisation Act. Hence, an aggrieved person, that too any person who has grievance against such measures taken by the secured creditor under Sub-section (4) of Section 13, can approach the DRT or the Appellate Tribunal and not the Civil Court. The suit for partition was closed and the 2nd respondent relegated to the remedy under the SARFAESI Act before the DRT.

10. Essentially when measures are taken under the SARFAESI Act, it can only be challenged before the DRT under Section 17. What necessarily flows from the decision is that if an interference is caused to the measures adopted by the secured creditor, then the further rights would have to be agitated before the Civil Court. The consequence of interference to the measures taken under the SARFAESI Act would be; even as to the right, title and interest asserted by any other party, that the property would be absolved from the proceedings under the SARFAESI Act. Necessarily, the DRT would not be entitled

to proceed for partition of the property for which definitely the parties would have to approach the competent Civil Court.

11. The civil court even in the instant case would be barred from invoking its jurisdiction, especially when measures under the SARFAESI Act have been taken by the secured creditor against the property. If the question is of right, interest and title over a portion of the property, as raised by the appellant herein, the same would have to be considered and adjudicated upon by the DRT. In the circumstances of the DRT finding favour with the appellants' contentions, the property would be absolved of the security interest, since the mortgage is created on a property; at least a portion of the property, on which the borrower does not have a valid title, thus, putting the security interest into peril. When the security interest is so put to peril, necessarily, the measures under the SARFAESI Act would have to be interfered with. If that is done, then the remedy of the appellant for recovery of possession would be before the Civil Court, where he would also have to establish his title.

12. On the above reasoning, we set aside the judgment of the learned Single Judge as also Annexure-9 order of the DRT. The S.A. 101 of 2014 is restored to the files of the DRT, Patna. We also reckon the fact of the Debt Recovery

Tribunal having interfered with the measures of auction as is seen from S.A. 44 of 2017, by order dated 14.02.2023, in an appeal filed by the borrower. The DRT, in fact, found that neither the borrower nor the guarantor were made a party before the High Court and, hence, there was no occasion for the High Court to decide the dispute between the borrower and the Bank. It was in such circumstances that the auction was set aside and the auction purchaser was directed to hand over possession back to the Bank upon which he was directed to be paid the entire auction money with simple interest at the rate of 10% per annum. The Bank was also consequently directed to hand over possession back to the mortgagor.

13. The parties agree that even now the purchaser is in possession of the property. The DRT had also directed that if the borrower does not comply with the order, he would be disentitled from any interest. In any event we would not speak on the merits of the order dated 14.02.2023 of the DRT since there is an appeal filed before the Appellate Authority. We would have ordinarily directed the appellant, in the circumstances of the re-delivery having been directed, to approach the Civil Court for recovery of possession. However, learned counsel for the appellant alertly points out that even

though the identification and delivery of possession of the property was interfered with by the DRT, even now the symbolic possession taken over by the respondent-Bank, before the sale proceedings, under the SARFAESI Act, remains in force.

14. In such circumstances, the appellant has only a remedy by way of the proceeding initiated under Section 17 of the SARFAESI Act. The S.A. filed by the appellant would stand restored before the DRT, Patna and the same would be considered on merits, insofar as the measures taken under the SARFAESI Act, which would also include the adjudication of whether the security interest created was proper and the borrower had a valid title over the entire property mortgaged or only a part of it.

15. The appeal stands allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	20.07.2023.
Transmission Date	N.A.