21-08-2023
ct no. 13
sl. no. 27
pk

M.A.T. No. 1497 of 2017
With
IA No. CAN 1 of 2017 (Old No. CAN 9462 of 2017)

Sonali Mukherjee & Anr.
-Versus-
Union of India & Ors.

Mr. Samim Ahammed,
Mr. Arka Maiti,
Ms. Gulsanwara Pervin
Ms. Ambiya Khatun

…for the appellants

Mr. Atish Dipankar Ray,
Ms. Sanjukta Ray

…for the respondent nos. 3 to 8

Mr. Gautam Chakraborty

…for the respondent no. 9

1. By the impugned order dated 18th August, 2017, a Single Bench of this Court directed the UCO Bank to register the sale and execute conveyance in favour of the writ petitioners/appellants. No possession was, however, ordered in favour of the writ petitioners. Refund of money was also denied. The Single Bench held as follows:-

> "The petitioners seek registration of a deed of conveyance in respect of an immovable property purchased by the petitioners in a sale conducted by UCO Bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and in the alternative refund of the purchase price.
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> The learned advocate for the petitioners submits that, the petitioners are interested in refund of the purchase price, as there is a dispute between UCO Bank and Central Bank of India over the property. He submits that, the petitioners had participated in the sale process under the Act of 2002. They became successful therein. The sale was confirmed

by UCO Bank on September 15, 2014 and the sale certificate was issued on October 14, 2014. The petitioners have since been dispossessed from the property on March 12, 2015. He refers to the affidavits used by UCO Bank and Central Bank of India and submits that, there are disputes between the two banks with regard to the property concerned. In the fitness of things, therefore, the Court should direct UCO Bank to refund the purchase price to the petitioners.

The learned advocate appearing for UCO Bank submits that, the property was put on sale under the Act of 2002, where the petitioners had participated. The petitioners were declared as highest bidders on September 15, 2017 and the sale in favour of the petitioners was confirmed on that date. The petitioners had applied for extension of time to make full payment on September 18, 2014. The sale certificate was issued on October 14, 2014. The possession was made over on October 15, 2014. On November 14, 2014, the petitioners had asked for registration of the deed of conveyance. Thereafter, the petitioners on March 12, 2015 had raised complaint that the petitioners had been dispossessed from the property. The so-called dispossession happened subsequent to the sale and the petitioners being put in possession of the property, the question of refund of purchase price does not arise.

The learned advocate appearing for Central Bank of India submits that, the Central Bank of India had also sold the property under the Act of 2002 and that, the sale was prior to the date of sale by UCO Bank. The respondent nos. 13 and 14 are the purchasers of such immovable property.

I have considered the rival contentions of the parties and the materials made available on record.

The two prayers of the petitioners, one being in the alternative to the other, require consideration. The petitioners claim to have purchased the immovable property in an auction sale undertaken by UCO Bank under the Act of 2002. UCO Bank acknowledges the petitioners to be the purchasers of the immovable property. It is the common case of the parties that, the petitioners had paid the entire consideration to UCO Bank. The entitlement of the petitioners to receive the deed of conveyance in respect of the property concerned is not denied by UCO Bank.

In such circumstances, the petitioners are at liberty to obtain the conveyance from UCO Bank in respect of the property concerned in accordance with law.

So far as the refund of the purchase price is concerned, it appears from the records that, the petitioners had participated in the sale conducted by UCO Bank. They were put in possession of the property concerned on October 15, 2014. They had issued a letter on November 14, 2014 to UCO Bank asking for execution of deed of conveyance. At no point of time prior to March 12, 2015, did the petitioners allege that they were dispossessed. Since the petitioners did not ever complain that, they were dispossessed from the property and the UCO Bank had put the petitioners in possession, the petitioners are not entitled to refund the purchase price.

So far as the Central Bank of India is concerned, such Bank and its so-called purchasers are at liberty to take appropriate steps in accordance with law to protect their interest, if any.

W. P. 7395 (W) of 2015 is disposed of without any order as to costs.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities."

2. Disinclined to obtain formal title of the secured asset without actual possession, the appellants challenged the order before a Division Bench.

3. A Division Bench headed by the then Chief Justice of this Court admitted the appeal vide order dated 29th July, 2019 directed as follows :

> "We have heard the learned senior counsel appearing for the appellants and the learned counsel appearing for UCO Bank as well as the learned counsel appearing for the Central Bank of India.
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> The writ appellants / writ petitioners, as we see from the facts of the case, are apparently between the devil and the deep sea.
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> Appellants are auction purchasers of a flat in a sale conducted by UCO Bank under the SARFAESI Act. They are in possession of that apartment. However, the registration of the document was not done. They came to this Court seeking a direction upon the UCO Bank to register the documents in their favour. Alternatively, they prayed for refund of the amounts paid by them as purchase price in the sale conducted by UCO Bank.
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> In the writ petition, the Central Bank of India came out with a plea that the same security asset is the security offered to it and the security interest that the Central Bank of India had over the property, was also ut to proceedings under the SARFAESI Act and such property ahs been sold by the Central Bank of India as well.
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> Thus, there could be competing claims in relation to the same flat or apartment.
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> However, it is pointed out that the sale certificate issued by the UCO Bank identifies the flat with a building number, but the sale certificate issued by the Central Bank of India does not carry any identification of the apartment on the basis of numbers.
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> UCO Bank and Central Bank of India are nationalized banks. They fall for adequate and appropriate control by the Reserve Bank of India.
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> This is not one of those cases where the matter cannot be left at the stage in which it has

now reached. The learned Single Judge has ordered in the writ petition refusing the relief claimed by the petitioners by way of refund of amount. It has left the Central Bank of India and the UCO Bank to proceed as it may find appropriate.

We think that the facts of the case in hand require a deeper look to ensure that the confidence of those, who buy such secured assets in auction by different banks, are regulated as may be required. The very peculiar facts and circumstances of this case persuade us to direct an enquiry to be conducted into the transactions of the UCO Bank and the Central Bank of India, which have led to this litigations and the proceedings which were carried by both these banks.

Hence, we direct that an enquiry as aforesaid shall be conducted by the Banking Ombudsman appointed under the Banking Ombudsman Scheme, 2006 or any succeeding Scheme, who has authority over the territory of the State of West Bengal. The Banking Ombudsman will be at liberty to exercise all powers in terms of the Banking Ombudsman Scheme as well as such further authority as may be necessary for due conclusion of the enquiry ordered hereby. We hereby authorize the Banking Ombudsman to exercise such powers. We do so in exercise of writ jurisdiction. The Banking Ombudsman having jurisdiction over the State of West Bengal is required to conduct an enquiry following due procedure as to notice, hearing etc. and also maintaining confidentiality as may be found necessary and due. The enquiry shall be completed and a report shall be submitted before this Court on or before 15th November, 2019.

The UCO Bank, Central Bank of India and the writ appellants are directed to mark their presence at the Office of the Banking Ombudsman who has jurisdiction over the State of West Bengal forthwith to enable commencement of proceedings. If the Ombudsman deems it appropriate to issue notice to any other parties, be it auction purchaser or otherwise, it is clarified that the Banking Ombudsman will be at liberty to do so.

Central Bank of India and UCO Bank are directed to provide copy of this order to the Banking Ombudsman concerned and cooperate appropriately with it by furnishing documents and materials, as may be required by that authority.

It is further directed that the possession of the compartment will be continued to be protected with the person with whom such possession is now.

Let this matter appear on 18th November, 2019."

4. Heard the counsels for the parties i.e. the appellants and the two respondents/Banks i.e. UCO Bank and the Central Bank of India (CBI).

The report of the ombudsman reveals the following facts:-

a) The UCO Bank had in the year 2005, advanced sums of money to one Puja Soni and Jitendra Soni against mortgage by deposit of title deeds of the subject Flat at Premises No. 409, Bansdroni Place, P.S.- Regent Park, Kolkata – 700 070. The loan became a Non-Performing Asset (NPA) in the year 2006 itself. The UCO Bank, however, did not register the property with the Central Registry (CERSAI) after it was established in March 2011, under Section 23 of the SARFAESI Act, 2002.

b) The UCO Bank had advanced another Cash Credit loan for 11 lacs to the said Pooja Soni as proprietrix of one Avishkar Electronics in May 2005. The security for the said loan was a flat at Shibpur in Howrah. It transpired that a fraud was committed on the Bank by the said borrower as the said property was already mortgaged to the Punjab National Bank. An FIR was registered. The UCO Bank had admitted before the Banking Ombudsman that there was a possibility of involvement of Guarantors, Advocates, and other persons in the fraud of the Bank.

c) In the meantime, sometime in the year 2009 the CBI also advanced a loan against mortgage of the same property, to one Subrata Poddar.

d) The CBI, however, thereafter registered its mortgage with the Central Registry in terms of Section 23 of the SARFAESI Act, 2002.

e) The borrower of CBI was a Railway employee. The loan became an NPA in April 2011.

f) It is only in the year 2014 (despite the account having become an NPA in 2006) that the UCO Bank put up the property for sale under Section 13(4) of the SARFAESI Act read with Rule 8 of the SARFAESI Rules of 2002. UCO Bank had already taken physical possession of the secured asset. The appellants/writ petitioners were declared the successful purchasers in the auction. Sale certificate was issued on 14th October 2014. Physical possession was stated to have been delivered to the appellants on 15th October 2014. Formal registration of the sale was pending. The appellants did not stay in the property and only put a nameplate thereon. The UCO bank did not assist the appellants in registering the property.

g) Around the same time, sometime in September, 2014, of the sale of the UCO Bank, the CBI had also put up the property under the provisions of the SARFAESI Act, 2002. The sale was completed by the Central Bank of India of the same property and confirmed on 17th September 2014 in favour of one Fardin Rahmat and Ayesha Mumtaz. Physical possession was handed over to the said purchasers by the CBI on 24th September 2014. This was before the sale and possession given to the appellants by the UCO Bank.

5. The banking Ombudsmen having heard all the parties, considering all documents and evidence, found that the matter may be resolved before a civil court as to which of the original loan accounts of the two banks (i.e. the Sonis' of UCO bank and Subrata Poddar's of CBI) were bona fide. However, taking a comprehensive view of the entire matter the ombudsman opined that the UCO Bank ought to refund the sale proceeds paid by the writ petitioners to them.

6. The Ombudsmen stated as follows:-

> "8(j) Both the banks claim to have done due diligence and appraisal while sanctioning the loans. Both banks have given copies of the relevant search reports and Conveyance deeds etc. While both the banks' contesting claims to be in possession of original title deeds for the same property simultaneously may not be correct, we are not in a position to examine which bank is

> having the original title-deed and related papers. Dispute of title to the property between the borrowers of the two banks requires full judicial scrutiny by the civil court.
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> (9) In the facts and circumstances stated herein above, keeping in mind the spirit of customer protection and the fact that the petitioners have made bonafide payment for the auctioned property to the UCO Bank in good faith, it will be fair that the sum paid by them be refunded with interest."

7. It is curious to note that neither the UCO Bank nor the Central Bank of India appear to have raised any question with regard to the jurisdiction of the Writ Court either before the Single Bench or before the Co-ordinate Bench of this Court or any subsequent date until today for the first time.

8. Indeed it is true that issues of this nature could have been sent for adjudication to the DRT at Kolkata. However, since a Co-ordinate Bench headed by the then Chief Justice has decided to refer the disputes for opinion of the Banking Ombudsman and such opinion having been received, the appeal is entertained.

9. This Court has in mind the decision of the Supreme Court in the case of Punjab National Bank Vs. O. C., Krishnan and others reported in (2001) 6 SCC 569. The dispute in the said case was raised by the borrower before the Writ Court directly. In the instant case the bona fide purchaser third party, having no connection

with the banks has been prejudicially and unfortunately deprived.

10. The principle of alternative remedy is not absolute. A Writ Court can exercise jurisdiction even when alternative remedy is available when extreme injustice and inequity is caused to an innocent third party.

11. The "Banking Ombudsman" has submitted a very painstakingly detailed, and comprehensive report. The ombudsman has inspected all the documents and reports of the two banks and has very clinically scruitinized every small detail and action of each of the parties i.e. the UCO bank, the Central Bank of India, and the appellants. This Court is, therefore, satisfied with the enquiry and recommendations of the ombudsman revealed from the report dated 7th November 2019.

12. The UCO Bank today however aggressively challenges the implementation of the report of Ombudsmen without challenging the reference to the Ombudsmen in the first place. It, therefore, would not lie in the mouth of the UCO Bank to question the findings or recommendation of the Banking Ombudsman.

13. The Bank's argument is that the Banking Ombudsman has contradicted himself. On the

one hand he has recommended that the disputes be resolved before a Civil Court. On the other hand he has recommended refund of money to the appellants. The UCO Bank appears to have completely misread the recommendation. The resolution before a Civil Court recommended was the dispute between the two banks, i.e. who has been more diligent.

14. In the peculiar facts and circumstances of the case, this Court directs implementation of the recommendation of the banking Ombudsmen, inter alia, for the following reasons :

(a) The UCO bank chose not to register the mortgage with the Central Registry despite lodging an FIR against the borrower in respect of a different account.

(b) The UCO bank's account had become an NPA within 8 months of its advance i.e. by March 2006.

(c) The UCO bank had failed to take steps for sale under the SARFAESI Act 2002 untill after 8 years of the account having become an NPA.

(d) The CBI's borrower was a first time defaulter but the UCO bank's borrower was a regular defaulter and a fraudster.

(e) The CBI had completed its sale and issued a sale certificate before the UCO bank and had delivered possession to the appellants.

(f) The appellant, a bona fide purchaser for value under the SARFAESI Act, 2002 is out of pocket to the extent of Rs.17,51,000/- since the year 2014 i.e. 9 years.

(g) The UCO Bank was sitting on the fence while waiting for the recommendation of the Ombudsmen.

(h) There is no formal affidavit filed objecting to the report of the banking Ombudsmen dated 7th November 2019 by the UCO bank, till date.

(i) The faith of the common public at large in auctions conducted by the banks would be eroded and the purpose behind enactment of the SARFAESI Act, 2002 itself be defeated if the appellants are now relegated to a statutory forum or civil court to recover money.

(j) It does not appear to this Court that the writ petitioner is highly placed economically given the fact that he has fourth with difficulty about Rs.17,51,000/- to purchase a property in a bank auction conducted under the SARFAESI Act, 2002,

15. For the reasons indicated hereinabove and in the very peculiar facts and circumstances of the case, this Court directs the UCO Bank to refund sum of Rs.17,51,000/- to the writ petitioners/appellants within a period of one month.

16. The instant appeal is disposed of.

17. In view of disposal of the appeal, connected application being CAN 9462 of 2017 is also disposed of.

18. After the order is dictated, learned counsel for the UCO Bank has prayed for stay of the operation of the order. The same is considered and declined by this Court.

19. There will be no order as to costs.

20. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)