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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 19th July, 2023***

+ **W.P.(C) 971/2019**

P KANAGASABHAVATHY Petitioner

Through: Appearance not given

versus

INDIAN RENEWABLE ENERGY
DEVELOPMENT & ORS Respondents

Through: Mr. Apoorv Sarvaria, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, impugning an order dated 15.11.2018, passed by the learned Debts Recovery Appellate Tribunal (hereafter '**the DRAT**') in Appeal No. 265/2016, captioned ***Indian Renewable Energy Development Agency Limited (IREDA) v. Sh. P. Kanagasabhavathy & Ors.***

2. The controversy in the present case relates to the question as to whether the petitioner is liable for the payment of interest and compensation to the auction purchaser of the mortgaged property on the said sale being set aside at the instance of the petitioner.

3. Briefly stated the relevant facts are that the petitioner had



furnished a guarantee for financial assistance disbursed by respondent no. 1 (hereafter '**IREDA**') to respondent no. 2, M/s South India Fuel Pvt. Ltd. (hereafter '**the borrower**'). The borrower had failed to discharge the repayment obligations. Consequently, IREDA filed an original application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (O.A. No. 174/2001) before the learned Debts Recovery Tribunal-I, Delhi (hereafter '**the DRT**') for recovery of a sum of ₹15,56,440/- along with interest.

4. The learned DRT allowed the said application and issued a Recovery Certificate for a sum of ₹15,74,440/- along with *pendente lite* and future interest at the rate of 11% per annum with quarterly rests.

5. Pursuant to the said Recovery Certificate, proceedings for recovery of the debts due to IREDA commenced before the Recovery Officer DRT-I (hereafter '**the Recovery Officer**') – R.C. No. 15/2010. In the said proceedings, the Recovery Officer attached the mortgaged property described as land measuring 9.3 cents comprising Old Survey No.1675 & 1676, New Survey No. 4/6-4, Hindu College, South Road, Nagercoil Taluk, Agatheeswaram, Kanyakumari District, Tamil Nadu (hereafter '**the mortgaged property**').

6. Two unsuccessful attempts to auction the mortgaged property were made and finally, the mortgaged property was auctioned on 09.03.2012, in favour of respondent no. 4 (hereafter '**the auction purchaser**'). The auction purchaser had offered a sum of ₹55.10 lakhs. The same was the highest bid and therefore, was accepted.



7. After the auction purchaser had discharged the entire consideration, the petitioner filed his objections to the said auction on 09.04.2012. The petitioner objected to the auction of the mortgaged property on essentially two grounds. First, that the value of the mortgaged property was ₹2.35 crores and had been sold at an undervalue; and second, that the description of the mortgaged property in the Sale Proclamation Notice dated 17.01.2012 was incorrect in as much as it had also mentioned (Door No. 122), which was erroneous. According to the petitioner, the correct Door No. was 122/1 and Door No.122 was a different property.

8. The petitioner also approached IREDA for settling its dues by way of a one time settlement (hereafter 'OTS'), for a sum of ₹65.5 lakhs. The petitioner also deposited a sum of ₹57 lakhs in April, 2012. The petitioner agreed to pay the balance amount within a period of sixty days from 31.07.2012; that is on or before 29.09.2012.

9. IREDA also filed an affidavit before the learned DRT confirming that it had accepted a sum of ₹57 lakhs after the auction of the mortgaged property in question and had further granted the petitioner, sixty days to pay the balance amount of dues. It also confirmed that it was no longer interested in proceeding with the sale of the mortgaged property.

10. The petitioner's objections to the auction of the mortgaged property was disposed by the Recovery Officer by an order dated 22.08.2012. The Recovery Officer did not accept that there was any material error in the description of the mortgaged property. Further,



the Recovery Officer observed that the petitioner could apply to set aside the sale under Rule 60 of the Second Schedule of the Income Tax Act, 1961. The petitioner's objection did not comply with the stipulated conditions and was also filed beyond the period of thirty days as stipulated under Rule 60 of the Second Schedule of the Income Tax Act, 1961. The Recovery Officer held that the auction of the mortgaged property was conducted according to the relevant rules and procedure and therefore, IREDA and the petitioner could not enter into any settlement compromising the rights of the auction purchaser. The Recovery Officer confirmed the sale of the mortgaged property in favour of the auction purchaser.

11. Thereafter, on 23.08.2012, IREDA executed the Sale Certificate in respect of the mortgaged property in favour of the auction purchaser.

12. It is material to note that as on 23.08.2012, the OTS had not been concluded in as much as the time afforded to the petitioner to pay the balance amount of ₹8,50,000/-, which was to be reckoned from 31.07.2012 had not expired. The order dated 22.08.2012 passed by the Recovery Officer also indicates that the petitioner had filed an application dated 14.08.2012 praying that the Recovery Certificate be discharged in terms of the compromise; the mortgage of the mortgaged property be redeemed; and the auction sale be set aside. But the said application was rejected.

13. The petitioner paid the remaining amount in terms of the OTS accepted by IREDA and a No Dues Certificate was issued on



27.09.2012.

14. The petitioner appealed the Recovery Officer's order dated 22.08.2012 before the learned DRT essentially, on three grounds. First, it claimed that there was an irregularity in the description of the mortgaged property. Second, that the property had been sold at a lower value. Third, that before the Recovery Officer, the auction purchaser had expressed its desire that consideration paid be refunded. And fourth, that the petitioner had paid a sum of ₹57,00,000/-, which was accepted by IREDA.

15. Insofar as the challenge to the auction sale, on the ground that the mortgaged property was sold at a lower value is concerned, the petitioner withdrew the said challenge. Thus, there is no allegation that the mortgaged property was sold for less than its fair value. Insofar as the contention that there was an error in the description of the mortgaged property is concerned, the learned DRT rejected the said contention. The learned DRT noted that it was not the petitioner's case that a wrong property had been auctioned because of a clerical error, or that the property had not fetched reasonable sale consideration. The auction purchaser had no grievance regarding any error in the description of the mortgaged property. In view of the aforesaid, the learned DRT held that the auction of the mortgaged property could not be held as null and void.

16. However, the learned DRT accepted the petitioner's prayer for setting aside the auction sale on the ground of equity. Since it was the petitioner's contention that the auction purchaser had expressed its



desire to receive back the consideration, the learned DRT moulded the relief on the said basis. It was noted that the auction purchaser had, before the Recovery Officer, expressed his desire to receive back the consideration along with interest and compensation and therefore, the auction purchaser could be compensated. In view of the above, the learned DRT directed that the auction purchaser be refunded the consideration along with an interest at the rate of 15% per annum with quarterly rests and in addition, 5% of the sale consideration as contemplated under Rule 60 of the Second Schedule of the Income Tax Act, 1961. The learned DRT further directed that the said amount be paid by IREDA in the first instance and thereafter, recovered from the petitioner.

17. Although the order passed by the learned DRT was largely in favour of the petitioner inasmuch as the sale of the auction property was set aside, the petitioner filed an appeal against the order dated 22.01.2013 before the learned DRAT (Appeal No. 437/2013). Before the learned DRAT, it was contended on behalf of the petitioner that there was material irregularity in the auction of the mortgaged property and therefore, the provisions of Rule 61, and not Rule 60, of the Second Schedule of the Income Tax Act, 1961 would apply. The petitioner contended that since there was an irregularity in the auction, the IREDA was liable to pay interest and cost to the auction purchaser and that the petitioner could not be fastened with that liability. The learned DRAT held that the submissions whether Rule 61 of the Second Schedule of the Income Tax Act, 1961 applied, was not



canvassed or considered by the learned DRT. Accordingly, the learned DRAT disposed of the petitioner's appeal (Appeal No. 437/2013) by an order dated 25.03.2014, remanding the matter to the learned DRT to pass an appropriate order after considering the petitioner's contention regarding applicability of Rule 61 of the Second Schedule to the Income Tax Act, 1961.

18. In terms of the aforesaid order, the learned DRT considered the petitioner's case that he was not liable for payment of any interest or penalty to the auction purchaser, as there was a material irregularity in the conduct of the auction for the mortgaged property.

19. It was the petitioner's case that the auction conducted was void and it was liable to be set aside in terms of Rule 61 of the Second Schedule to the Income Tax Act, 1961. The learned DRT accepted the petitioner's contention. The learned DRT noted that in the Sale Proclamation Notice of the mortgaged property issued prior to 17.01.2012 (sale proclamations dated 12.04.2010 and 10.06.2010), no Door number was mentioned in the description of the mortgaged property. However, Door No. 122 was mentioned in the Sale Proclamation Notice dated 17.01.2012. The learned DRT by its order dated 24.09.2016 held that Door no.122 and Door no. 122/1 were separate properties located adjacent to each other. The learned DRT also noted that the valuer had mentioned the corner plot, which would refer to Door No.122.

20. IREDA filed an appeal against the order dated 24.09.2016 passed by the learned DRT before the Learned DRAT (Appeal



No.265/2016), which was allowed in terms of the impugned order. The learned DRAT held that the petitioner's objection ought not to have been entertained at all. The learned DRAT reasoned that if it is accepted that the property auctioned was not the mortgaged property, the petitioner could have no grievance. The learned DRAT also observed that no other person had objected to the auction and the petitioner's objections were frivolous. The learned DRAT also considered IREDA's contention that since the learned DRT held that Rule 61 of the Second Schedule to the Income Tax Act, 1961 was applicable, it was entitled to resell the mortgaged property and conduct a fresh sale. However, the Court held that since the petitioner and IREDA had entered into a settlement, the mortgage was liable to be redeemed. And, the only question to be considered was which party would be liable to reimburse the interest and compensation. The learned DRAT held that the auction could not have been set aside under Rules 60 or 61 of the Second Schedule to the Income Tax Act, 1961 and that IREDA was entitled to refund of its money. The learned DRAT held that the petitioner would be liable to reimburse the amount to IREDA and would be entitled to receive the title deeds of the mortgaged property after payment of the said amount. However, the learned DRAT rejected IREDA's claim for ₹14,07,378/-, which included further interest, and restricted the same to an amount of ₹8,48,411/-, which was demanded earlier.

21. We have heard the learned counsel for the petitioner as well as IREDA. The auction purchaser remained unrepresented.



22. It is clear from the facts as narrated above that the petitioner had not objected to the description of the mortgaged property for the Sale Proclamation Notice dated 17.01.2012 at the material time. The petitioner had raised its objections at a belated stage after the auction of the mortgaged property had been confirmed in favour of the auction purchaser. Undisputedly, the petitioner had the notice of the auction.

23. It is also apparent from the record that there was no confusion at the material time regarding the identity of the mortgaged property. It is material to note that the petitioner had given up its claim that the mortgaged property had been sold at an under-value.

24. The auction purchaser was not under any misconception as to the property that it had bid for. The auction purchaser had correctly applied for mutation of the mortgaged property as is evident from its application dated 24.09.2012 filed before the Nagercoil Municipality. These aspects were considered by the learned DRT and it had, by the judgement dated 22.01.2013, rightly rejected the petitioner's contention that there was any material irregularity in the auction of the mortgaged property.

25. As noted above, the petitioner had filed an appeal against the said judgment. In the appellate proceedings (Appeal No.437/2013), the petitioner had canvassed that the auction sale was liable to be set aside under Rule 61 of the Second Schedule to the Income Tax Act, 1961. And, the matter was remanded to the learned DRAT to consider this submission.

26. It is relevant to refer to Rule 61 of the Second Schedule to the



Income Tax Act, 1961 and the same is set out below:

“61.Application to set aside sale of immovable property on ground of non-service of notice or irregularity.- Where immovable property has been sold in execution of a certificate, such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that—

(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.”

27. It is apparent from the plain reading of Rule 61 of the Second Schedule to the Income Tax Act, 1961 that an application to set aside a sale of an immovable property on the ground of material irregularity could be moved at any time within a period of thirty days from the date of the sale. The petitioner’s objection to the auction was not filed within the stipulated period. More importantly, even if it is assumed that mentioning Door No. 122 instead of 122/1 in the Sale Proclamation Notice was an error, the petitioner’s interest was not



adversely affected by this error. It is material to note that prior attempts to sell the mortgaged property were unsuccessful. And, there was no dispute that the price offered by the auction purchaser was reasonable as was noted by the learned DRT in the order dated 22.01.2013. It is important to note that it was not the petitioner's case before the learned DRT in the first round (Appeal No.32/2012) that a different property had, in fact, been sold. It is also relevant to note that in terms of proviso (a) to Rule 61 of the Second Schedule to the Income Tax Act, 1961, no sale can be set aside unless it is established that the applicant has "sustained substantial injury" on account of alleged irregularity. There is no material to establish that the petitioner has sustained any substantial injury in the facts of this case as the mortgaged property was not sold at less than the fair value. This, as noted earlier, is not in dispute as the petitioner had given up his contention that the mortgaged property was sold at an undervalue.

28. The Recovery Officer had rejected the petitioner's objections and had declined to set aside the sale of the mortgaged property. As noticed above, the petitioner had appealed the order dated 22.08.2012 of the Recovery Officer before the learned DRT. Notwithstanding that the learned DRT had not accepted that the sale of the mortgaged property was flawed in any manner, the learned DRT had accepted the petitioner's plea for setting aside the sale, *inter alia*, on the ground that the auction purchaser had expressed his willingness to accept the refund of the consideration paid with interest and penalty.

29. Clearly, the petitioner could not have prevailed in Appeal No.



32/2012 for setting aside of the auction sale without the condition of repayment of the amount to the auction purchaser along with interest and penalty. However, the petitioner had filed a further appeal (Appeal No.437/2013) before the learned DRAT in regard to the question of payment of interest and penalty. The learned DRAT had remanded the matter to the learned DRT solely to consider the petitioner's contention that there was a material irregularity in the auction sale in terms of Rule 61 of the Second Schedule to the Income Tax Act, 1961. As noted above, the material conditions for setting aside a sale under Rule 61 of the Second Schedule to the Income Tax Act, 1961 are not established in the facts of the present case and the petitioner's contention in this regard was required to be rejected. The learned DRAT had erred in passing the order dated 25.03.2014 accepting the petitioner's contention in this regard.

30. It is also important to note that the auction purchaser had given up his right and title in the mortgaged property by accepting the refund of the consideration along with interest and penalty. Clearly, the auction purchaser was required to be compensated for being deprived of its funds for the given period of time as well as the opportunity.

31. The learned DRAT had considered various orders passed by the Recovery Officer and the learned DRT, and found that the contentions raised by the petitioner were frivolous. The learned DRAT had reasoned that as the petitioner's claim was that when the mortgaged property had not been sold, it could have no objection in regard to the auction sale. This reasoning is not persuasive. However, it is clear



that the learned DRAT had found that the objections raised by the petitioner were frivolous. It is also apparent that the learned DRAT had moulded the relief by restricting the petitioner's liability to pay the interest and penalty paid to the auction purchaser and IREDA's claim for further interest was rejected. The petitioner's liability was restricted to ₹8,48,411/- instead of ₹14,07,378/- as claimed by IREDA.

32. We concur with the conclusion that the petitioner's objections to the auction sale of the mortgaged property were insubstantial. Since the sale of the mortgaged property was set aside at the instance of the petitioner, he is liable to reimburse an additional amount paid to the auction purchaser.

33. We concur with the decision of the learned DRAT in moulding the relief as aforesaid.

34. The petition is, accordingly, dismissed.

35. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 19, 2023

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