September 26, 2024
Sl. No.6
Court No.9
s.biswas

WPA 11109 of 2024

Vishnu Agarwal
vs.
Punjab National Bank (erstwhile United Bank of India) and others

Mr. Ajit Kumar MIshra
Mr. Abhishek Dey
... for the petitioner

Mr. Abhishek Banerjee
Ms. Parna Roy Chowdhury
... for the bank

1. The petitioner was the successful auction purchaser to whom the secured asset was sold by Punjab National Bank (erstwhile United Bank of India). The petitioner was also put in possession of the said property upon confirmation of sale. The possession letter is quoted below:

   Ref: RO/Cal(S)/Revery/7748/2017

   To
   Mr. Geeta Devi Agarwal
   14 & 15 Bangur Avenue, Block-C
   Kolkata-700055

   <u>Sub: Handover physical possession of the property to the purchaser/authorized person by the purchaser.</u>

   Re : Flat no.-401, 4th Floor, holding no.49K, Dr. Abani Dutta Road, Dist.-Howrah

   We are handover the physical possession in respect of the captioned property to the purchaser/authorized person by the purchaser as per the Securitisation and Reconstruction of the Financial Assets and Enforcements of Security Interest Act, 2002 and in exercise of the powers conferred under Section 13 read with rule 12 of the Security Interest (Enforcement) Rules, 2002.

   Please acknowledge the same accordingly.

   Authorised Officer & Chief Manager
   Date:05.05.2017
   Place: Kolkata

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2. It is alleged that before the registration of the deed, another bank, namely, Allahabad Bank proceeded against such property in respect of another loan account.
3. The petitioner is aggrieved because he is being deprived from enjoying the property.
4. Warrant of attachment was issued by the Recovery Officer. Petitioner submits that when the petitioner approached the Punjab National Bank for refund of the money, the petitioner was informed that without direction from a court of law, the money could not be refunded.
5. Learned advocate for the bank submits that property was mortgaged to the United Bank of India. On account of the failure on the part of the borrower to repay the loan, the account was declared as NPA. Steps were taken under the SARFAESI Act and the property was sold on 'As is Where is Whatever is basis'. The petitioner was the successful purchaser. The property was handed over to the petitioner. The sale certificate was confirmed. Thereafter, the bank did not have any role to play. The subsequent recovery proceeding at the instance of the Allahabad Bank cannot cast a liability on the Punjab National

Bank to refund the money as the said money was appropriated against the NPA.

6. In my opinion, the proper course of action for the petitioner would to approach the recovery officer in RP/167/2017 and pray for necessary order and stay of the attachment. The petitioner can also pray for addition of Punjab National Bank in the proceeding. It appears to this court that steps have been taken by the petitioner before the said Recovery Officer, already.
7. Under such circumstances, the writ petition is disposed of with direction upon the Recovery Officer, Debts Recovery Tribunal-3 Kolkata to dispose of the application of the petitioner expeditiously and not later than a period of two months from date.
8. It is also made clear that if any order is passed contrary to the petitioner's claim, in that event the petitioner is at liberty to prefer an appeal before the Presiding Officer of the appropriate tribunal.
9. The recovery officer will determine whether under the facts and circumstances as pleaded in the said application, the order of attachment of the property should be executed or stayed.
10. With regard to the issues raised by the petitioner as to whether the Punjab National Bank had a

better charge over the property than the Allahabad Bank and whether sale of the property under the provision of SARFAESI Act would negate the order passed in the proceeding initiated by the Allahabad Bank and connected matters, will have to be adjudicated before the appropriate forum.

11. Accordingly, the writ petition is disposed of.
12. There shall be no order as to costs.
13. All parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)