24.07.2024
Sl. No.9(DL)
srm

W.P.A. No. 11481 of 2024

Shiv Kumar Kanoi

Versus

Union of India & Ors.

Mr. Anirban Ray,
Mr. Rachit Lakhmani,
Mr. Mrigank Kejriwal
…for the Petitioner.

Mr. Rupak Ghosh,
Mr. Shaswat Nayak,
Mr. Debasish Chakraborty,
Mr. Snehasish Chakraborty
…for the Respondent No.2.

1. This writ petition has been filed challenging various actions of the Central Bank of India.
2. It is contended that the bank was the tenant of the petitioner. The petitioner was also a borrower. The bank and the petitioner enjoyed dual relationship as lender and borrower and landlord and tenant. The account of the petitioner became NPA. The bank initiated SARFAESI proceedings.
3. On other hand, the petitioner alleges to have certain money claims from the bank on account of unpaid corporation taxes and rent/occupation charges. According to the petitioner, records would reveal that negotiations and talks of settlement were going on between the parties and the bank had decided

to set off the amount payable by the petitioner against the loan, from the alleged dues of the bank towards rent, occupation charges, corporation taxes, etc.

4. One such document has been relied upon by Mr. Ray, learned Advocate appearing for the petitioner which is at page 150 of the writ petition. The relevant portions of the same are quoted below:

> "It is pertinent to mention that lease deed of the branch has expired on 31/12/2018 and Mr. Kanoi is also having following three account outstanding which are classified as NPA.

Name of the account	Facility	Account No.	O/S bal	NPA Date
Mr. Shiv Kumar Kannoi	Cent Rental	3063324465	3141337.00	28/02/2018
M/s. Shri Balaji Industries	Cent Trade	315545072	10101853.87	29/10/2016
M/s. Bansal & Company	Cent Trade	3155643647	5026248.49	28/02/2017

> <u>Based on the above understanding we have calculated amount of the arrears to be paid with interest @ saving bank till availment of loan by Mr. Kanoi and thereafter crediting the same to the loan account. Accordingly, we recasted all the above mentioned three loan accounts and it is observed that all the three accounts are adjusted in full by giving credit notionally in the account and charging interest accordingly. While recasting the loan account, we have also added Rs.371025/- being amount of KMC tax and surcharge paid to the credit of SB account no.1008726094 of Mr. Shiv Kanoi & SB account no 1008807098 of Mr. Ajay Kanoi (co-owner of the premises) on dated 20/01/2016 as per court order. Mr. Kanoi vide his letter dated 14/01/2019(copy enclosed marked as annexure-4) has also consented to settle the issues and agreed to resolve the matter if all his loan accounts are settled with the payment of arrears and interest thereon as discussed above.</u> We are enclosing herewith following calculation sheet duly checked for your reference.

1. Calculation of SB interest on Rs.98280/- thereafter this amount is credited to cent rental account. **(copy enclosed marked as annexure-5).**
2. Calculation of total outgo of the bank as on 31/12/2018 **(copy enclosed marked as annexure-6).**
3. Calculation of KMC tax and commercial surcharge from 01-01-1999 to 31/12/2018 wherein interest is calculated @ SB rate from the next month of execution of lease deed i.e. from September-2009 to February-2010 i.e. up to sanction of cent rental account. Thereafter this amount is credited to cent rental account. Subsequent KMC tax and surcharge is credited notionally in cent rental account till the account is adjusted thereafter it is credited notionally to cent trade account **(copy enclosed marked as annexure-7)**.
4. Recasted cent rental account no 3063324465 which is adjusted on 31/03/2012 by giving notional credit and changing interest accordingly leaving credit balance of Rs.102402/-. This result into remission of interest charged in the account by Rs.8562194.72 **(copy enclosed marked as annexure-8).**
5. Recasted cent trade account no 3155545072 which is adjusted on 28/03/2016 by giving notional credit and charging interest accordingly leaving credit balance of Rs.1141078/-. This results into remission of interest charged in the account by Rs.3348532/- **(copy enclosed marked as annexure-9).**
6. Recasted cent trade account no 3155643647 which is adjusted on 31/05/2018 by giving notional credit and charging interest accordingly leaving credit balance of Rs.1646859/- upto 31/12/2018. There is no remission of interest in this account instead interest to be charged to the tune of Rs.452598/- **(copy enclosed marked as annexure-10)**."

5. It is further contended that the document was internally circulated amongst all the officers of the bank and as such the same has a binding effect. Subsequently, the bank resiled from the said document by issuing other documents which are at pages 280 and 287 of the writ petition. Such documents indicate that the negotiations had failed. The petitioner

disputes the contents of such documents and submits that no meeting had been held. The petitioner alleges that the mention of the presence of the representative of the landlord/petitioner, was false. The documents were fabricated. The allegation would be further proved as the alleged minutes do not bear any signature either of the petitioner or of his representative. It is next contended that quashing of those documents were not within the jurisdiction of the learned Debts Recovery Tribunal and proceedings initiated by the petitioner being SA 264 of 2020 should not be a bar for the writ court to not only entertain the writ petition, but also quash the documents which were created by the bank and some of the officers, behind the back of the petitioner.

6. Mr. Ghosh, learned Advocate appearing for the bank submits that the writ petition is not maintainable. The petitioner has an efficacious remedy under the SARFAESI Act. The petitioner has approached the appropriate forum and the matter is pending. It is further contended that taking over possession of the mortgaged property has been protected by the learned Debts Recovery Tribunal by passing an interim order of status quo, sometime in 2020. It is next contended by Mr. Ghosh that the petitioner cannot pray before the writ court, for quashing of any document. The validity and veracity of the documents

which are denied by the petitioner, cannot be the subject matter of a writ proceeding. The petitioner may avail of his remedy before the appropriate forum. Disputed questions of facts cannot be gone into in the writ proceeding. Mr. Ghosh also submits that the money claim against the bank towards municipal taxes etc. have been denied by a competent coordinate Bench.

7. Mr. Ray denies such allegation and submits that there is an order of the Court permitting the petitioner to claim 60% of the municipal taxes, without any proof of payment.

8. Having heard learned Advocates for the respective parties, this Court finds that the petitioner has already approached the learned Debts Recovery Tribunal under the provisions of Section 17 of the SARFAESI Act. The learned Debts Recovery Tribunal has passed an interim order directing the parties to maintain *status quo* in respect of the property in question. The petitioner is at liberty to urge his case before the learned Debts Recovery Tribunal on all points including those which have been urged before this Court with regard to the conduct of the bank.

9. Moreover, this Court is of the view that declaration of the documents to be false and fabricated, cannot be passed by a writ court, as the matter requires elaborate evidence.

10. With regard to the specific submissions that some of the officers of the bank had approached the petitioner for bribe and on his denial, the bank withdrew from the settlements by issuing such false and fabricated letters which are at pages 280 and 287 of the writ petition, also, this court cannot be asked to adjudicate the same. The petitioner is always at liberty to take appropriate steps under the applicable laws, which he has so far chosen not to do.
11. All points are left open to be adjudicated by the appropriate forum.
12. It is expected that that the learned Tribunal shall dispose of the pending proceedings expeditiously preferably within a period of three months from the date of communication of this order.
13. The writ petition is, thus, disposed of.
14. Since no affidavit has been called for, allegations made in the writ petition are deemed to be denied by the bank.
15. There shall be no order as to costs.
16. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)