IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2637 OF 2024

Bank of Baroda, Having its Head Office at Mandvi,
Baroda – 390 006, Gujarat.
Having its Branch Office at Dharampeth, Nagpur –
440 010. Through its Principal Officer. **PETITIONER**

VERSUS

1. Amit Prakash Khandelwal, Age : Adult, Occupation : Proprietor, R/o Plot no.106, Shivaji Nagar, Near Bhopal Transport, Wadi, Nagpur – 440 023.

Also at
301, Sukhnivas Apartment, Trust Layout, Ambazari, Nagpur – 440 010.

2. M/s Uma Sales Corporation, Registered Office at Block No.5, Tawakkal Commercial Complex, Khasra No.23/3, Behind Sheela Complex, Wadi, Nagpur 440023.
Through its Proprietor Amit Khandelwal. **RESPONDENTS**

Miss Y. Ramani Patro, Counsel for the petitioner.
Shri M.D. Samel, counsel for the respondents.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : AUGUST 01, 2024

ORAL JUDGMENT (PER : NITIN W. SAMBRE, J.)

RULE. Rule made returnable forthwith and the writ petition is heard finally with consent of the learned counsel for the parties.

2. On or about October 21, 2023, the respondent no.1, Proprietor of the respondent no.2-Uma Sales Corporation (for short, 'the respondent-Firm') had initiated a consumer complaint under Section 27 of the Consumer Protection Act, 2019 alleging deficiencies in services against the erstwhile 'Dena Bank' which was merged into the petitioner-Bank of Baroda (for short, 'the petitioner-Bank'), a Nationalized Bank.

3. In the complaint filed before the State Consumer Disputes Redressal Commission, an application for grant of interim relief came to be moved which was allowed *vide* impugned order, whereby the petitioner-Bank has been directed not to proceed with the auction of Plot Nos.94 and 106, Khasra Nos.25 and 26, at Mouza Wadi, District Nagpur until further orders. Feeling aggrieved thereby, the petitioner-Bank has approached this Court by filing the present writ petition.

4. The facts necessary for deciding the present writ petition are as under:-

The petitioner-Bank alleging that total dues to be recovered from the respondents as on March 28, 2023 amounted to Rs.3,33,43,835/-, initiated the proceedings under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993. The said proceedings were initiated by the petitioner-Bank on or about May 27, 2023 under the authority of the Chief Manager. Amongst other, the reliefs claimed in the said original application are as under :-

> "*(a) that the Defendants no.1 to 3 are liable to pay total claim amount of Rs.3,33,43,835/- (Rupees Three Crores Thirty Three Lakhs Forty Three Thousand Eight Hundred Thirty Five only) towards outstanding loan amount, more particularly set out in para 5.28 hereinabove with future interest thereon at the rate of 10.35% for all loan accounts per annum with monthly rests on all loans outstanding amount, respectively with right to charge such modified rates as may prevail from time to time till realisation of certificate amount, from the date of the application;*

(b) It be declared that the entire outstanding amount is secured by the mortgage and hypothecated properties mentioned in the Schedule-I and II and the loan documents, in favour of the applicant;

(c) that the movable property, immovable property etc. belonging to defendants as described in mortgage documents and otherwise and other properties and other securities in any form etc. whether charged/mortgaged in favour of the bank or not, more particularly described in the Schedule I and II be ordered to be sold/realised for realisation of claim amount, without prejudice to the applicant's right to dispose off such properties under SARFAESI Act or otherwise;

(d) restraining the defendants or anybody on their behalf permanently from transferring, encumbering or parting with possession or any way dealing or entering into any agreement or any arrangement which affects the applicant in any manner whatsoever or disposing or charging their all mortgaged and other properties, which included immovable/movable properties mentioned in Schedule I and II and also the other movables and immovable whether charged to the bank or not; till the completion of the process initiated for recovery of the dues by the applicant;

(e) A recovery certificate with above direction and stipulations may kindly be issued;

(f) That the costs of application be granted;

(g) Any other relief as may be deemed fit by Tribunal under the facts and circumstances of the case may also be granted."

The petitioner-Bank has prayed for following interim reliefs in the said Original Application :-

"*(i) to restrain the defendants or anybody on their behalf from transferring, encumbering or parting with possession or any way dealing or entering into any agreement or any arrangement which affects the applicant in any manner whatsoever or disposing or charging their all properties, which include immovable/movable properties mentioned in Schedule I and II and also the other movables and immovable properties whether charged to the bank or not till the disposal of the OA;*

(ii) to restrain the defendants themselves or their agents, servants and anybody claiming through or under them, directly or indirectly, from opening, operating and/or continuing, if already opened, any banking account in any form with or without the loan or credit/financial facilities, without the prior written permission of the applicant bank. It any Bank has opened such account(s), the credit lying in any form may also be directed to be paid to the applicant bank, till the disposal of the original application;

(iii) The defendants may be jointly and each severally ordered and directed by this Hon'ble Debts Recovery Tribunal to make and furnish to the applicant, an affidavit stating, disclosing, containing and setting out the particulars, details, information and description of the nature and extent of their rights, title and interest in all their immovable properties, assets and for that purposes necessary orders be passed, inquiries be made and directions be given;

(iv) The defendants may be jointly and each severally and individually ordered, decreed and directed by this Hon'ble Debts Recovery Tribunal to make and furnish to the applicant from time to time and at all material times an affidavit stating, disclosing, containing and setting out the names and addresses of debtors of the respective defendants and setting out the exact amounts of debts due to the said defendants from their debtors;

(v) The defendants may be ordered and directed by this Hon'ble Debts Recovery Tribunal from time to time and at all material times to pay to the applicant all amounts received or to be received hereinafter by the said defendants from their debtors;

(vi) The Defendants 2 and 3 to be restrained from leaving the country and an order for impounding their passports be passed so that recovery process initiated by the applicant bank is not defeated [such directions are necessary, since the amount involved is huge and there is every likelihood that Defendants No.2 and 3 might leave the country. Also, the realizable value of hypothecated/mortgaged/charged properties might not be sufficient to fully satisfy the claim of the bank and in such event, there is every likelihood that Defendants No.1 might leave the Country in order to avoid the legal liability;

(vii) Defendants be directed to file a comprehensive Affidavit of Assets along with documentary evidence including inter-alia the following particulars [such directions are necessary for the similar reasons stated at para no.iii above] –

List of all bank accounts with copies of the same for last three years.

Copy of Passport (with all endorsements) and surrender the same before this Hon'ble Tribunal.

List of Immovable properties alongwith copies of Title Deeds.

Disclose whether they are the owners or tenants of the property where they are presently residing alongwith relevant documentary evidence.

Income Tax Returns for last 5 years alongwith Annexures.

Present Means of livelihood alongwith relevant documentary evidence.

i. Full/complete details of business interest in foreign countries.

(viii) Pending the hearing & final disposal of the O.A., the defendants be ordered to furnish sureties for the sum of Rs.3,33,43,835/- (Rupees Three Crores Thirty Three Lakhs Forty Three Thousand Eight Hundred Thirty-Five only) being the amount prayed for in prayer of the O.A. with interest within such time as this Hon'ble Tribunal may direct;

(ix) For purposes, aforesaid, necessary accounts may be taken, inventory made and such further and other orders, directions and reliefs may be granted to the applicant as the nature and circumstances of the case may require or as this Hon'ble Debts Recovery Tribunal may deem fit and proper."

5. It appears that after the aforesaid proceedings were initiated in view of failure of the respondents to repay the borrowings, the petitioner-Bank has taken recourse to the proceedings before the Debts Recovery Tribunal, Nagpur for attachment and sale of Plot Nos.94 and 106 in relation to which the mortgage-deed was executed.

6. Accordingly, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act of 2002') demanding the outstanding amount was issued on February 04, 2023 and thereafter notice under Section 13(4) of the Act of 2002 was issued on April 11, 2023, wherein the symbolic possession of Plot Nos.94 and 106, i.e. the mortgaged property, was taken over by the petitioner-Bank. A sale notice was issued on May 16, 2023 in relation to the aforesaid property and the said plots were put to e-auction on June 17, 2023 on 'as is where is' basis. It is claimed that so as to stall the aforesaid auction, the respondents have initiated the consumer complaint in which the order impugned came to be passed based on the following reasons :-

(a) that, the petitioner-Bank has failed to demonstrate that open plots bearing Nos.94 and 106 of Khasra Nos.25 and 26 of Mouza Wadi, District Nagpur were mortgaged with the petitioner-Bank;

(b) the proceedings initiated under the Act of 2002 are not interfered with.

7. The counsel for the petitioner-Bank would invite our attention to the provisions of the Act of 2002 and the object with which the said statute is enacted. According to her, the Act of 2002 is a special statute which is framed to regulate securitisation and reconstruction of financial assets and enforcement of security interest and to provide for a Central database of security interests created on property rights, and for matters connected

therewith or incidental thereto. According to her, the petitioner-Bank has taken recourse to the provisions of Chapter-III for enforcement of security interest against the respondents. She would claim that the said Chapter empowers the petitioner-Bank, who is a secured creditor, to enforce the security interest created in its favour without intervention of Court or Tribunal. According to her, it is not in dispute that the respondents are the borrowers. In such an eventuality, she would claim that the only remedy available to the respondents against the action initiated by the petitioner-Bank is under Section 17 of the Act of 2002 which provides an aggrieved person a remedy against the measures referred to under Section 13(4) of the Act of 2002 initiated by the secured creditor like the petitioner-Bank to make an application alongwith fees to the Debts Recovery Tribunal within a period of forty five days from the date on which such measures have been taken. She would claim that the respondents in such an eventuality ought not to have approached the State Consumer Disputes Redressal Commission thereby creating multiplicity of litigation. She would claim that the finding recorded by the Consumer Commission of the property not being mortgaged can be looked into by the Tribunal under the provisions of Section 17 of the Act of 2002 and in that view of the matter, the proceedings before the State Consumer Disputes Redressal Commission are not maintainable.

8. As against above, Shri M.D. Samel, learned counsel for the respondents would urge that the remedy under the Consumer Protection

Act, 2019 is a special remedy available to the consumer. According to him, the respondents are the consumers of the petitioner-Bank and as such have rightly taken recourse to the provisions of Section 27 of the Act of 2019. According to him, the State Consumer Disputes Redressal Commission having noted that the petitioner-Bank had failed to demonstrate about mortgage of the plots in question, has rightly passed the impugned order and that being so, the order impugned does not warrants any interference.

9. We have appreciated the rival claims.

10. It is not in dispute that the State Consumer Disputes Redressal Commission *vide* order impugned has directed not to auction the plots in question on the ground that the petitioner-Bank has failed to produce any document on record. It is also not in dispute that the proceedings initiated by the respondents are later in point of time than that of the proceedings initiated by the petitioner-Bank under the provisions of the Debts and Bankruptcy Act, 1993. The fact remains that the petitioner-Bank initially took recourse to Section 13(2) of the Act of 2002 by issuing notice to the respondents and subsequent thereto the action under Section 13(4) of the Act of 2002 was taken recourse to. In such an eventuality, if we consider the action taken by the respondents under Section 27 of the Act of 2019 what can be noticed is that there is some property viz. Plot Nos.94 and 106, Khasra Nos.25 and 26, Mouza Wadi, District Nagpur, in

relation to which the State Consumer Disputes Redressal Commission has granted injunction. The order impugned granting injunction in relation to the said property which is also the subject matter of the proceedings under Sections 13(2) and (4) of the Act of 2002 can be challenged under Section 17 of the Act of 2002 before the Tribunal. The fact remains that the respondents instead of taking recourse to the remedy provided under the special statute, have taken recourse to the provisions of the Consumer Protection Act, 2019 seeking injunction in the matter of auction of the suit property.

It is the claim of the petitioner-Bank in such an eventuality, if so brought to the notice of the Tribunal under Section 17 of the Act of 2002, the Tribunal could have looked into the same. The respondents so as to frustrate the claim of the petitioner-Bank, have taken recourse to the remedy under the Act of 2019 to which they are otherwise not entitled.

11. The fact remains that the respondents cannot, in our opinion, be termed as 'consumers' because the petitioner-Bank and the respondents are into a commercial transaction as the respondents had availed the loan facility on interest. Apart from above, what can be noticed is that the respondents can always approach the Tribunal questioning the action of the petitioner-Bank under Section 17 of the Act of 2002. We are required to be equally sensitive to the object for which the Act of 2002, which is a special statute, has been enacted.

12. In that view of the matter, we are of the view that the order impugned passed by the State Consumer Disputes Redressal Commission produced at Annexure No.16 cannot be said to be sustainable. Even otherwise, the judicial discipline warrants that the State Consumer Disputes Redressal Commission ought not to have acted at the behest of the respondents when the respondents have a remedy under the special statute, i.e. the Act of 2002.

13. That being so, the impugned order is quashed and set aside. We permit the respondents to take recourse to the alternate remedy including that of the one available under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The writ petition is disposed of.

14. Rule is made absolute in aforesaid terms. No costs.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

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