Niranjan Kumar Sinha Vs. Central Bank of India and Ors

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SooperKanoon Citation : sooperkanoon.com/76179

Court : Jharkhand

Decided On : Jul-04-2016

Appellant : Niranjan Kumar Sinha

Respondent : Central Bank of India and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (C) No. 2024 of 2016 with W.P.(C) No. 2025 of 2016 --- Niranjan Kumar Sinha (WPC20242016) Smt. Madhumala Singh (WPC20252016)--- --- ---- Petitioners Versus 1. Central Bank of India 2. The Chairman, Central Bank of India 3. The Executive Director, Central Bank of India 4. The General Manager (Recovery), Central Bank of India 5. The Zonal Manager, Central Bank of India, Patna 6. The Assistant General Manager, Central Bank of India, Ranchi 7. The Authorized Officer, Central Bank of India, Ranchi 8. The Chief Manager, Central Bank of India. Satsangnagar Branch, Deoghar --- --- --- Respondents --- CORAM:The Honble Mr. Justice Aparesh Kumar Singh For the Petitioner: M/s Anil Kr. Sinha, Sr. Advocate, Mukesh Kr. Singh, Debarsi Mondal, Advocates For the Resp - Bank: Mr. Gyanendra Kr. Sinha, Advocate --- I.A. No. 3493/2016 in WPC20242016 I.A. No. 3494/2016 in WPC20252016 02/ 04.07.2016 Heard counsel for the parties.

2. Original prayer in both the writ petitions relating to challenge to the e-auction notice dated 05.03.2016 published in the daily newspaper Times of India and Prabhat Khabar by the respondent Bank in respect of the landed properties of the petitioners taken as collateral security by the Bank for sanction of certain loans to

Shivam Educational Society, have been rendered infructuous as the said notices were withdrawn during pendency of the writ application as also informed by the learned counsel for the respondent Bank on 21.04.2016. However, Interlocutory applications have been filed being I.A. No. 3493/2016 and 3494/2016 in both the writ petitions seeking to challenge the e-auction sale notice dated 03.06.2016 published in the Daily Newspaper Times of India and Prabhat Khabar for the sale of same mortgaged assets of the petitioners taken as collateral security by the respondent Bank. 2 3. The relevant facts taken note of from the submissions of the counsel for the parties are as follows: The borrower Shivam Educational Society was granted a term loan of Rs. 600 lakhs for establishment of Secondary Education School up to 10th Standard at Rikhia, Deoghar on 09.09.2011 with the terms and conditions stipulated therein. Counsel for the parties had placed reliance on the documents at Annexure-1 i.e. sanction letter where the description of Primary Security, Collateral Security, names of Guarantor and repayment mode have been prescribed. Collateral securities of the two petitioners which are being put forth for e-auction are as follows: Collateral Securities: Equitable mortgage of Madhumala International Hotel Complex at R.R. Buxi Road. Deoghar. G+5 well furnished hotel, constructed on the piece of land vide Sale Deed No. 1817 & 1325, area :

3295. sft., plot nos. 216, 241 to 245, present plot no. 396, sub plot no. 13, 14, 15, 16, ward no. 11 (old), 9 (new), present no. 22 holding no. 304 & 305, Mouza; Shyamgunj (ii) First charge on entire 8.89 decimals residential land at Deepatoli, Ranchi on Khata No. 157, plot no. 714, sub plot no. 714/A/31. Khewat no. 1, holding no. 2231, ward no. 7/6, area:

8. 89 decimals. Sale Deed no. 2296 name: Niranjan Kr. Sinha Respondent Bank had also granted further loan of Rs. 2.00 crores by letter dated 03.01.2013 (Annexure-2) where also, the collateral securities were re- affirmed by the Guarantor / Mortgagor. The Respondent bank issued notices under section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (in short 'SARFAESI Act, 2002) to the borrower on 25.05.2015. This was objected to by the borrower, upon which, a reasoned order was also passed. Provisions of section 13(4) of SARFAESI Act, 2002 were

invoked on 13.08.2015 which were the subject matter of challenge in SARFAESI Appeal No. 68/2015 by the borrower. In the meantime, symbolic possession of the property have been taken. The SARFAESI Appeal was disposed of on 04.02.2016 (Annexure-5) during pendency of which, an earlier e-auction notice was sought to be challenged therein. The learned Debt Recovery Tribunal 3 gave liberty to the Bank to comply with the provisions of the Act and Rules, if required, for taking steps for fresh auction of the property after 30 days notice to the borrower. Thereafter, the second notice dated 05.03.2016, impugned originally in the present writ petitions, was issued and could not be acted upon by the Bank. The present notices dated 03.06.2016 are sought to be impugned in these two writ petitions in the aforesaid background.

4. It has been argued by the learned Senior counsel for the petitioners that in presence of primary security of the borrower described in the sanction letter also, the respondent Bank has chosen to put on auction the collateral securities of the petitioners who are guarantors. It is pointed out that in earlier auction notices assailed in the SARFAESI Appeal by the borrower, it was the school property which was put on auction.

5. The creation of collateral security by deposit of Title Deeds of the properties of the present writ petitioners / guarantors through equitable mortgage, is also being questioned by reference to Section 58(f) of the Transfer of Properties Act. It is submitted that Deoghar Town had not been notified earlier as being covered under the provisions of Section 58(f) of the said Act when the respondent Bank sought to create equitable mortgage of the properties of petitioner. In support thereof, a Notification of Registration Department, Government of Jharkhand dated 31.03.2014 has been produced. The respondent Bank had also not got the mortgage registered under the provisions of the Indian Registration Act, 1908. Assertions have also been made that the question relating to restructuring of the loan of the borrower was to be considered by the Board of the respondent Bank, but have been declined by a non-speaking order as it is not in proper form. That letter of denial is assailed in another writ petition being WPC No. 1071/2016 by the borrower. If the restructuring of loan is approved, then there shall be no outstanding dues to be realized. borrower is paying a sum of Rs. 8.00 lakhs per

month towards repayment 4 of the loan amount. Originally, sanction letter provided for repudiation of the loan in 84 equal installments which would come to an end only in 2018. However, the respondent bank has chosen to invoke the provisions of SARFAESI Act to put the properties of the guarantors on auction in a devious way perhaps acting on the behest of some interested bidders. It has been further submitted that the Bank had permitted restructuring of loan on 26.09.2013 whereunder, payments were to commence from June 2015. This aspect has been completely ignored by the respondent Bank. Learned counsel for the petitioners has also submitted that conduct of the respondent Bank is not bonafide and therefore, needs interference by this Court.

6. Learned counsel for the respondent Bank has referred to the terms of sanction letters dated 09.01.2011 and 03.01.2011 under which, amounts @Rs. 47.00 lakhs and Rs. 15.00 lakhs respectively were payable in each installment by the borrower after the moratorium period, which it had failed to do. After declaration of the Loan A/c as Non Performing Assets (NPA), steps for realization of the outstanding loan through the mode of SARFAEI Act has been invoked. Reliance has been placed upon a judgment rendered by the Apex Court in the case of Industrial Investment Bank of India vs. Biswanath Jhunjhunwala [(2009) 9 SCC478 in support of the submission that liability of the borrower and guarantor is coextensive. Learned counsel for the respondent Bank has also relied upon a judgment of the Apex Court rendered in the case of Mardia Chemicals Ltd. & others vs. Union of India & others and analogous cases [(2004) 4 SCC311 paragraph-81 thereof]. It is submitted that the Bank has adequately responded to the legal and factual grounds of challenge raised by the petitioners by filing a counter affidavit. It has brought on record the Notification of the Land Reforms and Revenue Department, Government of Jharkhand dated 17.08.2004 whereunder, the district of Deoghar and several other districts have been covered under the provisions of section 58(f) of the Transfer of Properties Act. It is further submitted that documents enclosed to the 5 counter affidavit filed today go to show that there was a conscious act on the part of the petitioners / guarantors to deposit the title deeds of their properties for creation of equitable mortgage as collateral security of the loan amount. Reaffirmation of the equitable mortgage has also been done in the subsequent loan granted in favour of the borrower on the part of the guarantors / petitioners

also. Learned counsel for the respondent Bank has also referred to the orders passed by the learned Debt Recovery Tribunal (DRT), Ranchi in SARFAEI Appeal No. 68/2015 where borrower had failed in its attempt to challenge the possession notice. It is submitted that the action of the Bank is bonafide and completely in consonance with the provisions of the Act of 2002. Lastly, he submits that in the presence of the appellate remedy available under section 17 of SARFAESI Act, 2002, petitioners should be relegated to pursue their challenge before the Debt Recovery Tribunal where all such issues on facts and law can be agitated.

7. I have considered the submissions of the parties and relevant pleadings on record. Conspectus of facts and issues raised by the petitioners against an action taken by the respondent Bank under the provisions of SARFAESI Act, 2002 invoking the provisions of section 13(4) of the Act of 2002, are amenable to the alternative statutory remedy available under section 17 of SARFAESI Act, 2002. Judgments rendered by the Apex Court in the case of United Bank of India vs. Satyawati Tondon & others [(2010) 8 SCC110 and Mardia Chemicals Ltd. (Supra) lay down the principles on the scope of interference by the Writ Court in a proceeding undertaken under a fiscal statute like SARFAESI Act by the respondent Bank. This Court is therefore not inclined to make any comments on the issues raised by the parties as it might prejudice their case in any challenge before the alternative statutory forum i.e. the Debt Recovery Tribunal where such grievances are amenable under the provisions of section 17 of SARFAESI Act. It is however always open for the respondent Bank in terms of the provisions of the Act of 2002 to allow the borrower / guarantor to repudiate the debts before the property is 6 auction sold or to undertake any restructuring process of the original loan, if permitted under the terms and conditions of RBI Guidelines. However, this Court is not inclined to interfere in the impugned notices of auction in the presence of alternative statutory remedy. The prayer made in the instant I.As. is therefore rejected. However, petitioners are at liberty to avail the forum of appellate remedy available under the Act of 2002.

8. Learned counsel for the petitioners, at the end, submitted that e-auction is scheduled to be held on 11.07.2016. It is submitted that if the appeal is not taken up before 11.07.2016 before the learned Debt Recovery Tribunal, Ranchi, it may

be rendered infructuous. It is therefore prayed that interim protection may be granted till the matter is taken up before the learned Debt Recovery Tribunal.

9. If the petitioners prefers a SARFAESI appeal in respect of the aforesaid action of the respondent Bank, the learned Debt Recovery Tribunal would consider the prayer for interim relief on its own merits, if possible, at an early date keeping into mind the date of e-auction i.e. 11.07.2016. In view of the observations made hereinabove, the respondent Bank if proceeds with the e-auction on the scheduled date i.e. 11.07.2016, would however not finalize the same for a period of two weeks from today, so that the petitioners may have the liberty to approach the learned Debt Recovery Tribunal for any interim relief. It is made clear that the interim protection granted hereinabove, shall cease to operate upon expiry of the period of two weeks from today.

10. Writ petitions are accordingly disposed of with the aforesaid observations. However, let it be made clear that this Court has made no comments on the case of the parties. (Aparesh Kumar Singh, J) Ranjeet/