

Rakesh Kumar vs Debt Recovery Tribunal Allahabad And ... on 3 March, 2025

Author: Rohit Ranjan Agarwal

Bench: Rohit Ranjan Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29451

Court No. - 9

Case :- WRIT - C No. - 5295 of 2025

Petitioner :- Rakesh Kumar

Respondent :- Debt Recovery Tribunal Allahabad And Another

Counsel for Petitioner :- Brijesh Kumar Kesharwani, Mohammad Waseem, Sita Devi, Umakant Kus

Counsel for Respondent :- Ashish Agrawal

Hon'ble Rohit Ranjan Agarwal, J.

1. This writ petition has been filed with the following prayer:

"Issue a writ, order or direction in the nature of mandamus direct the respondent No.1 to decide the Misc. Recall Application No.5 of 2023 (Rakesh Kumar Vs Union Bank of India) and further direct the bank not to take any coercive action against the petitioner."

2. It is contended by learned counsel for the petitioner that after the order dated 01.12.2022 was passed, the Bank initiated proceedings under Section 14 of the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called as "Act of 2002", which was put to challenge by the petitioner before this Court through Writ-C No.39165 of 2022, which was dismissed on 09.01.2023 leaving it open to the petitioner to avail the remedy as provided under the law. Pursuant to the said order of the writ Court, the petitioner had moved an application under Section 22(2)(g) of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter called as "Act of 1993") before Debt Recovery Tribunal, Allahabad.

3. Sri Shrey Singh, learned counsel appearing for the Bank had raised a preliminary objection that the application under Section 22(2)(g) of the Act of 1993 is not maintainable as the said section provides for setting aside any order of dismissal of any application for default or any order passed by it ex parte.

4. According to him, through the recall application, the petitioner wants to get the order dated 01.12.2022 passed by Debt Recovery Tribunal recalled which is neither an ex parte nor an order dismissing any application in default.

5. I have heard learned counsel for the parties and perused the material on record.

6. Before advertng to decide the case in hand, a cursory glance of order dated 01.12.2022 passed by Debt Recovery Tribunal is necessary for the better appreciation of the case, which is extracted hereas under:

"Ld. Counsel Sri Maneesh Mehrotra is present on behalf of the S. Applicant.

Ld. Counsel Sri Sandeep Arora is present on behalf of the respondent bank.

?.?. ??3908/2022 Ld. 'Counsel for the S. Applicant has filed this I.A. No.3908/2022 for urgent hearing of the matter along with Stay Application, I.?. No.3909/2022.

Grounds mentioned in I.?.?.3908/2022 is sufficient. Accordingly, prayer of Urgency Application to hear the matter is allowed. The ?.?. No.3908/2022 is disposed off accordingly.

This S.A. has been filed by the S. Applicant challenging the entire SARFAESI actions including exparte order dated 30.09.2022 passed by Ld. CMM, Kanpur.

Ld. Counsel for the S. Applicant submitted the order of Ld. CMM has been affixed on the secured asset on 16.11.2022 and the respondent bank is going to take physical possession of the property in question today.

It is further submitted that 30 days time may be granted to unable the S. Applicant to vacate the secured asset and delivered the physical possession of the property to the respondent bank and requested to disposed off the S.A. accordingly.

Ld. Counsel for the respondent bank submitted that if the S. Applicant handover the physical possession of the property respondent bank within 10, the respondent bank has no objection.

Considered. Since the respondent bank has no objection and the S. Applicant is willing to handover the physical possession of the property peacefully, therefore, this Tribunal is of the view that S. Applicant shall handover the physical possession of the property in question within 20 days.

It is made clear that if the S. Applicant failed to deliver the physical possession of the property in question within 20 days i.e. upto 21.12.2022, the respondent bank is free to take physical possession of the property in question immediately thereafter.

Accordingly, the S.A. is disposed off.

Let copies of this order be supplied to the parties as per rules and thereafter, file be consigned to record."

7. After this order was passed, the Bank had initiated proceedings under Section 14 of the Act of 2002 as the petitioner had not given possession of the property in question. The writ Court had not intervened in the matter and had dismissed the writ petition on 09.01.2023 and following order was passed:

"The instant petition has been filed praying for quashing of the order dated 30.9.2022, passed by Chief Metropolitan Magistrate, Kanpur, under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and for a mandamus restraining the respondents from taking forcible physical possession of the secured asset, i.e. House No. 1344/3, Nai Basti, Barasirohi, Kalyanpur, Kanpur Nagar and to provide a fresh statement of account to the petitioners to enable them to repay the balance amount.

Learned counsel for the petitioners admits that the mortgaged asset had already been auctioned by the Bank. He also admits that the petitioners had filed a securitisation application under Section 17 before DRT. The said application has been disposed of by DRT by order dated 1.12.2022. The order records that the petitioners made a statement that they would vacate the secured asset and deliver physical possession of the property to the respondent-Bank within thirty days. On aforesaid statement, the petitioners were granted twenty days time to vacate. The securitisation application was disposed of by providing that in case the petitioners fail to deliver possession within twenty days, i.e. upto 21.12.2022, the respondent-Bank would be free to take physical possession of the property in question immediately thereafter.

Learned counsel for the petitioners tried to submit that the petitioners made no such prayer before DRT and it is wrongly recorded in the order that they prayed for thirty

days time to vacate the secured asset.

We are not impressed by the submission made by learned counsel for the petitioners. In case any wrong statement is recorded in the order passed by DRT, it is open to the petitioners to avail appropriate remedy as may be advised. Even the order passed under Section 14 could be challenged by the petitioners before DRT, if so advised, in view of the law laid down by Supreme Court in *Kanaiyalal Lalchand Sachdev and Others vs. State of Maharastra and Others*, 2011 (2) SCC 782.

In the facts noted above, no good ground is made out to interfere in the matter. The petition is disposed of with the above liberty reserved in favour of the petitioners.

The order has been passed in presence of Sri Anil Kumar Singh Bishen, appearing on behalf of respondent no. 3."

8. From perusal of the order passed by Division Bench, it is clear that proceedings under Section 14 of Act of 2002 was under challenge and no liberty was given to the petitioner to move any application under Section 22(2)(g) of Act of 1993. The recall application moved before Debt Recovery Tribunal, Allahabad being Misc. Recall Application No.5 of 2023 is not maintainable as no permission was granted by the writ Court nor the said application falls under the category enumerated under Section 22(2)(g) of Act of 1993. Once the application moved by the petitioner under Section 22(2)(g) is not for recall of any dismissal order of any application for default or any order passed ex parte, the said application is not maintainable.

9. In view of the said fact, Misc. Recall Application No.5 of 2023 (*Rakesh Kumar vs. Union Bank of India*) moved by the petitioner before Debt Recovery Tribunal, stands dismissed without any further order.

10. The writ petition also fails and is hereby dismissed.

11. Registrar (Compliance) is hereby directed to send a copy of this order to the Debt Recovery Tribunal, Allahabad to be placed on record of Misc. Recall Application No.5 of 2023 (*Rakesh Kumar vs. Union Bank of India*).

Order Date :- 3.3.2025 Kushal