M.S. Sanjay vs Indian Bank on 29 January, 2025

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2025 INSC 177

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1188/2025
(@Petition for Special Leave to Appeal (C) No.26695/2019)

M.S. SANJAY Appella

VERSUS

INDIAN BANK & ORS. Respond

O R D E R

1 Leave granted.

2. This appeal arises from the Judgment and Order passed by the High Court of Karnataka at Bengaluru dated 15-6-2019 in Writ Petition No.47721/2017 by which the High Court allowed the Writ Petition filed by the Respondent No.4 – herein (guarantor) and thereby set aside the order passed by the Debt Recovery Appellate Tribunal (DRAT) dated 11-4-2017 in RA(SA) 151/2011.

3. The facts giving rise to this Appeal may be summarized as under:

(i) The appellant – herein before us is the auction purchaser. The Respondent No.4 is the guarantor. The Respondent No.2 before us M/s. Arihant Sarees had availed of loan facility from the Respondent No.1 – Bank.

(ii) As the borrower defaulted in repaying the loan amount, the Bank decided to proceed under the provisions of the SARFAESI 17:09:58 IST Reason:

Act.

(iii) The property in question was mortgaged by the original borrower, with the Respondent No.1 – Bank. Thus, a security interest was granted in favour of the Bank.

(iv) The Bank proceeded to put the property in question to auction after due compliance with the provisions of the SARFAESI Act.

(v) The Auction was conducted on 31-7-2007. The appellant - herein was declared as the successful bidder in the said auction pro-

ceedings. He deposited a total sum of Rs.24,00,000/- (Approx.) with the Bank.

(vi) It is not in dispute that thereafter on 30-11-2007, a Sale Certificate also came to be issued in favour of the appellant – herein.

(vii) The appellant thereafter started developing the property pur-

chased by him in the auction.

(viii) The borrower did not deem fit to question the legality and validity of the auction proceedings. However, it is the Re- spondent No.4 - herein its capacity as the guarantor went be- fore the Debt Recovery Tribunal and questioned the legal- ity and validity of the auction proceeding.

(ix) The DRT, Karnataka vide the order dated 23-1-2009 allowed the ASA 232/2008 instituted by the Guarantor and set at naught the auction proceedings.

(x) The DRT in its impugned order observed thus:-

> "On verification of the pleadings put forth by the appellant as well as the respondent bank herein, along with its counter the respondent bank field pub- lication copies of sale notice dated 14.7.2007 and another sale notice dated 8.6.2007 and possession no- tice dated 24.5.2007, along with the counter field by it on 6.6.2008. On 8.12.2008 along with a memo the respondent bank field publication copy of pos- session notice dated 24.5.2007 in 2 newspapers, sale notice dated 8.6.2007 published in 2 newspapers, sale notice dated 14.7.2007 published in 2 newspapers, and valuation report dated 25.5.2007. But, at the first instance along with its objections to the appeal nothing prevented the respondent bank to file the valuation report along with its counter objections for the reasons best known to it in spite of avail- ability of it with the respondent bank, which definitely leads to a suspicion whether it was ob- tained prior to filing its objections or subsequent to filing its objections. If really the respondent bank obtained valuation report as required under law, nothing prevented it to file the same along with its objections, as the appellant has taken the plea that the authorized officer has not followed all the for- malities before bringing the property for sale. Fur- ther, as seen from the sale notices dated 8.6.2007 and 14.7.2007 the respondent bank issued 2 sale no- tices, whereas the 2nd sale notice dated 14.7.2007 was published on 16.7.2007 in Kannada Praba as well as Indian Express as required under law. But the tenders. were opened on 30.7.2007 and sale was held on 31.7.2007. But the 2nd publication was made by the respondent bank without giving 30 days time for selling the property. But, on 30.7.2007 itself it opened the tenders and sold the property to the highest bidder, i.e. on 31.7.2007 itself. But, as per law laid down under Securitization Act, the respon- dent bank ought to have sold the property by giving 30 days time after publication of sale notice. No doubt in this case the respondent bank published of sale notice on 8.6.2007, but the sale was not held in pursuance of the same. While in respect of the 2nd publication of

> sale notice, the respondent bank not followed the law laid down under Securitization Act i.e. 30 days gap in selling the property. Further, the respondent bank in spite of saying that it has issued demand notice, no copy of the demand notice is filed by the respondent bank to verify whether it was properly issued or not. Under the above circumstances it can be presumed that the respondent bank has not proceeded in accordance with the law, but proceeded. according to its wishes.

Further, the filing of the documents by the re- spondent bank on 8.12.2008 gives rise to a kind of suspicion regarding the valuation report said to have been obtained by them dated 25.5.2007 itself. Under the above circumstances, the proceedings initiated by the respondent bank under Securitization Act are not in terms of the provisions laid down under law. As such, they are not valid proceedings. So, under the above circumstances the appeal preferred by the appellant has to be allowed.

In the result, appeal is allowed."

(xi) The Respondent No.1 - herein, i.e., the Bank being dissatis- fied with the order passed by the DRT went in appeal before the Debt Recovery Appellate Tribunal. The DRAT by its order dated 11-4-2017 allowed the appeal filed by the Bank and thereby set aside the order passed by the Debt Recovery Tri- bunal, referred to above. Some of the relevant observations made by the Appellate Tribunal read thus:-

> "7. In such a situation, bank cannot be held guilty for not maintaining 30 days gap between second publi- cation of sale notice, because initially there was gap of more than 30 days. In so far as valuation is concerned, documentary proofs are available on record. Notices are sent to the respondents/ guaran- tors on the addresses available in the bank records and all debts and proceedings were known to the re- spondents/ guarantor/s but due to their negligence and over confidence, they did not approach the bank well in time for repayment of the loan or for further communication. Malafide of respondent/ borrower is evident from the fact that on 31.7.2007 itself, i.e. date of sale, he sent letter to the bank. But he did not take interest for repayment of loan.
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> 8. In view of the aforesaid facts and situations, re-

spondent/ guarantor does not deserve any benefit on so called technical grounds. Rather, bank whose pub- lic money is at stake, acted in legal manner to en- sure for recovery of the debt amount. Any dispute be- tween respondents can be resolved on civil or criminal independently to ensure whether the respon- dent/ guarantor was really cheated or not? But bank has better rights to realize money from the respon- dents/ guarantors also.

9. Accordingly, the impugned order is set aside. Sale dated 31.7.2007 deserve to be and is hereby affirmed. Appeal stands allowed."

(xii)The respondent No.4 – herein being dissatisfied with the or- der passed by the Appellate Tribunal challenged the same be- fore the High Court by filing Writ Petition No.47721/2017. The High Court allowed his Writ Petition and thereby set aside the order of the DRAT.

(xiii)The High Court in its impugned order has observed thus:-

> "11. The contention of the 4th respondent that Rule 9(1) is amended by way of substitution in the year 2016 and as per the amended Rules 15 days clear notice is sufficient if the property is brought to sale on the second occasion. In the instant case, as the sale is on the second occasion, he contends that there was 15 days clear notice and the 1st respondent Indian Bank had rightly issued the sale certificate.
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> 12. Even though the Rule is amended by way of substitu-

tion in the year 2016, it would have no application to the facts of the present case. The sale has taken place in the year 2007 and the law as stood on the date of sale is to be looked into. The amendment made is to procedural law and not substantive law. When the amend- ment is brought into procedural law, it would always be prospective. In the case on hand, as on the date of sale 30 days clear notice was mandatory and as such the contention of 4th respondent is liable to be rejected. Even assuming that as the amended Rule would apply 15 days notice is sufficient, but the sale has not taken place in accordance with the amended Rules. The amended Rules would specify that the sale on the second occa- sion could take place if the sale notice is of not less than 15 days. Section 9 of the General Clauses Act, 1897 (for short 'the 1857 Act') provides for computa- tion of prescribed time. Section 9(1) of the 1857 Act reads as follows:-

> "9. Commencement and termination of time – (1) In any 2[Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"." From a reading of the above provision it is clear that if a provision prescribes time which commences with the word "from", the first day of period of time prescribed shall be excluded. For calculating 15 clear days time the date of publication is to be excluded. The sale publication was on 16.07.2007. If the date of pub- lication of sale notice is excluded, then there would be no 15 days clear notice of sale. The last date for submitting the tender was 30.07.2007 and as stated, the sale has taken place on 31.07.2007, that is to say, the sale has taken place on the 15th day. Hence, there was no clear 15 days notice of sale. On this ground also the sale is liable to be set aside.
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> 13. For the aforesaid reasons, the writ petition is al-

lowed. The order of the DRAT dated 11.04.2017 in RA(SA) 151 OF 2011 is set aside and the order passed by the DRT on 23.01.2009 in ASA No. 232 of 2008 is con- firmed."

(xiv)Thus, it appears on plain reading of the impugned order passed by the High Court that the High Court proceeded on the footing that 15 clear days notice was not issued by the Bank for putting the property in question to auction & accordingly de- clared the auction to be illegal.

4. In such circumstances, referred to above, the appellant is here before this Court with the present appeal.

5. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we hold the Respondent No.4 (Guarantor) wholly responsible for dragging the appellant – herein to a very frivolous litigation and that too on a very technical point. It all started in 2007. The appellant paid the en- tire sale consideration towards the sale of property which was put to auction, i.e., an amount of Rs.24,00,000/- (Approx.) on 30-11- 2007 and a sale certificate also came to be issued. Till that point of time, neither the borrower nor the guarantor said anything in this regard. It is sometime in March, 2008 that the guarantor con- ceived the idea of challenging the auction proceedings before the DRAT.

6. At this stage, it is also relevant to refer to the order passed by this Court dated 8.11.2019 which reads thus:-

> "We have heard Mr. S. N. Bhat, learned counsel appear- ing for the petitioner, who has inter alia submitted that he was successful in the auction conducted way back on 31.07.2007 and the sale certificate was issued on 30.11.2007. Learned counsel has further own submit- ted that the petitioner has been in possession of the property in-question over the years and the peti- tioner had put up construction in the said property. In this regard, learned counsel for the petitioner has drawn the attention of the Court to approved plan (page 227 of the SLP papers) and also the photograph depict-

ing the building constructed thereon (page 228 of the SLP papers). Learned counsel also raised other con- tentions in support of his submissions.

Having regard to the submissions made at the Bar, issue notice.

There shall be stay of the impugned order until further orders from this Court."

7. It appears from the materials on record that after the possession was handed over to the appellant, he developed the property by putting up further construction. For this purpose, building plans etc. were sanctioned by the competent authority and he is said to have spent about Rs.1.5 Crore in developing the prop- erty further.

8. When the High Court took up the Writ Petition for hearing in 2019 it went strictly by the number of days necessary for the is- suance of auction notice. The High Court should have taken a prac- tical view of the matter considering that the auction had attained finality way back in the year 2007.

9. It is well settled that interference by the Writ Court for mere infraction of any statutory provision or norms, if such in- fraction has not resulted in injustice is not a matter of course. In the case of Shiv Shanker Dal Mills v. State of Haryana reported in (1980) 2 SCC 437, the dealers in that case had paid market fees at the increased rate of 3%, which was raised from the original 2 per cent under Haryana Act 22 of 1977. The excess of 1 per cent over the original rate was declared ultra vires by this Court in the case of Kewal Krishna Puri v. State of Punjab reported in (1980) 1 SCC 416. The excess of 1 per cent over the original rate having been declared ultra vires, became refundable to the re- spective dealers from whom they were recovered by the Market Com- mittee concerned. The demand for refund of the excess amounts il- legally recovered from them not having been complied with, the dealers filed Writ Petitions under Article 32 and Article 226 of the Constitution for a direction to that effect to the Market Com- mittee concerned. The Market Committees contended that although the refund of the excess collections might be legally due to the deal- ers, many of them had in turn recovered this excess percentage from the next purchasers. While disposing of the petition and laying down guidelines, this Court held as under:

> "Article 226 grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exer- cising this flexible power, to pass such order as public interest dictates and equity projects. Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accord- ingly, the granting or withholding of relief may properly be dependent upon considerations as of pub- lic interest."

10. It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable con- sideration and mould the final order in exercise of its extraordin- ary jurisdiction. Any other approach would render the High Court a normal Court of Appeal, which it is not. It is a settled principle of law that the remedy under Article 226 of the Constitution of In- dia is discretionary in nature and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary ju- risdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties.

11. In such circumstances, referred to above, without saying anything further in the matter, we allow this appeal and set aside the impugned Judgment and Order passed by the High Court.

12. At one point of time, we were inclined to allow this appeal with costs to be paid by the Respondent No.4 for instituting a frivolous litigation, however, we have refrained ourselves from passing any order of costs.

……J (J.B. PARDIWALA) ……J (R. MAHADEVAN) NEW DELHI 29TH JANUARY, 2025.