

Govind Kumar Sharma & Anr.

v.

Bank of Baroda & Ors.

(SLP (C) No. 24155 of 2018)

18 April 2024

[Vikram Nath* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Whether an auction/ sale under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI Act) carried out without issuing the mandatory 30-day notice to the borrower under Rules 8(6) and 8 (7) of the Security Interest (Enforcement) Rules, 2002 is liable to be set aside. If so, can the *bona fide* purchaser, who was originally the tenant, be forced to hand over the physical possession of the premises in order get the refund. Whether the *bona fide* purchaser would be entitled to refund of the auction money and interest, and compensation for improvement/ investments made by him.

Headnotes

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Security Interest (Enforcement) Rules, 2002 – Appellants/ Original tenants in physical possession of premises – Appellants were issued sale certificate after auction- Bank admitted to procedural lapse – DRT set aside sale and directed Bank to refund auction money with interest as applicable to fixed deposit only after receiving the possession of the premises – DRT found no proof of improvements/investments – DRAT and High Court confirmed.

Held: Supreme Court upheld the setting aside of the auction/sale in view of concurrent findings and Bank's admission- Supreme Court modified DRT's directions – Appellants were allowed to retain physical possession in the capacity of tenants and borrower/ landlord could to evict as per law and Bank was directed to return the auction money with 12% per annum compound interest. [Paras 12-15]

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List of Acts

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Security Interest (Enforcement) Rules, 2002.

List of Keywords

Rule 8(6), Rule 8 (7) of Security Interest (Enforcement) Rules, 2002; Mandatory notice; Default; Non-compliance of statutory provisions; Setting aside of auction/ sale; Refund; Physical possession.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5028 of 2024

From the Judgment and Order dated 02.07.2018 of the High Court of Judicature at Allahabad in WC No. 20266 of 2018

Appearances for Parties

R. P. Shukla, Dhruv Shukla, Ms. Upasena Shukla, Ms. Aeishwarya Sharma, Gaurav Chauhan, Ms. Megha Gaur, Piyush Kumarendra, Vibhav Mishra, Vijay K. Jain, Advs. for the Appellants.

Arun Aggarwal, Ms. Anshika Agarwal, Deepti Jain, Shivam Saini, Praful Rawat, Pramod Kumar Singh, Vijay Pal, Shiv Dutt Sharma, Ms. Rekha Agarwal, Rajvir Singh, Bikash Chandra, Rameshwar Prasad Goyal, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Vikram Nath, J.

Leave granted.

2. The appellants herein have assailed the correctness of the judgment and order dated 02.07.2018 passed by the Allahabad High Court dismissing the Writ Petition of the appellants, confirming the orders passed by the Debt Recovery Tribunal¹ as also the

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Debt Recovery Appellate Tribunal², whereby the auction sale held in favour of the appellants had been set aside and the appeal was dismissed.

Brief facts in nutshell are as follows:

3. The firm-respondent no.3, had taken a loan from the respondent no.1-Bank. However, as it went into default, the Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002³. In the said recovery proceedings, the Recovery Officer conducted an open auction. The appellants were the highest bidder. Their bid was accepted and they made good the deposits as per the terms of this auction. Accordingly, a sale certificate was issued in their favour on 30.03.2009. It may be noted here that the appellants were tenants of the borrower in the premises in question which had been put to auction. As such the status of the appellants changed from that of tenants to that of owners after the sale was confirmed and sale certificate was issued.
4. The borrower-respondent nos.3 and 4 filed a securitization application under Section 17 of the SARFAESI Act for setting aside the sale on the ground that the Bank had not followed the statutory procedure prescribed under the Security Interest (Enforcement) Rules, 2002⁴, in particular, the notice as required under Rules 8(6) and 8(7) which required a mandatory notice of 30 days to the borrower, had neither been issued nor served upon the borrower.
5. The DRT, after examining the matter, came to the conclusion that the Bank itself had admitted that the statutory compliance under the above rules had not been made and as such proceeded to set aside the sale vide order dated 21.04.2015. The operative portion of the order passed by the DRT is reproduced hereunder:

“...The sale as pointed out earlier is liable to be quashed for the non-compliance of Rule 8(6) and 8(7) of the Security Interest (Enforcement) Rules, 2002. The auction purchaser set up his case that he has spent huge money on improvement of property in question. The auction

2 DRAT

3 SARFAESI Act

4 2002 Rules

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purchaser has not place on record any material to prove the alleged improvements in the property. The auction purchaser is enjoying this property since 2009 as such auction purchaser is not entitled to any extra compensation. However, Bank will be under obligation to refund the auction money with interest as applicable to fixed deposit. The sale is accordingly set aside and it is made clear that Bank will refund the auction money only after receiving possession of property from auction purchaser within 15 days from the delivery of auction purchaser to the Bank. The applicant is directed to pay the dues of the *sic* within 15 days with upto date interest, failing which Bank will be at liberty to proceed further under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 to recover its dues.

xxx

xxx

xxx”

6. In effect the DRT, after setting aside the sale, further proceeded to direct the Bank to refund the auction money with interest as applicable to fixed deposits only after receiving possession of the property from the auction purchaser within 15 days thereof. The borrower was directed to pay the dues of the Bank within 15 days with up to date interest, failing which the Bank would be at liberty to proceed further under the SARFAESI Act for recovery of its dues.
7. The appellants preferred an appeal before the DRAT registered as Appeal No. R-57 of 2015, which came to be dismissed, vide order dated 19.04.2018. Thereafter the appellants approached the High Court by way of a Writ Petition registered as Writ Petition (C) No.20266 of 2018, which has since been dismissed by the impugned judgment and order, giving rise to the present appeal.
8. The submission advanced by learned counsel for the appellants is two-fold: firstly, that they were bonafide purchasers for value and, therefore, the DRT, the DRAT and the High Court erred in setting aside the sale and confirming it. The second submission advanced is that after the sale certificate was issued, the appellants have developed the suit property and have invested approximately Rs.60 lacs and in case the sale is to be set aside, the appellants should be suitably compensated not only by refund of the auction money

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along with interest but also for the improvements made by them in developing the property and investment made therein.

9. On the other hand, learned counsel for the respondent-Bank submitted that although it had followed the procedure prescribed but could not substantiate with any material to rebut the findings recorded by the DRT, DRAT and the High Court that the Bank had failed to follow the statutory provisions of notice under Rules 8(6) and 8(7) of the 2002 Rules. It was further submitted that as the appellants have enjoyed the property as it was already in their possession, they cannot claim any additional compensation for the improvements made by them as they were well aware of the litigation initiated by the borrower by filing an application under Section 17 of the SARFAESI Act and whatever improvements have been made were at their own risk.
10. Further, learned counsel for the borrower (respondent nos.3 and 4) submitted that they have already paid the entire outstanding dues of the Bank without adjusting the auction money received by the Bank which is lying separately in an escrow account because of the litigation. It was also submitted that the Bank admits that the entire dues have been paid but at the same time it has declined to issue the No Dues Certificate because of pendency of the litigation. It was also submitted that the Bank, without following due procedure, had conducted the auction and, therefore, the DRT rightly set aside the sale which has been confirmed by the DRAT and the High Court.
11. From the facts, as narrated above and the arguments advanced, the following is the admitted position:
 - (i). The appellants were tenants in the premises in question which had been put up for auction. Their possession and status as tenants were converted into that of owners after the sale was confirmed and the sale certificate issued;
 - (ii). The borrowers have admitted that they were in default and that the Bank had a right to recover its dues in accordance to law;
 - (iii). After the auction sale, the borrowers have deposited the entire outstanding amount independent of the auction money which is additionally lying with the Bank;

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- (iv). The Bank has admitted that there was non-compliance of the statutory provisions in conducting the sale and as such had conceded before the DRT that the sale in question may be set aside and the Bank be granted liberty to proceed afresh;
 - (v). The Bank has admitted that the auction money of Rs.12.40 lacs is lying in a separate fixed deposit and this amount is in addition to the outstanding amount deposited by the borrower after the auction sale.
12. Considering the above facts and circumstances and the arguments advanced, we proceed to deal with the same:
- (i). In view of the concurrent finding based on the admission by the Bank that mandatory notice of 30 days was not given to the Borrower before holding the auction/sale, the setting aside of the auction/sale cannot be faulted with. The same has to be approved.
 - (ii). Once the sale is set aside, the status of the appellants as owners would automatically revert to that of tenants. The status of possession at best could have been altered from that of an owner to that of tenants but Bank would not have any right to claim actual physical possession from the appellants nor would the appellants be under any obligation to handover physical possession to the Bank. The DRT fell in error on the said issue. Therefore, the direction issued by the DRT that the Bank will first take possession and thereafter refund the auction money with interest applicable to fixed deposits, is not a correct direction;
 - (iii). The entire controversy has arisen because of the Bank not following the prescribed mandatory procedure for conducting the auction sale and, therefore, the Bank must suffer and should be put to terms for unnecessarily creating litigation. As of date the dues of the Bank have been fully discharged and an additional amount of the auction money is lying with the Bank since 2009. This amount is to be returned to the appellants. In such facts and circumstances of the case, we are of the view that the award of interest on the auction money at the rate applicable to fixed deposits is not a correct view. The rate of interest deserves to be enhanced.
 - (iv). We could have considered awarding 24 per cent per annum compound interest on the auction money to be refunded to the

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appellants in view of serious illegality committed by the Bank in conducting the auction and driving the parties to litigation. Considering the fact that the money of the Bank is also public money, we feel that interest of justice would be best served if the auction money with 12 per cent per annum compound interest is returned to the appellants. Such interest be calculated from the date of deposit till the date it is actually paid.

- (v). There was some dispute between the Bank and the borrower that there could be minor adjustments still left. We are of the view that if any additional amount is lying with the Bank, the same would be returned to the borrower and if any amount is still due to be paid, the borrower would pay the said amount to the Bank. The Bank and the borrower have both agreed for making the said adjustments.
13. In view of the above discussion and analysis, the following directions are issued:
- a) setting aside of the auction sale is affirmed.
 - b) The status of the appellants as tenants shall stand restored leaving it open for the borrower as owner of the property to evict the appellants in accordance to law.
 - c) The entire auction/sale money lying with the Bank (R-1 & 2) shall be returned to the appellants along with compound interest @12 per cent per annum to be calculated from the date of deposit till the date of payment.
 - d) The Borrower Respondent nos.3 and 4 and the Bank–Respondent nos.1 and 2, would streamline their accounts and the Bank upon settlement of the same will issue a No Dues Certificate to the Borrower.
14. The impugned order shall stand modified as above. The appeal stands disposed of accordingly.
15. Pending applications, if any, stand disposed of.

Headnotes prepared by:
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Result of the case:
Appeal disposed of.