SUPREME COURT OF INDIA

Oasis Dealcom Pvt. Ltd.

Vs.

Khazana Dealcomm Pvt. Ltd. & Ors.

C.A.No.10676-10677 of 2016

(Anil R.Dave and Uday Umesh Lalit,JJ.,)

08.11.2016

JUDGMENT

Anil R.Dave,J.,

SLP (Civil) No. 32638-32639 of 2011

1. Leave granted.

2. The present appeals are directed against the judgment dated 24.08.2011 rendered by the High Court of Calcutta, whereby the High Court has dismissed the revision petition filed by the appellant under Article 227 of the Constitution of India and affirmed the order of the Debt Recovery Appellate Tribunal, Calcutta.

3. The facts of the case, in a nutshell, are as under :

> "Respondent nos. 2 and 3 are the principal shareholders, directors and persons in charge of Respondent No.1 Company. Respondent No. 4 (ING Vysya Bank) had granted financial assistance to Respondent nos.1 to 3 by way of "Cash Credit facility". In consideration of the aforesaid loan, Respondent nos.1 to 3 had furnished security in terms of (a) Hypothecation of Book Debts, (b) Equitable mortgage of residential flat bearing no. 1-C at 7/1, Queens Park, Kolkata-700019 and (c) pledge of LIC Policy for an assured sum of Rs.8 lakh in name of Respondent No.3."

4. Respondent nos. 1 to 3 defaulted in the repayment of the loan and thus, the account was classified as "Non-performing Asset" with effect from 1.12.2008 in accordance with the directions of Reserve Bank of India. As on 31st December, 2008, a sum of Rs.37,01,758.49 (Rupees Thirty seven lakh one thousand seven hundred fifty eight and forty nine paise), along with applicable interest @ 15% per annum and penal interest was outstanding against the said Respondents.

5. Accordingly, a notice dated 17th January, 2009 under Section 13 (2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act") read with Rule 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the Rules") was served upon Respondent nos.1 to 3 calling upon them to pay the aforementioned sum along with future interest within 60 days from the date of the said notice and they were also instructed not to create any third party interest in the secured assets by way of sale, lease or otherwise. The aforesaid notice was duly replied to by Respondent No.1 Company vide letter dated 14th March, 2009 by disputing the amount and requesting Respondent no. 4 bank to give certain credits. Respondent no.4 gave a reply vide its letter dated 20th March, 2009 to letter dated 14th March, 2009 by asserting that notice dated 17th January, 2009 had been correctly issued as per the provisions of Section 13 (2) of the Act.

6. It is apposite to state that Respondent No. 4 bank vide possession notice dated 10th August, 2009 took "symbolic possession" of the property in question i.e. Residential Flat No. bearing 1C (1st Floor) situated at premises no. 7/1, Queens Park, Kolkata-700019 (hereinafter referred to as "the flat") which was in the names of Respondent nos. 2 and 3

7. Being aggrieved by said notice dated 10th August, 2009, Respondent nos. 1 and 3 preferred application no.92/2009 under Section 17 of Act, 2002 on 15th September, 2009 against Respondent no.4 bank by stating that the act of taking symbolic possession of the flat in question was illegal, without jurisdiction and was in violation of the Act and Regulations made thereunder, primarily for the reason that no advertisement was published in the newspaper in terms of Rule 8 (2) of the Rules and no possession notice under Rule 8 (1) was affixed on the said property and hence, prayed for quashing of notice dated 17th January, 2009 and also for quashing all steps taken under the Act.

8. Taking cognizance of the aforesaid application, the learned Presiding Officer, DRT, Kolkata vide order dated 17th December, 2009 directed Respondent nos.1 and 3 to pay a sum of Rs.15 lakh before 26th December, 2009 and directed the Respondent bank to maintain status-quo and in case the borrowers fail to deposit the said sum before the stipulated date, Respondent no. 4 bank would be at liberty to proceed in accordance with law.

9. Being dissatisfied with the order dated 17th December, 2009 passed by the DRT, Kolkata, Respondent nos.1 and 3 filed a Petition under Article 227 of the Constitution of India before the High Court and the High Court vide order dated 24th December, 2009 modified the order passed by the DRT to the extent that instead of paying a sum of Rs.15 lakh to the bank before 26th December, 2009, bank guarantee for Rs.10 lakh be furnished before 2nd January, 2010 and the hearing was adjourned to 4th January, 2010.

10. On 4 th January, 2010, when the matter was taken up before the High Court, an adjournment was sought for by the borrowers and it was submitted on behalf of the Respondent bank that bank guarantee for Rs.10 lakh, as ordered, had not been furnished by the borrowers.

11. In the light of the aforestated situation, Respondent no.4 bank issued a notice dated 4th January, 2010 for auctioning the flat by referring to an earlier auction notice dated 10th November, 2009, which had been published in newspapers "The Statesman" (English) and "Aajkal" (Bengali). The auction was to take place on 6th January, 2010 and the reserve price of the flat was Rs.1,48,00,000/-(Rupees one crore forty eight lakh only).

12. In terms of the aforestated notice dated 4th January, 2010, the Appellant (M/s Oasis Dealcom Pvt. Ltd) submitted its bid to purchase the flat, who was the sole bidder. Respondent no.4 bank, vide its letter dated 6th January, 2010 accepted the bid for a sum of Rs.1,48,00,000/- and on the same day, confirmed the sale in terms of the provisions of the Act. Respondent no.4 bank vide letter dated 9th January, 2010 also issued a sale certificate in favour of the Appellant as per Rule 9 (6) of the Rules.

13. On 11th January, 2010, when the Petition came up for hearing before the High Court, it was noticed that the bank guarantee had not been furnished by the borrowers in terms of its order dated 24th December, 2009 and the Respondent bank had sold the property in question to the Appellant company.

14. When the matter was placed before the Debt Recovery Tribunal on 7th January, 2010, the Tribunal recorded the fact that the flat had been sold and therefore, virtually the proceedings had become infructuous. However, the matter was adjourned to 5th March, 2010, to enable the parties to complete the pleadings. However, on 14th January, 2010, the Respondent borrowers filed an application for depositing the amount payable but on the same day, taking judicial notice of the subsequent developments, the Tribunal dismissed the said application as it had become infructuous.

15. In the aforestated circumstances, the Respondent borrowers filed another application under Section 17(1) of the Act challenging the validity of the demand notice dated 17th January, 2009 and sale of property which had taken place in January 2010 in pursuance of the aforestated notice. The Tribunal ordered to maintain status-quo as on 28th January, 2010.

16. Being aggrieved by the order of the Tribunal, Writ Petition No.169 of 2010 was filed by the present Appellant i.e. the auction purchaser, but the High Court disposed of the Petition as the matter was pending before the Tribunal. Ultimately, the Tribunal passed an order dated 10th June, 2010 in O.A. No.4 of 2010 setting aside the sale certificate. However, it permitted the borrowers to make payment within three weeks and if the amount was paid within three weeks, the bank was directed to refund the purchase money to the Appellant with 8% interest thereon.

17. Being aggrieved by the said order, the Appellant filed Writ Petition No.7087 of 2010 challenging the validity of the order dated 10th June, 2010 passed by the Tribunal and the said petition was disposed of with a liberty to the Appellant to approach the Debt Recovery Appellate Tribunal.

18. By an order dated 18th February, 2011, the Debt Recovery Appellate Tribunal confirmed the order passed by the Tribunal observing that material irregularities had been committed in conducting the auction sale and in the circumstances, the auction purchaser as well as the respondent bank separately challenged the validity of the said order dated 18th February, 2011 before the High Court and the High Court confirmed the order passed by the Debt Recovery Appellate Tribunal by an order dated 24th August, 2011.

19. Being aggrieved by the said judgment and order dated 24th August, 2011, the present appeals have been filed by the auction purchaser .

20. The Appellant was represented by one of its Directors, Shri Agarwal, who appeared in person. He submitted that the amount of purchase price had already been paid and as the entire proceedings had been conducted in accordance with the provisions of the Act as well as the Rules, the High Court committed an error by setting aside the auction sale. He further submitted that there was neither any fraud nor any illegality in conducting the auction of the flat. He also submitted that necessary notice under Section 13 had already been issued to the Respondent borrowers and as the borrowers had failed to make payment after publication of notice in newspapers as per the provisions of the Act as well as the Rules, the property in question had been sold by holding an auction. He further submitted that the price offered by the Appellant was just and fair, though nobody else had participated in the bid. According to him, wide publicity had also been given to the auction. In view of the fact that the entire amount had been paid, according to him, the sale ought not to have been set aside. He further submitted that sufficient opportunity had been given to the borrowers to make the payment at an earlier point of time, but they had failed to make payment of their dues to the creditor bank. Moreover, according to him, the borrowers had also failed to furnish bank guarantee, as directed earlier and the said fact had been duly considered by the Tribunal at an earlier point of time and as the borrowers had failed to furnish the bank guarantee, the creditor bank had rightly confirmed the sale in favour of the Appellant company.

21. On the other hand, the learned counsel for the Respondent borrowers had submitted that several serious irregularities had been committed by the bank in conducting the auction. Requisite notice, as required as per the Rules, had not been given and he had supported the judgment delivered by the High Court. According to him, if for any reason the auction sale is postponed, the entire process for holding the auction should be started afresh and as no fresh notice was given before conducting the auction, the sale effected by the bank was absolutely improper as held by the High Court. He had thus supported the reasons assigned by the High Court for setting aside the auction sale.

22. On behalf of the Respondent bank, the learned counsel submitted that the bank was prepared to accept the amount due and payable by the respondent borrower and in that event it would return the amount received from the Appellant along with interest thereon, as directed by the High Court.

23. Upon hearing the learned counsel and going through the concurrent findings of fact arrived at by the Debt Recovery Appellate Tribunal as well as the High Court, we have no

doubt about the fact that undue haste was made by the creditor bank in holding the auction. The creditor bank could have waited for some time when the proceedings were pending before the Tribunal as well as the High Court before conducting the auction and confirming the sale. We do not find any reason to disturb the concurrent findings arrived at by the Debt Recovery Appellate Tribunal as well as the High Court about the irregularities committed in holding the auction.

24. A submission had been made on behalf of the Appellant that the second application filed under Section 17 of the Act was not maintainable and therefore, it ought not to have been entertained by the Tribunal. We are not in agreement with the said submission for the reason that when another application was filed under Section 17(1) of the Act, the cause of action was different. At an earlier point of time, the issuance of notice as well as notice for sale of the flat had been challenged, whereas the subsequent application had been filed after the auction had been held. The cause of action in respect of both the applications was not same and therefore, in our opinion, the second application for a different cause of action was maintainable.

25. In the circumstances, we do not intend to disturb the judgment delivered by the High Court. However, looking at the nature of litigation faced by the auction purchaser, we modify the order and direct that the amount already paid by the auction purchaser shall be returned to the auction purchaser with simple interest at the rate of 10% till the said amount is paid.

26. In exercise of our powers under Article 142 of the Constitution of India, we further direct that before 30th November, 2016, the creditor bank shall give intimation of the total amount payable by the borrowers (i.e. principal amount and interest, including penal interest, if any) as on 1st December, 2016 and if the said amount is not paid by the borrowers before 10th day of December, 2016, it would be open to the creditor bank to sell the flat by holding an auction, without giving any further notice to the borrowers but after giving a 30 days' public notice for the sale of the flat in one English leading newspaper and in one local newspaper, so as to recover its dues.

27. The appeals are disposed of in terms of the aforestated modification with no order as to costs.