

SUPREME COURT OF INDIA

Dwarika Prasad

Vs.

State of Uttar Pradesh

C.A.No.000148 of 2018

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

06.03.2018

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP(Civil)No.26428 of 2016

1. The appellant was a guarantor to a loan sanctioned for educational purposes to one Jitendra Kumar. Under the letter of sanction dated 20 June 2009, there was a 'repayment holiday' of 24 months (comprised of a grace period of 12 months and an additional 12 months) or six months after the borrower obtained a job, whichever was earlier. Repayment was to commence from 20 June 2011. In order to secure the liability, the appellant created an equitable mortgage in respect of an immovable property bearing Khasra Nos-185, 186 and 188, Central Doon, Dehradun. At the request of the appellant, the period prescribed for repayment was extended by two periods each of six months (29 June 2011 to 20 December 2011 and again upto 30 June 2012). The loan was not repaid. The account was classified as a non-performing asset on 3 September 2013. Corporation bank (the second respondent) which had disbursed the loan initiated proceedings by issuing a recall notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') on 12 September 2013. Neither was a representation made nor was any money deposited. The bank took symbolic possession on 14 February 2015. The property was put to e-auction on 30 March 2015. No bid was received. A second e-auction was scheduled on 30 January 2016. After the bank received one bid in response to the auction, the appellant initially proposed to deposit the amount of Rs 2,00,000 as against the dues of Rs.36 lakhs. This was not acceptable. The proceedings before the DRT were listed on 1 February 2016 during the course of which the appellant stated that he would move a redemption application within three days. The proceedings were adjourned to 4 February 2016. No stay was granted on the confirmation of the sale. The sale was confirmed on 2 February 2016. The appellant moved a redemption proposal on 3 February 2016. During the pendency of the proceedings before the DRT, the appellant filed a writ petition before the Allahabad High Court (Writ (C) 10877 of 2016). The following order was passed on 15 March 2016 by a Division Bench of the Allahabad High Court:

“Learned counsel for the petitioner upon instructions states that the petitioner is ready and willing to deposit the entire loan amount within a month. He further submits that on or before 28.3.2016 the petitioner will deposit Rs. 7,00,000/- and the remaining amount as may be intimated by the Bank would be deposited on or before 30.4.2016. Put up this case as a fresh case on 28.3.2016. By the said date the petitioner will fill a supplementary affidavit annexing proof of receipt of deposit of Rs. 7,00,000/- with the respondent Bank. The execution of the sale deed will remain stayed till 28.3.2016”

From the record it is not in dispute that the appellant paid the amount of Rs 7,0,000 by demand drafts of the State Bank of India. However, on 28 March 2016 the attention of the court was drawn to the fact that the appellant had already initiated proceedings before the DRT. The objection raised by the bank to the maintainability of the writ petition being noted, the appellant sought leave to withdraw the writ petition and to pursue the proceedings initiated by him before the DRT. Hence, on 28 March 2016, the following order was passed:

“Sri Shashi Dhar Sahai, learned counsel for the respondent- Bank on the basis of instructions has brought to our notice that petitioner who is a guarantor to the loan has already initiated proceedings before the Debt Recovery Tribunal, Lucknow for the same relief which is being claimed in the writ petition and same cause of action. An application for temporary relief has also been moved before the Debt Recovery Tribunal, Lucknow, which is pending.

Learned counsel for the petitioner when confronted with the aforesaid facts sought leave of the Court to permit withdrawal of the writ petition with the liberty to pursue before the Debts Recovery Tribunal.

Prayer made is allowed.

Writ petition stands dismissed as withdrawn.”

After the dismissal of the writ petition, the sale certificate was issued on 5 April, 2016 in favour of the auction purchaser. After the confirmation of the sale the bank executed a registered sale deed against the receipt of a total consideration of Rs 54,41,500. The auction purchasers (respondent nos 3 and 4) took possession of the property.

2. The appellant filed a writ petition before the Allahabad High Court contending that since he was ready and willing to clear the outstanding dues of the bank, he has a right of redemption to the mortgaged property and that the auction sale without considering his offer for redemption was illegal and void. The Division Bench of the High Court rejected the writ petition, placing reliance on the provisions of Section 13(8) of the SARFAESI Act. The High Court held that the exercise of the right of redemption is permissible before the execution of the sale in favour of the auction purchaser. In this view, once the sale was complete and was

registered, it was not open to the appellant to exercise the equity of redemption. The High Court has relied on the judgment of this Court in *Mathew Varghese v M. Amritha Kumar*¹.

3. The learned counsel appearing on behalf of the appellant submits that prior to the confirmation of the sale, the appellant voluntarily offered to defray an amount of Rs 36,00,000 towards claim of the bank and indicated his willingness to make an initial deposit of Rs 6,00,000. Though before the DRT the bank had on 1 February 2016 stated that the appellant should apply for redemption, when the application was moved on 3 February 2016 it was arbitrarily rejected. Thereafter in pursuance of the order of the High Court dated 15 March 2016, the appellant deposited a sum of Rs 7,00,000 and was ready to deposit the balance within 30 days, the time stipulated in the order dated 15 March 2016. Hence it was urged that there was no reason or justification for the bank to issue a certificate of sale on 12 April 2016. The fact that the appellant did not obtain an interim order before the DRT was not a circumstance within his control and the appellant demonstrated his willingness by making a part payment of Rs 7,00,000.

4. On the other hand, the learned counsel appearing on behalf of the bank and for the auction purchasers supported the order of the High Court. It was urged that despite moving the DRT, the appellant sought relief before the Allahabad High Court in proceeding under Article 226 of the Constitution. After the High Court passed an order on 15 March 2016 recording the statement that the appellant would deposit an amount of Rs 7,00,000 by 28 March 2016 and the balance by 30 April 2016 the writ petition was withdrawn on 28 March 2016 with liberty to pursue the proceedings before the Tribunal. At no stage did the Tribunal interdict the issuance of a certificate of sale. The sale certificate was issued and was followed by the registration of the sale deed in April 2016. The bank had advertised the proposed sale by auction and followed all requisite procedure under law. The appellant failed to comply with the provisions of Section 13(8). Having failed to do so, the appellant cannot assert an equity of redemption upon the completion of the sale and the registration of the sale deed.

5. Section 13(8) of the SARFAESI Act provides as follows:

“(8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.”

These provisions have fallen for interpretation before this Court in *Mathew Varghese* (supra). Dwelling on Section 60 of the Transfer of the Property Act, this Court held that the right of redemption is available to a mortgagor unless it stands extinguished by an act of parties. The right of the mortgagor to redeem the property survives until there has been a transfer of the mortgagor's interest by a registered instrument of sale. Applying these principles in the context of the SARFAESI Act this Court held as follows:

“39. When we apply the above principles stated with reference to Section 60 of the T.P. Act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a secured creditor to resort to a sale without the intervention of the Court or Tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor, i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. Under Sub-section (8) of Section 13, as noted earlier, the secured asset should not be sold or transferred by the secured creditor when such tender is made by the borrower at the last moment before the sale or transfer. The said Sub-section also states that no further step should be taken by the secured creditor for transfer or sale of that secured asset. We find no reason to state that the principles laid down with reference to Section 60 of the T.P. Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the above-stated principles apply in all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act”.

6. In the present case, the appellant failed to comply with the provisions of Section 13(8). The statute mandates that it is only where the dues of the secured creditor are tendered together with costs, charges and expenses before the date fixed for sale or transfer that the secured asset is not to be sold or transferred. The appellant was aware of the proceedings initiated by the bank for asserting its right to recover its dues by selling the property. The appellant moved the DRT in Securitization Application 176 of 2015. During the pendency of those proceedings, orders were passed by the Tribunal on 1 February 2016 and 3 February 2016. The appellant moved the Allahabad High Court which by its order dated 9 March 2016 restrained the bank and the auction purchaser from executing the sale deed until 15 March 2016. The stay was extended till 28 March 2016 by which date the appellant was to deposit an amount of Rs7,0,000. The balance was required to be deposited by 30 April 2016. While appellant deposited an amount of Rs 7,00,000 with the bank, he failed to deposit the balance in accordance with the provisions of Section 13(8). Even after the writ proceedings before the High Court was withdrawn, the appellant did not deposit the balance due together with the costs, charges and expenses. The sale was confirmed, a sale certificate was issued and a registered sale deed was executed on 12 April 2016. The appellant failed to ensure compliance with Section 13(8). The right to redemption stands extinguished on the execution of the registered sale deed. This is also the view which has been expressed in the judgment in *Mathew Varghese* (supra).

7. The appellant, is however, entitled to a refund of his deposit of Rs 7,0,000 with interest at 9% per annum from the date of deposit till payment. The bank has in its counter affidavit stated that it was at all times ready and willing to do so. The bank shall refund this amount of Rs 7,00,000 with interest at 9% per annum within 8 weeks. For the above reasons, save and except for the above direction to refund Rs 7,00,000 with interest, we find no merit in

the appeal. The appeal shall accordingly stand disposed of. There shall be no order as to costs.

Judgment Referred.

¹(2014) 5 SCC 0610