

## **RAJASTHAN HIGH COURT**

Ratan

Vs.

Ajmer Central Co-operative Bank  
D.B.S.A. (Writ) No.491 of 2004

(Gyan Sudha Misra and R.S. Chauhan, JJ.)

12.09.2007

### **JUDGEMENT**

**Gyan Sudha Misra and R.S. Chauhan, JJ.**

1. This appeal has been preferred against the order dated 5-7-2004 passed by the learned single Judge in S.B. Civil Writ Petition No. 3770/04 which had been filed by the petitioner/appellant herein for quashing the auction purchase of the land which had been mortgaged by the deceased-debtor-Abhay Raj in favor of the respondent-Bank-Ajmer Co-operative Bank Ltd. for securing a loan of Rs. 3 lacs for purchase of a canter.
2. The writ petition was dismissed by the learned single Judge upholding the auction proceeding and auction purchase but a liberty was left to the petitioner to file a representation before the Bank.
3. In order to appreciate the controversy which has led to the filing of this appeal, it may be stated that the cousins of the petitioner/appellant herein had executed a power of attorney in favor of his deceased-cousin brother Abhay Raj for obtaining a loan of Rs. 3 lacs from the respondent-Bank who had mortgaged Khasra No. 3495 measuring 6 bighas 15 biswas and Khasra No. 3507 measuring 19 bighas 8 biswas of land situated at village Masuda in the District of Ajmer. The appellant herein also had a share in the land which had been mortgaged to the Bank by other coparceners. It could be noticed that the principal debtor-Abhay Raj, during his lifetime, had already paid more than a sum of Rs. 3 lacs to the respondent-Bank towards discharge of the loan amount, which had been advanced to him but the respondent-Bank had further raised a demand from the deceased Abhay Raj during his lifetime towards interest which according to the respondent-Bank is Rs. 6.70 lacs. A controversy, therefore, arose

between the parties as to how much amount is payable to the Bank towards interest. Unfortunately, the principal debtor Abhay Raj died, before settlement of this dispute, on 17-7-2001 and thereafter the respondent-Bank initiated a proceeding for auction of the land measuring 26 big has which had been mortgaged by the deceased Abhay Raj to the Bank towards the loan of Rs. 3 lacs which had been advanced to him and had also been repaid to the Bank as already stated.

4. Hence, the controversy is now confined to the dispute as to how much amount towards interest would be payable to the respondent-Bank for which the respondent-Bank initiated an auction proceeding of the entire land of 26 big has which had been mortgaged to it.

5. According to the case of the respondent-Bank the notice for this auction proceeding had been issued to the wife of the deceased-debtor before proceeding with the auction and the valuation of the land had been done at the District Level Committee at Ajmer and thereafter entire 26 big has of land was put to auction and the same was purchased by the respondent-Bank itself at a price of Rs. 3.8 lacs only.

6. The petitioner/appellant herein, who is the cousin brother of the deceased Abhay Raj, challenged the auction proceeding before the learned single Judge by filing a writ petition, which was dismissed as indicated hereinbefore.

7. Assailing the aforesaid order of the learned single Judge, it was submitted by the counsel for the appellant that the petitioner/appellant herein had not been served any notice before initiating the auction proceeding, which has been strongly refuted by the counsel for the respondent-Bank. It has been submitted by the counsel for the respondent-Bank that a notice had been issued to the wife of the deceased debtor Abhay Raj and according to him, the whole proceeding had been conducted in a legal and lawful manner after which the entire land of 26 big has under mortgage was finally auctioned for a sum of Rs. 3.8 lacs.

8. The question, therefore, which now emerges for consideration before this Court is whether the auction proceeding can be held to be vitiated so as to call for interference with the order passed by the learned single Judge. In the process we have noticed that although more than a sum of Rs. 3 lacs had already been paid by the deceased-debtor to the Bank which included the principal amount also, a notice had been sent to all the persons who had executed power of attorney in favor of the deceased-Abhay Raj for obtaining a loan after which it could be determined as to how much amount was payable to the Bank by the persons who had executed power of attorney in favor of the

deceased-debtor; but the notice admittedly was not issued to any of those persons except the wife of the deceased.

9. In our considered opinion, this notice was not sufficient at all in the eye of law for the obvious reason that when the power of attorney was executed by the cousins of the deceased-debtor in regard to the mortgaged land in which the appellant also had a share, then after the death of the deceased at least all persons who had executed power of attorney, should have been served with the notice for settling the amount of loan which had been advanced before initiating the auction proceeding and putting the entire land to auction.

10. Another aspect of the matter is that even if the amount towards interest was outstanding and was payable by the debtor or his successors after his death, then we fail to understand as to how the entire 26 big has of land could be put to auction when the principal amount of Rs. 3 lacs was already paid and the dispute was confined to the determination of the amount of interest. We have already held earlier in similar circumstance, that if at all any amount of loan is outstanding at the instance of debtor to be paid to the Bank, only such portion of the land can be put to auction which is capable of fetching the amount towards the outstanding amount of loan plus interest. In the instant matter when the principal amount of Rs. 3 lacs had already been repaid by the debtor then in all fairness, the Bank should have proceeded with the auction proceeding in an upright and legal manner by putting only such portion of the land to auction which was capable of fetching the value of the amount which was payable by the debtor or his predecessor who had executed power of attorney in favour of the principal debtor. It is difficult to appreciate and uphold the steps taken by the Bank in this matter where 26 big has of land had been put to auction in the year 2003 only for a paltry sum of Rs. 3,80,000/- and the Bank is trying to justify this step overlooking the legal lacuna of want of notice on the persons who had executed power of attorney in favor of the deceased-debtor. If the Bank was really anxious to recover the outstanding amount of loan towards the amount which had accrued by way of interest, then it could have issued notice, as already stated hereinbefore, to the persons who had executed power of attorney in favor of the deceased-debtor Abhay Raj. But this step having not been taken by the Bank, we are of the view that the auction which had been held by the bank for 26 big has of land in favor of the Bank itself for only a sum of Rs. 3.8 lacs, smacks of *mala fide* prompting to draw adverse circumstantial inference that the auction proceeding had been conducted without any notice to the power of attorney holder with an oblique motive.

11. The aforesaid position cannot be allowed to be sustained and hence we set aside the auction proceeding which had been held by the Bank for 26 big has of land situated in village Masuda in the district of Ajmer for a sum of Rs. 3.80 lacs only.

12. In the process however, we do not ignore the claim of interest raised by the Bank as it is surely entitled to the amount of interest which is payable to the Bank by the successor power of attorney holders of the debtor in whose favor power of attorney had been executed by the deceased-principal-debtor. This exercise appears to have already been done by the respondent-Bank but we reiterate that the interest shall be calculated by the Bank in the light of the guidelines issued by the Reserve Bank of India and a fresh demand thereafter will be allowed to be raised by the respondent Bank within a period of four weeks from the date of receipt of this order after which the appellant shall deposit the amount raised towards interest. In the event of failure to pay this amount, the respondent-Bank shall be entitled to initiate fresh auction proceeding only in regard to such portion of the land which had been mortgaged to the Bank and is capable of fetching the value of Rs. 3.80 lacs. We further do not accept the contention of the counsel for the appellant that 26 bighas of land situated in village Masuda, District Ajmer could be auctioned for a paltry sum of Rs. 3,80,000/- only and hence if an occasion arises to auction the land, proper evaluation of the mortgaged land shall be done by an official evaluator at Ajmer with a copy of the report to the mortgagor also.

13. The appeal accordingly stands allowed but with no order as to costs.

Appeal allowed.