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WP-10392-2013

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 8th OF DECEMBER, 2025WRIT PETITION No. 10392 of 2013*PUNJAB NATIONAL BANK**Versus**MOHD. ABDUL KALAM AND OTHERS*

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Appearance:

Shri Rajesh Maidiretta - Advocate for the petitioner.

Shri Ramesh Kumar Verma with Shri Ram Murti Tiwari - Advocate
for respondent No.1.
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ORDER

Per. Justice Pradeep Mittal

The petitioner-Bank has preferred the present Writ Petition challenging the order dated 03.04.2013 passed by the learned Debt Recovery Appellate Tribunal, Allahabad in Appeal No. R-81/2012, whereby the Appellate Tribunal set aside the order dated 25.04.2012 passed in CaseNo 71/09 by the learned Debts Recovery Tribunal, Jabalpur and allowed the appeal filed by respondent No.1.

2. The facts, in brief, necessary for adjudication of the present writ petition are that the petitioner-Bank initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against respondent No.2, Shri Sanjay Dubey. The



said action was challenged by respondent No.2 by filing a Securitisation Application on 06/05/09 before the Debts Recovery Tribunal, Jabalpur, which was registered as S.A. No. 71/2009. During pendency on 22/05/09 of the said application, the learned Tribunal passed an interim order directing the parties to maintain status quo. Pursuant to the auction publication notice dated 21.04.2009, tenders were invited for sale of the secured asset on 27.04.2009 with a reserve price of Rs.18.00 lakhs. In response thereto, a bid of Rs.18.01 lakhs was received from respondent No.1 Mohd. Abdul Kalam against the outstanding dues of Rs.48,22,663.42/-. The entire auction amount was deposited by respondent No.1. However, in view of the interim order of status quo passed by the Debts Recovery Tribunal, Jabalpur neither the sale certificate was issued nor possession of the secured asset was delivered to respondent No.1. The OTS tender of respondent No.1 was accepted by the petitioner-Bank vide letter dated 28.04.2009, wherein it was clearly stipulated that the sale was on "as is where is" basis and that such acceptance was subject to confirmation by the Bank as secured creditor. Respondent No.1 was directed to deposit 25% of the sale amount and the balance by 14.05.2009. During pendency of S.A. No.71/2009 on 25/4/11, respondent No.2 offered a settlement to liquidate the entire outstanding dues. Since the auction sale had not been confirmed, the petitioner-Bank accepted the settlement for a sum of Rs.73.80 lakhs, which was duly deposited by respondent No.2. The learned Debts Recovery Tribunal, Jabalpur, vide judgment dated 25.04.2012, taking into consideration the settlement arrived at between the petitioner-Bank and respondent No.2, permitted respondent



No.2 to settle the account and directed the Bank to release the title deeds after receipt of the entire settlement amount. To compensate respondent No.1, the Tribunal directed payment of interest @ 7.5% per annum on Rs.18.01 lakhs, along with costs of the proceedings.

3. Respondent No.1 objected to the compromise before the Debts Recovery Tribunal, Jabalpur on the ground that once the auction had taken place, the Bank could not have entered into a settlement with the borrower. Reliance was placed on the decision reported in AIR 2012 MP 35. The learned Tribunal, relying upon the settled legal proposition that an auction purchaser acquires a right only upon confirmation of sale and till such confirmation the right remains inchoate, rejected the objection raised by respondent No.1. Aggrieved, respondent No.1 preferred Appeal No. R-81/2012 before the Debts Recovery Appellate Tribunal, Allahabad. The Appellate Tribunal allowed the appeal, holding that since the auction was conducted on 27.04.2009 and the bid amount was accepted, the sale stood confirmed and merely because of the status quo order the sale certificate could not be issued. Consequently, the Appellate Tribunal directed the petitioner-Bank to issue a sale certificate in favour of respondent No.1.

4. Learned counsel appearing for the petitioner-Bank submits that In compliance with the judgment dated 25.04.2012 passed by the Debts Recovery Tribunal, Jabalpur, the petitioner-Bank closed the loan account of respondent No.2 and released the title deeds in his favour vide letter dated 18.05.2012. learned Debts Recovery Appellate Tribunal, Allahabad has committed a manifest error of law in allowing the appeal filed by respondent



No.1. It is contended that mere issuance of a letter accepting the bid does not confer any vested or enforceable right upon the bidder. The learned DRAT, Allahabad failed to appreciate that the letter of acceptance itself specifically provided that the acceptance of sale was subject to confirmation by the Bank as secured creditor, and in the present case, the sale was admittedly never confirmed.

5. It is further submitted that the learned DRAT, Allahabad overlooked the fact that no sale certificate was ever issued in favour of respondent No.1 and possession of the secured asset was also not delivered, as there was a subsisting interim order directing maintenance of status quo passed by the Debts Recovery Tribunal, Jabalpur. In such circumstances, the conclusion drawn by the learned DRAT, Allahabad that acceptance of the entire bid amount amounts to confirmation of sale is wholly erroneous and contrary to settled principles of law.

6. Learned counsel submits that the learned DRAT, Allahabad failed to consider that respondent No.2 subsequently repaid the entire outstanding dues pursuant to a lawful settlement arrived at with the petitioner-Bank, resulting in closure of the loan account. In compliance with the judgment passed by the Debts Recovery Tribunal, Jabalpur, the title deeds were duly released in favour of respondent No.2. It is emphasized that the rights, if any, of an auction purchaser accrue only upon confirmation of sale, which never took place in the present case.

7. It is further argued that as against the auction bid amount of Rs.18.01 lakhs, the petitioner-Bank recovered a sum of Rs.73.80 lakhs, thereby fully



liquidating the outstanding dues. It is well settled that even in exercise of judicial discretion, a sale may not be sustained where the sale consideration is grossly inadequate and a substantially higher amount is subsequently received, particularly when the sale has not attained finality.

8. Learned counsel further submits that the learned DRAT, Allahabad erred in directing issuance of the sale certificate in favour of respondent No.1, ignoring the fact that respondent No.1 was already duly compensated by the learned Debts Recovery Tribunal, Jabalpur by grant of interest and costs. Respondent No.1, therefore, had no subsisting right or locus to challenge the settlement arrived at between the petitioner-Bank and respondent No.2.

9. Respondents has placed the reliance on 2024(2) SCC1 CELIR LLP VERSUS BAFNA MOTORS (MUMBAI) where in the apex court has held that the confirmation of sale by the Bank under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules in accordance with Rule 9(6) of the SARFAESI. (iii) In accordance with the un amended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended



provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser. (iv) The Bank after having confirmed the sale under Rule 9(2) of the Rules of 2002 could not have withhold the sale certificate under Rule 9(6) of the Rules of 2002 and enter into a private arrangement with a borrower. (v) The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act. (vi) The two decisions of the Telangana High Court in the case of Concern Readymix (supra) and Amme Srisailam (supra) do not lay down the correct position of law. In the same way, the decision of the Punjab and Haryana High Court in the case of Pal Alloys (supra) also does not lay down the correction position of law. (vii) The decision of the Andhra Pradesh High Court in Sri Sai Annadhatha Polymers (supra) and the decision of the Telangana High Court in the case of K.V.V. Prasad Rao Gupta (supra) lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act.

10. Respondent has relied on judgment 2012 (1) MPLJ 548 Gaurav Enterprises v/s State Bank of India, wherein it was held that mere issuance



of sale certificate will not bestow any right in favour of the auction-purchaser and unless actual sale deed is executed, there is no 'sale' in the eyes of law and power of redemption can be exercised by the bank. In the opinion of this Court, this argument is liable to be rejected. The language of section 13 (8) of SARFAESI Act is very clear, which contains the words 'before the date fixed for sale or transfer'. The intention of the Legislature appears to be the date fixed for sale and not the actual sale. The Statute is accordingly designed and worded. Thus, before date fixed for sale, the borrower could have exercised the same and section 13 (8) permits the bank to do the same. In other words, section 13 (8) even prohibits the bank to transfer or sell the secured assets before the date fixed for sale and gives an opportunity to the borrower to repay all dues, costs, charges and expenses incurred by the bank. However, once sale certificate is issued, the bank cannot invoke section 13 (8) of SARFAESI Act and section 60 of TP Act has no application. Accordingly, the judgment cited by Shri Raju Sharma in M/s. L.K. Trust (supra) has no application in the fact situation of this case.

11. Respondent has placed reliance in 2012 MPLJ 670 Saroj v/s Gaurav Enterprises it was held that the Division Bench of Madras High Court in the case of K. Chidambara Manickam v. Shakeena and others, reported in AIR 2008 Madras 108. has discussed in detail the provisions of section 17 (2) (xii) of the Registration Act and also discussed the SARFAESI Act and Transfer at Property Act and right of redemption and has held that right of redemption will not prevail over sales already effected under SARFAESI Act and once the sale has been confirmed under the provisions of SARFAESI



Act the sale becomes complete. We are in agreement with the findings recorded by the Division Bench.

12. Respondent has reliance the judgement of coordinate bench of this High court writ Petition No 2829/2024 Smt. Swati Patel v/s Bank of India and others passed on 09 April 2025, it was noted by the coordinate bench of this High court is that the Apex Court in the matter of Mathew Vargese (supra) found no inconsistency between the unamended Section 13(8) of the SARFAESI Act and general right of redemption under Section 60 of the Transfer of Property Act, 1882 and held that the right of the borrower to redeem the secured assets was available to sale and transfer of some secured assets until and unless by the act of the parties, the same has been extinguished. Similar view was taken by the Apex Court in the matter of Celir LLP (supra) and it is held that it is equally well settled that the rights credited for the benefit of the borrower under the SARFAESI Act can be waived by expressed act of the parties or by implied conduct of the parties.

13. Respondent has placed his reliance on the judgement 2024 SCC Online SC 2878 IDBI Bank v/s Ramswaroop , in that judgement it was held that As far as the filing of Writ Petition No. 12390 of 2018 by one of the guarantors is concerned, an interim stay order was passed therein on 18.04.2018 by which time the auction had already taken place and confirmed. The said writ petition was ultimately dismissed on 18.07.2018 and as such the interim stay order ceased to exist. The interim stay order granted therein was of no effect insofar as the issuance of sale certificate to the respondents was concerned as the sale had already taken place and stood



confirmed before the passing of the interim stay therein. There was no direction or stay on the issuance of sale certificate. The passing of the interim stay order in the above writ petition was not on account of the respondents so as to assign any default on their part in depositing the balance sale consideration within the time stipulated.

14. After considering the all judgement the legal position is that after amendment of the the SARFAESI Act, in 2002, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser.

15. In present Case the notice under Rule 9(1) of the Rules of 2002 issued on 20/04/09 and auction bid for 18.1Lacs on the date 27/4/2009 was accepted. SA was filed borrower on 6/5/09, Before filing the SA application No 70/09, auction was completed. Therefore, interim order dated 22/5/09 passed by DRT, Jabalpur has no effect to quashed the auction on the date 27/4/2009. DRT, Jabalpur order has only precluded the bank to issue sale certificate nothing more. It is very well clear the auction is completed on the dated when the bid was accepted, before accepting the bid borrower has a right to redeem the mortgage property not till the completion of the sale or



transfer of the secured asset in favour of the auction purchaser.

16. After auction of mortgage property is completed, bank has no right to accepted one time settlement with the permission of the DRT, Jabalpur because right to auction purchaser has been created on the date when the auction was completed. Borrower has not challenged the order of DART Allahabad only support of bank appeal, Therefore, no irregularity found in the order of DRAT Allahabad.

17. The 2016 amendment to Section 13(8) of the SARFAESI Act drastically curtailed the borrower's right of redemption, extinguishing it upon the publication of the sale notice, not upon the final registration of the sale certificate. It clarified that this amended provision has retrospective application to all live claims and proceedings. the SARFAESI Rules envisage only a single, composite notice of sale, and the concept of "publication" in Section 13(8) encompasses the service, affixation, and public notice of this sale notice as required by the rules. Consequently, the special provisions of the SARFAESI Act override the general right of redemption under the Transfer of Property Act, and writ jurisdiction should not be exercised to overreach a concluded statutory auction process.

18. With the above consideration we are the view the learned DART has not committed any error to set aside the order passed by the DRT Jabalpur. Therefore, writ petition is dismissed.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE



Praveen

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