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WP-11374-2013

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

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HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 9th OF DECEMBER, 2025WRIT PETITION No. 11374 of 2013*SMRITI TALKIES, PARASIA DISTT. CHHINDWARA**Versus**SHRI CHANDRA KUMAR GALANI AND OTHERS*

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Appearance:

Shri Shashank Shekhar Dugwekar - Senior Advocate with
Shri Bhoopesh Tiwari - Advocate for petitioner.

Shri Sanjay Agrawal - Senior Advocate with Shri Arpit Agrawal -
Advocate for respondent No.1.

Shri Ashok Kumar Banke - Advocate for respondent No.2.
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ORDER

Per. Justice Pradeep Mittal

The present writ petition has been filed by the petitioner assailing the order dated 20.05.2013 passed by the Debts Recovery Appellate Tribunal, Allahabad, whereby the appellate tribunal set aside the order dated 30.11.2012 passed by the Debt Recovery Tribunal, Jabalpur, and restored the order dated 07.01.2010 passed by the Recovery Officer confirming the auction sale dated 02.09.2009.

2. Facts of the case in short are that the petitioner Smriti Talkies had availed two loans from respondent No.2 Bank, one on 13.06.1997 for a sum of Rs.13



lakhs and another on 25.07.1998 for Rs.3.25 lakhs, aggregating to Rs.16.25 lakhs. On account of default in repayment, the Bank issued a demand notice dated 28/03/03 under Section 13(2) of the SARFAESI Act, 2002 demanding Rs.24,12,102/-. Thereafter, a possession notice dated 12.07.2003 was issued in respect of the secured asset, namely land and building known as Smriti Talkies situated at Khasra No.259/1, Village Dongar Chikhali, Tahsil Parasia, District Chhindwara. In execution proceedings arising out of O.A. Ex. No.92/2004, the Recovery Officer issued an auction sale notice dated 23.07.2009, fixing the auction on 02.09.2009 at 12.00 noon with a reserve price of Rs.18 lakhs. The auction notice did not specify any closure time for the auction. On the date of auction, objections were submitted by M/s Harikishandas Jaikishan Rathi and Shri Bhagwan Prasad Khandelwal, stating that they were unable to submit demand drafts towards earnest money due to technical difficulties in the respective banks, though they were willing to participate and had offered a higher bid. One of the objectors offered Rs.24 lakhs and enclosed demand drafts amounting to Rs.6.8 lakhs. Despite this, the Advocate Commissioner concluded the auction in haste and did not permit the said persons to participate. The auction was finalized in favour of respondent No.1 for Rs.20 lakhs, without permitting any other bidder to participate, even though the auction notice did not prescribe any closing time and the objections were submitted during banking hours. Subsequently, on 24.09.2009, the petitioner submitted a proposal for one-time settlement of Rs.25 lakhs, enclosing a cheque of Rs.5 lakhs, and sought time to deposit the balance. The respondent No.2 Bank itself, vide letter dated 29.09.2009,



addressed to the Recovery Officer, categorically stated that the auction dated 02.09.2009 was conducted in undue haste and requested re-auction, as willing bidders offering higher amounts were not permitted to participate. The petitioner also filed objections before the Recovery Officer on 01.10.2009, contending, inter alia, that the auction price was grossly inadequate, that the market value of the property exceeded Rs.1 crore, and that material irregularities were committed in the conduct of auction. Despite objections raised both by the borrower and the Bank, the Recovery Officer, vide order dated 07.01.2010, rejected the objections and confirmed the sale in favour of respondent No.1, holding that Rule 61 of the Second Schedule to the Income Tax Act, 1961 was not attracted.

3. Aggrieved, both the petitioner and the Bank filed appeals before the DRT, Jabalpur under Section 30 of the RDDBFI Act, 1993, which were registered as Appeal No.2/2010 and Appeal No.3/2010, within the period of limitation. During pendency of the appeals, the DRT, Jabalpur granted interim protection on 14.07.2010, restraining further action pursuant to the confirmation of sale. After considering the pleadings, objections, settlement proposal accepted by the Bank, and the way the auction was conducted, the DRT, Jabalpur, vide order dated 30.11.2012, allowed both appeals and set aside the order dated 07.01.2010, holding that the auction suffered from material irregularities and illegality.

4. The auction purchaser / respondent No.1 thereafter filed Appeal No. R-22/2013 and Appeal No. R-23/2013 before the DRAT, Allahabad. The petitioner filed a detailed reply on 28.04.2013, pointing out factual



inaccuracies and justifying the DRT's order. However, the DRAT, Allahabad, vide common order dated 20.05.2013, allowed both appeals, set aside the order dated 30.11.2012 passed by the DRT, and restored the order dated 07.01.2010, thereby confirming the auction sale dated 02.09.2009.

5. Learned Counsel for the Petitioner submits that that the impugned order dated 20.05.2013 passed by the Debts Recovery Appellate Tribunal, Allahabad is wholly illegal, arbitrary and unsustainable in law, having been passed without proper application of mind and without due appreciation of the material facts on record. The appellate tribunal has gravely erred in holding that the appeal filed by the petitioner before the Debt Recovery Tribunal, Jabalpur was barred by limitation. Learned counsel submits that the Recovery Officer passed the order confirming the sale on 07.01.2010, and the petitioner preferred Appeal No.2/2010 before the DRT, Jabalpur on 13.01.2010, i.e., within six days. As per Section 30 of the RDDBFI Act, 1993, an appeal against the order of the Recovery Officer is maintainable within thirty days, and therefore there was absolutely no question of limitation. It is urged that the finding recorded by the DRAT, Allahabad in paragraph 23 of the impugned order is factually incorrect and legally untenable. Learned counsel further submits that the impugned order suffers from internal inconsistency inasmuch as the appellate tribunal held the appeal filed by the Bank to be within limitation, though the Bank had filed its appeal later in time on 18.01.2010.

6. Learned counsel further submits that the DRAT, Allahabad erred in holding that the objections raised by the petitioner could not be considered in



view of Rule 61 of the Second Schedule of the Income Tax Act, 1961. It is argued that the said provision has been interpreted in a hyper-technical manner by the Recovery Officer as well as by the appellate tribunal. Learned counsel submits that Rule 61 permits challenge to an auction on the ground of material irregularity, and in the present case, the auction dated 02.09.2009 suffered from grave and patent irregularities. The auction notice did not prescribe any closing time; yet the auction was concluded in undue haste. Two intending bidders submitted written objections on the date of auction itself, one of whom had offered Rs.24 lakhs and produced demand drafts amounting to Rs.6.8 lakhs, far exceeding the earnest money requirement. Despite this, the said bidders were not permitted to participate, and the property was sold for Rs.20 lakhs, causing serious prejudice.

7. It is further submitted that the Debt Recovery Tribunal, Jabalpur, after detailed consideration, had rightly set aside the order dated 07.01.2010 passed by the Recovery Officer by recording a categorical finding that the auction proceedings were vitiated by material irregularities. The appellate tribunal failed to appreciate the correctness and legality of the said order dated 30.11.2012 and mechanically restored the order of confirmation of sale.

8. Learned counsel also submits that the reserve price of Rs.18 lakhs fixed by the Recovery Officer was grossly inadequate and far below the market value of the property, which, as per the Collector guidelines, exceeded Rs.1 crore. Such fixation of reserve price itself amounted to material irregularity, which could not have been overlooked by the appellate tribunal.



9. It is further urged that the settlement proposal of Rs.25 lakhs was accepted by the respondent Bank prior to confirmation of the sale by the Recovery Officer. In such circumstances, and in view of the admitted irregularities in the auction proceedings, the DRT, Jabalpur had rightly interfered with the confirmation of sale. The DRAT, Allahabad failed to consider this vital aspect, rendering the impugned order unsustainable.

10. Lastly, learned counsel submits that the DRAT, Allahabad erred in discarding the objections raised by the two intending bidders on the ground that they had not independently filed appeals. It is argued that their objections were part of the auction proceedings and were required to be considered by the Recovery Officer before confirmation of sale. Since the Recovery Officer failed to do so, the petitioner and the Bank were fully justified in raising those grounds before the DRT, Jabalpur. The appellate tribunal's reasoning in this regard is legally flawed and contrary to settled principles. On the aforesaid grounds, learned counsel for the petitioner submits that the impugned order dated 20.05.2013 deserves to be quashed and the order dated 30.11.2012 passed by the Debt Recovery Tribunal, Jabalpur deserves to be restored.

11. Perused the record and considered the argument in advanced, it is revealed from the record that the auction notice did not prescribe any closing time; yet the auction was concluded before the 2.20 pm. Two intending bidders submitted written objections on the date of auction at 2.20 pm on 02.09 .2009 itself, one of whom had offered Rs.24 lakhs and produced demand drafts amounting to Rs.6.8 lakhs, far exceeding the earnest money



requirement. Despite this, the said bidders were not permitted to participate, on the date 24.09.2009 borrower had deposited outstanding amount 25 lacs in settlement with bank. Auction purchaser was bis only 20 lacs.

12. Learned DRAT, Allahabad noted that the objector of the auction proceeding never challenged the auction proceeding and nor had a party in appeal therefore no causing serious prejudice to borrower. That finding is not correct because the value of the property reached 24 lacs in the bid but due to technical difficulties participant could not take a part in proceeding and they seek time but RO denied them. It is also a causing paradise to the auction proceedings. The learned DRT, Jabalpur has considered the whole circumstances and reject the auction proceedings.

13. Learned counsel invite our attention towards the the Second Schedule Procedure for Recovery of Tax section 60 and 61, which are being given below:

"60. (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of 51[fifteen] per cent per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase money, but not less than one rupee.



(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

61. Where immovable property has been sold in execution of a certificate, 52[such Income-tax Officer as may be authorised by the Chief Commissioner or Commissioner in this behalf], the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that— (a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate."

14. Above provision is clearly authorized to challenge the auction proceeding by the borrower and other interested person. Borrower had challenged the auction proceeding on the auction date and prayed time to extend the proceeding, but RO denied them. This is a valid ground to causing prejudice the auction proceedings, this is not a case whether the sale has been



absolute or not or whether sale certificate issue or not. It is matter that the auction proceeding is not accordance with law. Borrower had requested to cancel the auction proceeding in due time therefore no issue of limitation arise out and with in limitation borrower and bank-initiated proceedings before the DRT, Jabalpur.

15. With above consideration we are the view the learned DART, Allahabad committed error to set aside the order passed by the DRT Jabalpur. Therefore, writ petition is allowed by setting aside the order of DRAT, Allahabad passed in appeal No.R-22/13 and Appeal No.R-23/2013 and restore the order of DRT Jabalpur passed in Appeal No.02/2010 and Appeal No.03/2010.

No order of cost.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

Praveen