(2012) 09 AHC CK 0204

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20685 of 2005

Avdhesh Tyagi and another APPELLANT

Vs

Commissioner Meerut Division and others RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 2, 25
Stamp Act, 1899 — Section 33

Citation : (2012) 9 ADJ 519 : AIR 2013 All 31 : (2013) 1 ALJ 491 : (2013) 2 AWC 1278 : (2013) 1 BC 613

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Advocate : U.K. Saxena, Ajit Rai and Prateek Tyagi, for the Appellant;

Final Decision : Allowed

Judgement

Hon''ble Sabhajeet Yadav, J.—Heard Sri U.K. Saxena, learned counsel for the petitioners and learned Standing Counsel for State-respondents. The brief facts leading to the case are that Punjab National Bank advanced some loan to one M/s M.L. Pharm and to advance the said loan the bank obtained security document as well as guarantee and Smt. Vimla Tyagi created an equitable mortgage of property of Khasra Plot No. 327 area 2 bighas, 13 biswas and 6 biswas situated in village Shahpur, District Ghaziabad as security by depositing the original title deed. It appears that the borrower defaulted in repayment of financial facility provided by the said bank hence an Original application No. 14 of 2000 was filed by the Bank before the Debt Recovery Tribunal which was ultimately allowed and Recovery Certificate was issued. In pursuance of the said Recovery Certificate the Recovery Officer held an auction of the aforesaid property of borrower in which the petitioners offered highest bid to the tune of Rs. 2,60,000/-, which was accepted by Recovery Officer vide his order dated 3.7.2003 and a sale certificate was issued by Recovery Officer of the Debt Recovery Tribunal-II, Delhi on

5.8.2003. Photo-stat copy of sale certificate dated 5.8.2003 is on record as Annexure-1 to the writ petition. In pursuance of aforesaid sale certificate the petitioners paid a sum of Rs. 26,000/- as Stamp duty. It is stated that the respondent No. 3-Sub-Registrar-II, Ghaziabad has submitted a report on Ist October, 2003 to the respondent No. 2-Addl. Collector (F & R), Ghaziabad to the effect that the Stamp Duty paid by the petitioners is not in accordance with law and there is a shortage of stamp to a tune of Rs. 4,03,500/-. On the basis of aforesaid report a proceeding under Section- 33 read with Section 47A of Indian Stamp Act 1899, herein after referred to as the Stamp Act, was initiated against the petitioners before Addl. Collector (F&R) Ghaziabad/the respondent No. 2 wherein he has held that since auction of the said property was neither held by Civil Court nor revenue Court, therefore, auction sale and sale certificate issued by the Recovery Officer of the Tribunal is not covered by Article-18 of Schedule I-B of Stamp Act, rather on the sale certificate issued by the Recovery Officer of the Debt Recovery Tribunal, stamp duty is chargeable under Article-23 of Schedule I-B of Stamp Act on the market value of the property determined/ prescribed by the Collector under Stamp Act, thus stamp duty paid by the petitioners is not sufficient as such, directed the petitioners to pay Deficient stamp duty to the tune of Rs. 4,03,500/- and a fine of Rs. 21,500/- vide his judgment and order dated 17.3.2004. The aforesaid amount was directed to be recovered from the petitioners alongwith interest at a rate of 1.5% per month from the date of issuance of sale certificate till actual payment of aforesaid amount. Photostat copy of the order dated 17.3.2004 passed by the respondent No. 2 is on record as Annexure-2 to the writ petition. Aggrieved by the judgment and order passed by respondent No. 2 the petitioners preferred an appeal before the respondent No. 1-Commissioner, Meerut Division, Meerut, which too was dismissed vide order dated 11.2.2005 passed by the respondent No. 1. Photo-stat copies of memo of appeal and the order dated 11.3.2005 passed by respondent No. 1 are on record as Annexures-3 and 4 respectively to the writ petition. The petitioners have challenged the aforesaid orders of the respondent Nos. 1 and 2 by instant writ petition.

2. Learned counsel for the petitioners has submitted that the Debts Recovery Tribunal, which issued recovery certificate in exercise of power u/s 19 of the Recovery of Debts Due to the Banks and Financial Institutions Act, 1993, herein after referred to as the Act, 1993, to the Recovery Officer for recovery of the amount due to the Bank is an authority or body empowered under law for time being in force to sell the property secured by the bank as security for loan and the Recovery Officer is entitled to recover the amount of debt specified in the recovery certificate by one or more of the modes enumerated under Section- 25 of the said Act, which includes attachment and sale of the movable and immovable property of the defendant before the Tribunal, therefore, sale certificate issued by Recovery Officer to the purchaser of the property sold by public auction, is referable to Article 18 of Schedule I-B of the Stamp Act. It is immaterial that such public auction was held by civil or revenue Court or

Collector or other Revenue Officer or not. Article-18 of Schedule I-B of Stamp Act as amended upto date in its application in Uttar Pradesh is not restricted to a certificate of sale granted to the purchaser of any property sold by public auction merely by a civil or Revenue Court or Collector or other Revenue Officer, rather by U.P. Act No. 19 of 1981 and U.P. Act No. 22 of 1998, the scope of said Article is extended to include the certificate of sale granted to the purchaser of any property sold by public auction, by a Court or by an officer, authority or body empowered under any law for time being in force to sell such property by public auction and to grant such certificate. Since Debt Recovery Tribunal is an authority or body empowered under Act 1993 to sell such property by public auction and Recovery Officer of the Tribunal is authorised to grant such sale certificate after holding public auction of the property secured by the bank to advance the loan, therefore, the stamp duty on such sale certificate of property is chargeable for a consideration equal to amount of the purchase money specified in the sale certificate only as envisaged by Article-18 of Schedule I-B of the Stamp Act and same cannot be charged on the basis of market value of the property constituting the subject-matter of sale certificate according to Article-23 of said Schedule. Thus, view taken by respondent Nos. 1 and 2 in holding that the stamp duty on such sale certificate is chargeable under Article 23 of Schedule I-B of Stamp Act on the market value of the property, specified in the sale certificate, is wholly erroneous, illegal and is not sustainable under law. Accordingly the impugned orders passed by respondent Nos. 1 and 2 asking the petitioners to deposit the deficiency of stamp duty to the tune of Rs. 4,03,500/- and penalty of Rs. 21,500/- total Rs. 4,25,000/- and further 1.5% per month interest thereon from the date of sale certificate till actual payment is wholly illegal and is not sustainable in the eye of law.

3. The submission of learned counsel for the petitioners appears to have substance and deserves to be accepted. Article 18 of Schedule I-B of Indian Stamp Act as amended upto date in its application to Uttar Pradesh is quoted as under :

Article-18 of Schedule I-B

4. From a plain reading of Article 18 of Schedule 1-B as substituted by U.P. Act No. 19 of 1981 and U.P. Act No. 22 of 1998 it is clear that in respect of property put up for auction and sale a sale certificate is granted to the purchaser of such property sold by public auction by a Court or by an officer, authority or body empowered under any law for time being in force to sell such property by public auction and to grant such certificate. The stamp duty payable on such certificate is described as same duty as on conveyance (No. 23 Clause (a)) for consideration equal to the amount of the purchase money only.

5. Now question arises for consideration as to whether the recovery officer appointed u/s 7(1) of the Act, 1993 who has granted sale certificate to the petitioners is an officer or authority and Debt Recovery Tribunal is body empowered under any law for time being in force to sell such property by public

auction and to grant such certificate as referable to Article 18 of schedule 1-B of the Stamp Act?

6. In order to find out accurate answer to this question, it would be useful to refer Section 3 clause (1), Section 7(1), Section 17 clause (1), Section 18, Section 19 clause (22), Section 25 and Section 31(1) of the Act, 1993 as under :

Section 3 Establishment of Tribunal.--(1) The Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

Section 7. Staff of Tribunal.--(1) The Central Government shall provide the Tribunal [with one or more Recovery Officers] and such other officers and employees as that Government may think fit.

Section 17. Jurisdiction, powers and authority of Tribunals.--(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

Section 18. Bar of Jurisdiction.--On and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority(except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in section 17.

Section-- 19 Application to the Tribunal.--

(1)........

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

Section- 25 Modes of recovery of debts.--The Recovery Officer shall, on receipt of the copy of the certificate under sub-section (7) of Section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:

(a) attachment and sale of the movable and immovable property of the defendant;

(b) arrest of the defendant and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the defendant.

Section 31. Transfer of pending cases.--(1) Every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action where on it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal :

Provided that nothing in this subsection shall apply to any appeal pending as aforesaid before any Court.

7. From a bare survey of the aforesaid provisions of the Act 1993, it clear that u/s 3 of the Act, the Central Government is empowered to establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the said Act. By virtue of Section 7 of the Act 1993, the Central Government is empowered to provide the Tribunal [with one or more Recovery Officers] and such other officers and employees as that Government may think fit. By virtue of Section 17 of the Act, 1993, A tribunal is entitled to exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions. The "appointed day" as defined u/s 2 of the Act 1993, in relation to a Tribunal, means the date on which such Tribunal is established under sub section (1) of section 3 of the Act. Section 18 of the Act 1993, creates bar of jurisdiction of Courts and other authorities whereby it is provided that on and from the appointed day, no Court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17 of the Act.

8. Section 19 of the Act 1993 deals with the procedures of Tribunal which provides procedure for recovery of debts due to the bank from any person, on application made by a bank or a financial institution and under Clause 22 of Section 19 of the Act, the Presiding Officer is empowered to issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate. u/s 25 of the Act 1993, modes of recovery of debts have been provided which inter alia envisages attachment and sale of the movable or immovable property of the defendant by the Recovery Officer appointed under the Act for such Tribunal. Section 31 of the Act deals with the transfer of pending cases. It provides that every suit or other proceeding pending before any Court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action where on it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal, provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any Court.

9. Thus, in view of aforesaid statements of law contained in various provisions of the Act, 1993, it is clear that since by virtue of Section-18 read with Section-31 of the Act, the jurisdiction of Court and other authority is barred for exercising

the jurisdiction and powers conferred on the Tribunals constituted and established under the said Act from the appointed date and Tribunal alone is entitled to recover the Debts due to the Banks and financial institutions, therefore, there can be no scope for doubt to hold that Debt Recovery Tribunal is an authority or body empowered under law for time being in force i.e. under the Act 1993 to sell the property of defendants before the Tribunal, who are borrowers and/or guarantor of the loan through Recovery Officers as such Recovery Officers are authorised to sell property of such defendants by public auction for recovery of debts specified in the certificate issued by the Tribunal and to grant sale certificate to the purchaser of the property, as such, in my considered opinion, such sale certificate granted by Recovery Officer is fully covered by Article-18 of Schedule I-B of Stamp Act. It is immaterial that aforesaid sale certificate was not granted by the civil or Revenue Court, Collector or Revenue Officer. In view of aforesaid discussion, without expressing any opinion on the merit of sale consideration, as to whether property of such value could be sold by the Tribunal for lesser amount specified in sale certificate or not because of the reason that same is not under challenge before this Court, I am of the considered opinion that sale certificate issued by the Recovery Officer of the Tribunal is fully covered under Article-18 Schedule I-B of the Stamp Act, therefore, the petitioners are liable to pay stamp duty for a consideration equal to the amount of purchase money only specified in the sale certificate. They are not liable to pay stamp duty under Article-23 of Schedule I-B on the market value of the property, determined/fixed by the Collector under Stamp Act. The view taken by the respondent Nos. 1 and 2 contrary to my view is wholly erroneous, therefore, cannot be sustained. Accordingly impugned orders passed by respondent Nos. 1 and 2 are hereby quashed. Thus writ petition succeeds and is allowed.