
(2025) 11 MP CK 1947

In the Madhya Pradesh High Court, Indore Bench

Case No : Miscellaneous Petition No. 6646 Of 2025

Baleshwar Dayal Jaiswal

APPELLANT

Vs

Bank Of India And Others

RESPONDENT

Date of Decision : 20-11-2025

Acts Referred:

Constitution Of India, 1950 — Article 227
Security Interest (Enforcement) Rules, 2002 — Rule 9(3)
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4)

Citation : (2025) 11 MP CK 1947

Hon'ble Judges : Vijay Kumar Shukla, J; Binod Kumar Dwivedi, J

Bench : Division Bench

Advocate : Akshat Agrawal, Raghvendra Singh Raghuvanshi, Dilip Singh Panwar

Final Decision : Dismissed

Judgement

Vijay Kumar Shukla, J

1. This present petition is filed under Article 227 of the Constitution of India challenging the order dated 06.11.2025 passed by the Debts Recovery Appellate Tribunal, Allahabad (hereinafter referred as "DRAT") in Appeal Diary No.253/2019, whereby the appeal filed by respondent Nos. 6 to 8 has been allowed and the order dated 17.08.2019 passed by the Debt Recovery Tribunal, Jabalpur (hereinafter referred as "DRT") has been set aside and further directed to handover the physical possession of the property in question to the respondent Nos.6 to 8 / auction purchaser within a month.

2. Counsel for the petitioner vehemently argued that the learned DRAT has committed an error while allowing the appeal filed by the respondents. He submitted that the DRT has allowed the petition on the ground that the auction purchasers have failed to deposit the auction amount within time.

3. Per contra, counsel for the respondent Nos.6 to 8 on caveat submitted that the

order passed by the DRAT is legal and valid, there is no perversity in the order passed by the DRAT hence, no interference is liable to be called for under Article 227 of the Constitution of India.

4. The facts of the case are that the respondent No.3 was granted some credit facilities by the respondent-Bank through its Director respondent No.6 Baleshwar Dayal Jaiswal, to which the respondent No.6 stood as guarantor by creating equitable mortgage over his property in question and the land, building, plant and machinery of the company were also mortgaged to secure the loan. Since the respondent No.3-borrower did not adhere to the terms of loan agreement, the account was declared as NPA and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as "SARFAESI Act") initiated. The demand notice dated 10.09.2005 under Section 13(2) of SARFAESI Act followed by the possession notice dated 16.10.2008 under section 13(4) of the SARFAESI Act were issued. Thereafter, the auction sale notice dated 13.01.2009 was issued scheduling the auction of the property in question on 14.02.2009 for the sale of two properties, one of the company and other of the respondent No.6, who is Director of the said company. The auction was scheduled to be held on 14.02.2009 or on any day thereafter.

5. The respondent No.3 through its Director had filed a Writ Petition No.951/2009 challenging the proceedings undertaken by the respondent-Bank before the Hon'ble High Court, Indore Bench, which was disposed of vide order dated 13.02.2009 with a direction to the respondent No.3 to deposit Rs.30.00 lacs with the respondent-Bank and to produce a private purchaser for the properties on or before 20.03.2009. The respondents-borrowers had undertaken before the Hon'ble High Court that if they could not produce the same on or before 20.03.2009, Rs. 5.00 lacs, out of Rs.30.00 lacs may be forfeited as penalty and the remaining Rs.15.00 lacs shall be adjusted against the loan. On the basis of which, the auction sale scheduled on 14.02.2009 was deferred by the Bank till 20.03.2009.

6. It transpires that the borrower-company deposited a cheque of Rs. 30.00 lacs and the same was encashed by the respondent-Bank, but they failed to produce any perspective buyer on or before 20.03.2009, hence the bid was opened by the Bank on 21.03.2009 after expiry of the period as stipulated by the Hon'ble High Court, in which the appellants were found to be highest bidders for the property pertaining to the respondent No.6 and thereafter the sale certificate was issued in their favour on 09.04.2009.

7. The aforesaid sale proceedings conducted by the Bank had again been challenged by the borrowers by filing Writ Petition No.2607/2009 before the Hon'ble High Court, which was disposed of on 22.04.2009 with a liberty to file the securitization application before the Tribunal below raising their grievances. Accordingly, the present S.A. was filed before the Tribunal below along with application for condonation of delay, which was dismissed vide order dated

14.12.2009 being barred by time. Against the said order, the respondent No.6 filed an Appeal Sr. No.17/2010 before this Tribunal, which was partly allowed vide order dated 17.04.2018 directing the Tribunal below to decide the matter afresh only to the extent of auction sale dated 21.03.2009 and the sale certificate dated 09.04.2009 after affording opportunity of hearing to the parties concerned.

8. The Tribunal below vide impugned order has allowed the S.A. filed by the borrowers and the auction sale conducted by the Bank has been set aside.

Being aggrieved by the said order, the present appeal was filed by the auction purchaser which has been allowed by the impugned order.

9. The DRAT had considered the specific issue that whether the Rule 9(3) of Security Interest (Enforcement) Rules, 2002 has been complied with or not. After going from the record, the relevant Para of the DRAT order is reproduced as under:

17. It is to be seen that after issuance of demand notice and possession notice the auction sale notice was issued on 13.01.2009 scheduling the auction of the property in question on 14.02.2009, which was challenged by the borrowers before the Hon'ble High Court by way of Writ Petition No.951/2009. The said Writ Petition was disposed off by the Hon'ble High Court vide order dated 13.02.2009. the relevant portion of the said order is as under:-

"Shri Krishnkant Jaiswal, one of the Directors of the petitioner-company states that to show its bonafides, the petitioner company shall handover a cheque for an amount of Rs. 30,00,000/- (a post dated cheque encashable on February 20, 2009) to Shri Mahendra V. Nandeedkar, Chief Manager, Bank of India, Zonal Office, Ujjain on February 14, 2009. Shri Jaiswal further states that the petitioner-Company shall present a private purchaser of the property in question to be respondent-Bank, on or before March 20, 2009 and the amount offered by the aforesaid purchaser would be more than sufficient to discharge the total recoverable amount by the Bank from the petitioner-company. Shri Jaiswal further undertakes that in case the petitioner-company is not in a position to arrange/present a private purchaser to the respondent-Bank, on or before March 20, 2009, then out of the amount of Rs. 30,00,000/-paid by the petitioner-company, to the respondent-Bank, as noticed above, an amount of Rs. 15,00,000/- may be forfeited, as penalty charges, and the remaining amount of Rs. 15,00,000/- would be adjusted towards the outstanding amount. In that situation, the Bank would also be at liberty to sell the properties of the petitioner-company, by following its own procedure, and the petitioner-company would have no objection in this regard.

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However, it is made clear that in case there is any default committed by the petitioner-company of the undertakes given on its behalf, as noticed above, in

that situation the respondent-Bank would be free to auction the property of the petitioner-company after March 20,2009, and in that situation would also be entitled to forfeit Rs. 15,00,000/-, out of total amount of Rs. 30,00,000/- furnished by the petitioner-company. The remaining amount of Rs. 15,00,000/- would be adjusted towards the outstanding liability of the company."

10. The DRAT has rightly held that the appellant who is a borrower got the interim order on 13.02.2009 from the High Court and got the auction sale deferred from 14.02.2009 to 20.03.2009 and despite that he had neither liquidated the due nor produced any prospective purchaser before the bank to purchase the property in question prior to 20.03.2009 or later on. The auction had taken place in the year 2009, the sale certificate has also been issued in favour of the auction purchasers.

11. In the light of the judgment passed by the Hon'ble Apex Court in the case of Varimadugu Obi Reddy v/s B. Sreenivasulu, 2023 (2) SCC 168 we do not find any perversity in the impugned order warranting any interference under Article 227 of the Constitution of India.

12. Even otherwise, it is settled law that jurisdiction under Article 227 of the Constitution of India cannot be exercised to correct all errors of subordinate Courts within its limitation. It can be exercised where the order is passed in grave dereliction of duty and flagrant abuse of the fundamental principle of law and justice. [See. Jai Singh and another vs. MCD, (2010) 9 SCC 385 and Shalini Shetty vs. Rajendra S. Patil, (2010) 8 SCC 329].

13. Further, a Co-ordinate Bench of this Court in the case of Ashutosh Dubey and another v/s Tilak Grih Nirman Sahakari Samiti Maryadit, Bhopal and another, 2004 (2) MPHT 14 held that supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise jurisdiction which it does have or the jurisdiction through available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied - (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law; and (ii) a grave injustice or gross failure of justice has occasioned thereby.

14. In view of the aforesaid enunciation of law, the instant petition is devoid of merit and is hereby dismissed.