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**(2014) 05 MP CK 0229**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 21136 of 2013**

Bank of Baroda

APPELLANT

Vs

M/s. Ample Developers Private Limited and Others

RESPONDENT

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**Date of Decision : 07-05-2014**

**Acts Referred:**

Constitution of India, 1950 — Article 227

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20

**Citation : (2014) 05 MP CK 0229**

**Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J**

**Bench : Division Bench**

**Advocate : Rajesh Maindiratta, Advocate for the Appellant; Sanjay Agrawal, Counsel for Respondent No. 1, Advocate for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

1. As a very short question is involved in the matter and as for deciding the present controversy, appearance of respondent Nos. 2 to 8 is not required, matter is being heard and decided at this stage based on the material available on record.

2. Records indicate that certain loan transaction had taken place between petitioner/Bank and respondent Nos. 2 to 7 and, therefore, for recovery of the amount advanced to the said respondents, the Bank initiated recovery proceedings before the Debts Recovery Tribunal, Jabalpur (hereinafter referred to as "DRT"). DRT, Jabalpur decided the matter and passed an order by its judgment dated 16.8.2000-Annexure P/1. In the meanwhile, it is the case of respondent No. 1 M/s. Ample Developers Private Limited that they had already purchased the property.

3. It was the case of respondent No. 1 that the property in question was never mortgaged with the Bank. They claim their exclusive right to the property by virtue of the title acquired by them and it is their contention that the DRT has passed a judgment adversely affecting their right to the property without hearing

them and without notice to them. As the judgment rendered by the DRT was an *exparte* one, behind the back of respondent No. 1 and without considering their right to the property and the crucial fact that the property was never mortgaged with the Bank, they filed an application for setting aside the *exparte* judgment, reopening of the matter and hearing afresh. When this application was rejected by the DRT, an appeal u/s 20 of the Recovery of Debts Due to the Bank and Financial Institutions Act, 1993 was filed by respondent No. 1 and in this appeal challenge was made to the order-dated 13.2.2013 passed by the DRT in M.A. No. 62/2012. The Appellate Tribunal having allowed this appeal of respondent No. 1 and having remanded the matter back to the DRT, for reconsidering the application for recalling and setting aside the *exparte* judgment dated 13.2.2013, this writ petition under Article 227 of the Constitution has been filed by the Bank.

4. We have heard learned counsel for the parties at length and perused the judgment dated 9.10.2013-Annexure P/6, passed by the Chairperson of the Debts Recovery Appellate Tribunal.

5. The Tribunal after evaluating the entire facts and *prima facie* on being satisfied that the DRT has passed an *exparte* order, which has certain adverse affect on the right to title and possession of the property said to have been mortgaged and further finding that respondent No. 1 has some right to the property, remanded the matter back to the DRT for reconsideration of the application for setting aside the *exparte* judgment and hearing the matter again. The Tribunal has evaluated the *prima facie* material in accordance with law and on being satisfied with regard to the *prima facie* case existing in favour of respondent No. 1 has passed the impugned order. The order is reasonable in nature and there is no error of law or fact in deciding this appeal warranting interference by Bank of Baroda Vs. M/s. Ample Developers Pvt. Ltd. and others this Court in exercise of its limited jurisdiction under Article 227 of the Constitution.

6. The Tribunal has found that certain rights accrued to respondent No. 1 by virtue of the sale deed executed in their favour and as their contention about the property not being mortgaged with the Bank is also found to have some substance, the Tribunal has taken action. In doing so, as already indicated hereinabove, the Tribunal has not considered any error and as the question is now open before the DRT in accordance to remand order made, no prejudice is caused to the Bank also, they can agitate the matter and the Tribunal can take note of all the facts and circumstances and take a decision in accordance with law.

7. However, Shri Rajesh Maindiratta, learned counsel for the petitioner/Bank, submitted that certain observations have been made by the Tribunal in paragraphs 15 and 16, which are adverse to the Bank and, therefore, the same be deleted.

8. The observations made by the Appellate Tribunal in paragraphs 15 and 16 are only a provisional assessment for finding out the *prima facie* case, and for

enabling the Tribunal to take a decision as to whether any interference is to be made. This finding is not permanent and in paragraph 19, the Appellate Tribunal itself has made an observation that the prima facie assessment made in the order shall not come in the way of the DRT in deciding the matter. Under such circumstances, the apprehension expressed by Shri Rajesh Maindiratta, learned counsel for the petitioner/Bank, is unwarranted. The Debts Recovery Tribunal is to proceed in the matter in accordance with law and without being influenced by any observations made either by this Court or by the Appellate Tribunal, and has to decide the matter in accordance with law. That apart, the parties are granted liberty to raise all such objections as may be available to them in the matter now, which is pending before the Debts Recovery Tribunal.

9. Considering the fact that the dispute is pending since 2000, Debts Recovery Tribunal, Jabalpur is directed to decide the application filed by respondent No. 1 in accordance with law, after hearing all Bank of Baroda Vs. M/s. Ample Developers Pvt. Ltd. and others concerned within a period of three months from the date of receipt of certified copy of this order.

10. With the aforesaid, this petition stands allowed and disposed of.