(2015) 02 MP CK 0147

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8579 of 2013

Bank of India and Others	APPELLANT
Vs	
Manish Sharma	RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17

Citation : (2015) 3 BC 153

Hon'ble Judges : Rajendra Menon, J;C.V. Sirpurkar, J

Bench : Division Bench

Advocate : Rajesh Maindiretta, for the Appellant; R.N. Roy, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition under Article 227 of the Constitution of India has been filed by the creditor-Bank against the borrower-respondent, who is proprietor of a private hospital. In this writ petition, challenge has been made to the order dated 4.4.2013 passed by the Debts Recovery Appellate Tribunal (DRAT), Allahabad, in Modf./Review Sr. No. 158/2013 arising from Appeal No. R-12/11. A prayer has also been made for a direction to the effect that the petitioner Bank is entitled to realize the entire outstanding dues from the respondent by sale of the mortgaged property in the case of failure on the part of the respondent to deposit the same.

2. A plethora of facts have been pleaded for and against the petitioner; however, the facts necessary for disposal of the petition lie in a narrow compass. The petitioner Bank initiated action for realization of outstanding dues against the respondent under the provisions of Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to in this judgment as "the Act"). By order dated 6.1.2012 (Annexure-P/3), the

learned DRAT, Allahabad, in Appeal No. R-12/2011 directed the respondent to pay an amount of Rs. 65,00,000/- in 15 equal instalments, with the first instalment falling due on 15.2.2012 and subsequent instalments on the 15th of each successive month. It was further clarified that in case the respondent failed to deposit any of the instalments, the petitioner Bank would be free to proceed with the auction of the property and recover the complete original amount as per the agreement. Since this order was passed in the absence of a representative of the petitioner Bank, it was allowed liberty to apply for review of the order, in case it had any objection. Utilizing the liberty so granted, the petitioner Bank moved an application for review, which was decided by order dated 28.2.2012 (Annexure-P/4), whereby the Bank was allowed to charge interest @ 10% per annum on the amount of Rs. 65,00,000/-. The respondent failed to comply with the aforesaid orders dated 6.1.2012 and 28.2.2012. Consequently, after a series of correspondence between the parties, finally, the Bank set up auction sale of the mortgaged property for 10.4.2013. The petitioner again approached the DRAT, Allahabad for reviewing order dated 6.1.2012, who yet again reviewed/ modified that order, by impugned order dated 4.4.2013 (Annexure P-11) granting liberty to the respondent to deposit Rs. 20,00,000/- on the date of the auction and deposit further instalments as falling due. It was directed that in case the respondent failed to deposit Rs. 20,00,000/- on the date of auction, the petitioner Bank would be free to confirm the auction.

3. The impugned order dated 4.4.2013 (Annexure-P/11) has been challenged by the petitioner Bank on following two grounds:

"(1) No notice was issued to the petitioner Bank before passing the impugned order and;

(2) There is no provision for review of an order passed by the DRAT in the Act; as such, the impugned order was without jurisdiction."

4. On the other hand, learned Counsel for the respondent has submitted that due to financial difficulties he was unable to fully comply with the conditions of order dated 6.1.2012, as modified by order dated 28.2.2012; however, a substantial amount was deposited by the respondent with the petitioner Bank. It has also been contended that the petitioner Bank had refused to accept the amount tendered by the respondent. It has also been submitted that the petitioner Bank is not interested in realizing its legitimate dues but is only interested in auctioning away highly valued property of the respondent at a throw away price to its "yes man". Learned Counsel for the respondent has also pointed out certain infirmities in the process of auction and inviting attention of this Court to the judgment passed by the Supreme Court in the case of Sardar Associates and Others Vs. Punjab and Sind Bank and Others, AIR 2010 SC 218 : (2009) 4 CompLJ 35 : (2009) 10 JT 410 : (2009) 8 SCC 257 : (2009) 12 SCR 803 , has stated that the petitioner Bank is not observing the guidelines issued by the Reserve Bank of India. With regard to the sustainability of an order for review. It has been contended that the impugned order merely extended the duration for

repayment of dues and, therefore, did not amount to a review of an earlier order.

5. Having considered the rival contentions, this Court is of the view that there is no substance in the first argument advanced on behalf of the petitioner to the effect that the impugned order was passed without notice to the petitioner Bank. A bare perusal of the impugned order dated 4.4.2013 reveals that the petitioner Bank was represented by Shri V.D. Chauhan, Advocate, who, it has been stated at bar, is standing Counsel for the petitioner Bank in the DRAT, Allahabad. In such a situation, if Shri V.D. Chauhan was of the view that it was necessary to seek instructions from the petitioner Bank, he ought to have made such a prayer before the DRAT. However, it is evident from the order sheet dated 4.4.2013 that no such prayer was made. In these circumstances, it cannot be inferred that the petitioner Bank went unheard on 4.4.2013.

6. Now the Court shall examine the sustainability of the second argument regarding maintainability of a review application before DRAT. In this regard, learned Counsel for the petitioner has invited attention of the Court to two pronouncements of the Supreme Court. The first one is the case of Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, AIR 2010 SC 3745 : (2010) 9 JT 382 : (2011) 1 RCR(Civil) 216 : (2010) 9 SCC 437 : (2010) 10 SCR 971 wherein it has been held that unless the statute/rules so permit, the review application is not maintainable in the case of judicial/quasi-judicial orders. It has further been observed that in the absence of any provision in the concerned Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. It has further been held that in the absence of any statutory provision for review, entertaining an application for review or an application for review under the garb of clarification/modification/correction is not permissible.

7. The second pronouncement on the point was made in the case of Assistant Commercial Taxes Officer Vs. Makkad Plastic Agencies, (2011) 185 ECR 116 : (2011) 4 JT 203 : (2011) 4 SCALE 27 : (2011) 4 SCC 750 : (2011) 2 UJ 1509 : (2011) 42 VST 1 , wherein, relying upon the case of Kalabharati Advertising (supra), it was held that review is a creature of statute and in the absence of any statutory provision for review, exercise of jurisdiction under the garb of clarification/modification/correction is not permissible.

8. Aforesaid pronouncements of Supreme Court leave no manner of doubt in our minds that power of review or review in the garb of clarification/modification/correction is not exercisable in the absence of a specific provision either in the concerned Act or in concerned Rules. Learned Counsel for the respondent failed to point out any provision in the Act permitting review of an order passed by the DRAT. Thus, it is luminously clear that the learned DRAT had no jurisdiction to review the orders dated 6.1.2012 and 15.2.2012. In the circumstances, the impugned order dated 4.4.2013 (Annexure P-11), cannot be allowed to stand.

9. So far as various objections with regard to the legality of the auction process

or conduct of the Bank, raised on behalf of the respondent are concerned, he is free to raise those objections under Section 17 of the Act before the appropriate authority in appropriate proceedings. In the result, the petition is allowed. The impugned order dated 4.4.2013 (Annexure-P/11) passed by DRAT, Allahabad in Modf./Review Sr. No. 158/13 in Appeal No. R-12/11 is set aside.

