

(2008) 03 P&H CK 0199
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6306 of 2007

Bhupinder Singh	Vs	APPELLANT
State Bank of Patiala and Others		RESPONDENT

Date of Decision : 25-03-2008

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 2, 2(1)

Citation : (2009) 1 ILR (P&H) 124 : (2008) 4 RCR(Civil) 50

Hon'ble Judges : Satish Kumar Mittal, J; Rakesh Kumar Garg, J

Bench : Division Bench

Advocate : A.K. Walia, for the Appellant; H.N. Mehtani, for Respondents No. 1 and 2, Vijay Kumar Chaudhary, AAG for Respondents No. 3 to 5 and Arvind Kashyap, for Respondent No. 6., for the Respondent

Judgement

Satish Kumar Mittal, J.—The Petitioner, who is a poor mason and had taken a small house loan of Rs. 4,80,000 from the Respondent Bank, has filed this writ petition challenging the action of the Respondent-Bank whereby the house for which the aforesaid loan was taken, has been sold in a fake auction in illegal, arbitrary and fraudulent manner by invoking the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act") The instant case is an example of unreasonableness and highhandedness where the bank authorities have misused the provisions of the Act by selling the house of a poor borrower at a throwaway price in collusion among themselves.

2. In the present case, in April, 2003, the Petitioner along with his wife had taken a loan of Rs. 4,80,000 for the purchase of a double storey constructed house situated at Dashmesh Nagar, Patiala. The said house was constructed in an area of 133.3 Sq Yards with a covered area of 1251 Sq. Ft. They had purchased that house for a consideration of Rs. 6,00,000 vide registered sale deed, dated 12th June, 2003 from one Smt. Saroj Bala. They had paid an amount of Rs. 1,20,000 from their personal savings and the remaining amount of Rs. 4,80,000 was

borrowed by them from the Respondent bank. The borrowed amount was directly paid by the bank to the vendor. As per the agreement, the said loan was to be repaid in equated monthly installments of Rs. 5000 each within a period of 180 months.

3. At the time of granting the loan, the Respondent-bank got valued the house in question from its approved valuer, who vide his valuation report, dated 9th June, 2003 assessed the value of the said house at Rs. 6,14,294. Thereafter the aforesaid amount of loan was sanctioned.

4. It is the case of the Petitioner that initially he had paid the installments regularly for some period, but subsequently Shri Parkash Singh, Manager of the bank(Respondent No. 2 herein), who was willing to purchase the house in question and was giving allurements to the Petitioner to sell the house to him, advised the Petitioner that he could deposit the installments quarterly or half-yearly. It is further the case of the Petitioner that under that bona fide advice, he deposited the amount of Rs. 10,000 Rs. 8,000, some time Rs. 6,000-and at one time Rs. 50,000. It is also the case of the Petitioner that up to January, 2006, he had paid an amount of Rs. 1,50,000 towards the said loan. In spite of that, Respondent No. 2 declared the Petitioner as a defaulter at the back of the Petitioner without serving any notice on him. It is further the case of the Petitioner that in April, 2007, he came to know that Respondent No. 2 hatched a conspiracy to grab his house by invoking the provisions of the Act. It is also the case of the Petitioner that on 27th April, 2007 he came to know that his house was sold in a public auction for a meagre amount of Rs. 4,75,000 to one Ashok Kumar (Respondent No. 6 herein). It is further the case of the Petitioner that before initiating the proceedings under the Act, no demand notice was ever served upon the Petitioner nor any notice for taking possession of the house in question was served on him nor affixed on his house as per the requirements of Sub-rule (1) of Rule 8 of the Act. It is also alleged that the house of the Petitioner was auctioned in an illegal and fraudulent manner by obtaining a wrong valuation report and the alleged sale was a benami transaction. Actually, Respondent No. 2 has purchased the house in question as benami in the name of Ashok Kumar (Respondent No. 6 herein). In these circumstances, the Petitioner has approached this Court by filing the instant petition.

5. Upon notice, the Respondent bank in its written statement has admitted that a loan of Rs. 4,80,000 was advanced to the Petitioner and his wife for the purchase of a built up house on 12th June, 2003 and to secure the said loan, the Petitioner had equitably mortgaged the said house and deposited the title deed with the Respondent bank. It is not disputed that the said house was purchased by the Petitioner for a consideration of Rs. 6,00,000 out of which an amount of Rs. 1,20,000 was paid by the Petitioner from his saving and an amount of Rs. 4,80,000 was directly disbursed to the vendor by the Respondent bank. It is also admitted that as per the loan agreement, the aforesaid loan was to be re-paid in equated monthly installments within a period of 180 months. Though it has been

stated that the Petitioner committed defaults in re-paying the installments of the loan but it has not been specifically stated as to from which particular date and how many installments were defaulted by him. It is further stated that when the Petitioner committed default in re-payment of his installments, a notice, dated 19th February, 2005 was sent by the Respondent bank to the Petitioner requesting him to regularize his account. In spite of that, the account was not regularized by the Petitioner. Therefore, the account of the Petitioner was classified as NPA on 31st March, 2005 and on 30th June, 2005 an amount of Rs. 5,18,989 was outstanding against the Petitioner and his wife. Accordingly, on 30th June, 2005, a demand notice u/s 13(2) of the Act was served upon the borrowers.

6. It is further the case of the Respondent bank that in spite of the demand notice when the outstanding amount was not cleared by the Petitioner and his wife, the possession of the secured assets was taken on 14th October, 2005. Subsequently, the auction notice were published in two newspapers, i.e. Hindustan Time (English Edition) and Chardi Kalan (Punjabi Edition) and the house in question was sold to Respondent No. 6, the only auction purchaser, on 28th May, 2006, who gave bid for Rs. 4,75,000. The reserve price of the house was fixed as Rs. 4,16,000 on the basis of the valuation report, dated 16th September, 2005 (Annexure R-8) given by Shri Gurdial Singh Sandhu, the approved valuer of the Respondent bank. It was further alleged that the sale was confirmed by the Respondent bank in accordance with law and the Sale Certificate, dated 23rd August, 2006 (Annexure R-7) in favour of Respondent No. 6 was also issued. It has been denied that the house in question was sold in a fake auction in illegal, arbitrary and fraudulent manner. However, in the written statement it has not been disputed that up to January, 2006, the Petitioner and his wife had already paid an amount of Rs. 1,50,000.

7. Respondent No. 2 in his separate reply has denied the allegations levelled against him that he wanted to purchase the house in question and it was a benami sale.

8. Respondent No. 6 has also filed a separate reply in which he has stated that he was the only auction purchaser who gave the highest bid of Rs. 4,75,000 and his bid was accepted and subsequently on depositing the entire sale consideration, the sale was confirmed. In his reply, the said Respondent has stated that he had deposited 5% of the reserve price for participating in the auction as per the terms and conditions of the auction notice but he has not stated how much amount he had deposited and how much amount he subsequently deposited and on which date. He has also not stated whether he had deposited the amount in cash or by demand draft.

9. During the course of hearing, Respondent No. 1 was directed to produce the record concerning the accounts of the Petitioner and the auction proceedings. In pursuance of the said order, a file containing some documents was produced in the court. From those documents, it was not clear when the account of the

Petitioner and his wife was classified as NPA and whether any intimation was given to them or not. Shri Gurdial Singh Sandhu, who gave the valuation report, dated 9th June, 2003, was also asked to explain how he had given the reserve price of the house in question in the year 2005 at Rs. 4,16,000 when previously the approved valuer of the Respondent bank,--vide his valuation report, dated 9th June, 2003 assessed the value of the said house at Rs. 6,14,294. On January 29, 2008, a specific question was put to Mr. Jasbir Singh, Special Assistant and Mr. Parkash Singh, Branch Manager, Sanauri Adda Branch, State Bank of Patiala, respectively, on which date and by whom the account of the Petitioner and his wife was classified as NPA and it was replied that their account was not declared as NPA as such. During the course of hearing, the counsel produced a list of assets classification prepared on 31st March, 2005 which was prepared for auditing purpose and in that list the account of the Petitioner was also mentioned. However, no specific account of the Petitioner was produced where it was written that this account stand classified as NPA.

10. Shri Ashok Puri, Chief Manager, who was the authorized officer to supervise and conduct the auction in question and was present in the Court on 14th February, 2008, had produced a file containing the auction proceedings held on 28th June, 2006. He had stated that the time of the auction was 11.00 a.m. and the auction of the house in question was completed at 3.10 p.m. He had further stated that one person, i.e. Ashok Kumar (Respondent No. 6 herein), who was the only bidder and gave the bid for the house in question, deposited 5% amount of the reserve price of the property as earnest money by DD No. 036340, dated 28th June, 2006 for Rs. 26,000 whereas the earnest amount comes only to Rs. 20,800. He had further stated that Respondent No. 6 deposited the remaining earnest amount of Rs. 1,05,000 on the next date in the bank. He had also stated that the remaining amount of Rs. 3,44,000 was deposited by the bidder on 11th July, 2006. He had further stated that he had confirmed the auction in favour of Respondent No. 6 on the very same day when the auction took place subject to payment of full sale consideration. However, he had stated that all the amounts deposited by the bidder were not credited in the account of the borrower before 18th October, 2006.

11. We have heard the arguments of the learned Counsel for both the parties and gone through the records produced by the Respondent bank.

12. Learned Counsel for the Petitioner argued that in the instant case the Respondent bank and its officials have acted illegally and arbitrarily while initiating the proceedings against the loanee under the provisions of the Act and have sold the house of the Petitioner totally at a throw away price by obtaining a false valuation report and by conducting a fake auction. He submits that in this case actually no auction took place and the house in question was allegedly sold to Respondent No. 6, who is stated to be the only auction purchaser present at the time of auction. Learned Counsel further contends that all these acts were done by the Respondent bank at the instance of Respondent No. 2 in order to

grab the house of the Petitioner. He further submitted that the Respondent bank has not only illegally classified the account of the Petitioner and his wife as NPA without any intimation to the Petitioner but the demand notice was also never served upon the Petitioner and his wife. Learned Counsel further submitted that no notice regarding selling the property was given to the Petitioner. Counsel contends that the value of the house of the Petitioner was more than Rs. 13,00,000 in the year 2006 and it was sold by the Respondent bank to the sole auction purchaser in an illegal and arbitrary manner by obtaining manipulated valuation report and recording the fake auction proceedings.

13. On the other hand, Shri H.N. Mehtani, learned Counsel for Respondents No. 1 and 2 submitted that the account of the Petitioner and his wife was legally classified as NPA when they defaulted in making the payment of the installments within time. He further submitted that thereafter the demand notice was issued on 30th June, 2005, a copy of which was also sent to the Petitioner by registered post. He further submitted that when the Petitioner and his wife did not make the payment as per the demand notice, symbolic possession of the house was taken in exercise of the powers conferred u/s 13(4) of the Act on 14th October, 2005. Before that the valuation report of the house in question was also obtained from the approved valuer Shri Gurdial Singh Sandhu on 16th September, 2005, according to which, he assessed the value of the house at Rs. 4,16,000. Therefore, reserve price of the house in question was fixed at Rs. 4,16,000. He further submitted that the auction notice was duly published in two newspapers i.e. Hindustan Times (English Edition) and Chardi Kalan (Punjabi Edition) on 28th May, 2006 and thereafter on 28th June, 2006 the property was sold in auction to Respondent No. 6, who gave the highest bid of Rs. 4,75,000. Since the bid was above the reserve price, therefore, the same was accepted and the sale was confirmed on the same day subject to payment of the full sale consideration. Learned Counsel submitted that though Respondent No. 6 was the only auction purchaser but there was no illegality and collusion in conducting the auction proceedings which were duly conducted by Shri Ashok Puri, the authorized officer to supervise and conduct the auction proceedings. Therefore, the learned Counsel submitted that there was no illegality in declaring the accounts of the Petitioner and his wife as NPA and initiating the proceedings under the Act and selling the secured assets in public auction. Hence, this petition is liable to be dismissed.

14. Shri Arvind Kashyap, Advocate, for Respondent No. 6 argued that the said Respondent had participated in the auction proceedings and purchased the house in question being the highest bidder and his bid was accepted and he had already deposited the entire sale consideration, therefore, being a bona fide purchaser, the sale of the house in question should not be set aside.

15. We have carefully examined the file produced by the Respondent bank containing papers with regard to the loan taken by the Petitioner and his wife as well as the auction proceedings conducted by the Respondent bank. It is

admitted fact that the Petitioner and his wife had taken the loan of Rs. 4,80,000 from the Respondent bank on 12th June, 2003 for the purpose of purchasing a double storey constructed house from one Smt. Saroj Bala. It is also admitted fact that the said house was constructed in an area of 133.33 sq. yards and the covered area is 1251 sq.ft. The said house, which is situated in Dashmesh Nagar, Patiala, was purchased,--vide registered sale deed, dated 12th June, 2003 for a consideration of Rs. 6,00,000 out of which an amount of Rs. 1,20,000 was paid by the Petitioner from his savings and an amount of Rs. 4,80,000 was directly disbursed to the vendor by the Respondent bank. As per the terms and conditions of the loan agreement, the loan amount of Rs. 4,80,000 was to be repaid in, equal monthly installments of Rs. 5000 each within a period of 180 months. Before granting loan to the Petitioner and his wife for purchase of the house in question, the said house was got valued from approved valuer of the bank, who submitted his valuation report, dated 9th June, 2003, according to which, the house was valued at Rs. 6,14,294. As per the said valuation report, the land was valued @ Rs. 1800 per sq. yard and the construction was valued @ Rs. 300 per sq. ft. A note was also added that the house is 4-1/2 years old and the useful life of the house is 60 years. From the statement of accounts, it appears that the Petitioner used to deposit the amount in installments. Some times, he had deposited monthly installments of Rs. 4000 and on two months, i.e. April, 2004 and November, 2004, two installments of Rs. 10,000 each were deposited, and further in the month of January, 2006, the Petitioner had deposited cash amount of Rs. 50,000 towards the loan. It appears that the Petitioner has not regularly deposited the monthly installments. The Respondent bank has not produced or brought in the court the original account of the Petitioner and his wife in which their account was classified as NPA. The Respondent bank has placed on record a photo-copy of the loan of assets classification and provisioning thereon as on 31st March, 2005. The said list contains the details of hundreds of accounts. According to the learned Counsel for the bank, this list was prepared by the Chartered Accountant of the bank and in the said list the account of the Petitioner also finds mention. On the basis of the said list, it was argued by the learned Counsel for the Respondent bank that account of the Petitioner and his wife was classified as NPA on 31st March, 2005. When during the course of arguments, a specific question was asked whether the account of the Petitioner was declared/classified as NPA by a specific order, it was replied that the account of the Petitioner was not declared or classified as such. In our opinion, in the instant case the Respondent bank has classified the account of the Petitioner as NPA without any specific order to that effect without application of mind. It is only when the account of the borrower became sub-standard, doubtful or total loss, then the account of a borrower becomes classifiable as Non-performing Assets and it is only then the Act came into operation. Clause(o) of Sub-section (1) of Section 2 of the Act defines Non-performing Asset which means an asset or account of a borrower which has been classified by a bank as sub-standard, doubtful or loss asset. In the instant case, the Respondent bank in spite of the direction, has not placed on record the

account of the borrower where the same was classified by the Manager of the Respondent bank as sub-standard, doubtful or loss asset. Merely on the basis of the aforesaid list, in our opinion, it can not be held that the account of the Petitioner was declared as NPA legally.

16. It has been further stated that the demand notice, dated 30th June, 2005 was served upon the Petitioner by registered post but there is no material available on the record to show that actually the demand notice was served upon the borrower or not. The loose file produced in the case does not contain any such document to show that the said demand notice was ever served upon the Petitioner. Though in the written statement it has been stated that the possession notice was issued on 14th October, 2005 and thereafter the possession was taken, but it appears that actual possession was never taken and by the said notice only symbolic possession was taken. From the record, it appears that the auction notices were published in two newspapers i.e. Hindustan Times (English Edition) and Chardi Kalan (Punjabi Edition) on 28th May, 2006. As per the advertisement, it appears that the auction notice pertaining to the house in question was also earlier published in two newspapers i.e. Indian Express (English Edition) and Chardi Kalan (Punjabi Edition) on 20th November, 2005 mentioning the date of auction as 21st December, 2005, but neither in the written statement nor in the file nor before the court it was explained as to what happened on 21st December, 2005; whether the house in question was put to auction, and if auctioned, why the said auction was cancelled. The Respondent bank has consciously concealed these facts from this Court for the reasons best known to it.

17. As per the subsequent notice, dated 28th May, 2006, the auction was to be held on 28th June, 2006 in the branch office of the Respondent bank at 11.00 a.m. It is the case of the Respondent bank that before conducting the auction, a valuation report, dated 16th September, 2005 was got prepared from the approved valuer Shri Gurdial Singh Sandhu. We have perused the said valuation report. A perusal of the valuation report available on the record shows that in this report the market rate of the land was assessed @ Rs. 1500 per sq. yards and the cost of construction of ground floor was assessed @ Rs. 200 per sq. ft. and the first floor @ Rs. 150 per sq. ft. Neither in this report nor before the court nor in the written statement any explanation was given by the valuer or the Respondent bank why after more than two years, the value of the same house was assessed at a lower price when initially it was assessed at Rs. 6,14,294. In the court, the valuer was called and he could not justify his report at all. He was aware of the earlier valuation report but could not explain in the court also why and on what basis he had undervalued the house in question after the lapse of more than two years period, particularly when the value of the real estate is increasing day by day.

18. We have perused the auction proceedings. Those auction proceedings were prepared at 3.10 p.m. on 28th June, 2006. From the auction sheet, it appears

that only Respondent No. 6 was the sole bidder and he only gave six bids. The first bid was given for Rs. 4,57,000 second for Rs. 4,60,000, third for Rs. 4,65,000 fourth for Rs. 4,68,000, fifth for Rs. 4,70,000 and the sixth bid was given for Rs. 4,75,000 and his sixth bid was accepted. A perusal of these documents shows that these documents were prepared at one time by one person in the same handwriting and ink. On these documents, the signatures of the auction purchaser have been obtained. Even the particulars of the highest bidder, which were supposed to be filled up by the bidder, have been filled up by the official of the bank on which also the signatures of the auction purchaser appear to have been obtained. From all these documents, it appears that without conducting any auction, those documents were prepared by giving the colour of a public auction. Actually no auction had taken place and Respondent No. 6 was put up as a dummy bidder. As per the terms and conditions of the auction 5% amount of the reserve price of the property to be sold was to be deposited by the bidder as earnest money. In this case, it has not been explained why Rs. 26,000 were taken as earnest money whereas the earnest money comes only to Rs. 20,800.

Though on the same day, the remaining earnest amount to make the total 25% was not deposited, in spite of that the sale was confirmed on that date subject to the payment of the full sale consideration. Before confirmation of the sale, no notice was given to the Petitioner to provide him an opportunity to raise an objection to the confirmation of sale.

19. We have also perused the Sale Certificate, dated 23rd August, 2006 (Annexure R-7) issued by the Respondent bank. In the said certificate, even the amount of consideration has not been mentioned and it has been stated that symbolic possession of the property has been delivered to the purchaser free from all encumbrances, whereas actual possession of the property was not handed over to the purchaser.

20. On considering the above facts, we are of the opinion that in the instant case the Respondent bank has acted illegally, arbitrarily and unfairly while initiating the proceedings under the Act and auctioning the secured assets at a throwaway price which belonged to a poor borrower, who had taken the small house loan. Wide powers have been given to the banks under the provisions of the Act for selling the secured assets itself without invoking adjudicatory process. Even the action taken by the Respondent bank under this Act cannot be challenged in the Civil Court. Therefore, the statutory powers vested under this Act with the Banks and the Financial Institutions must be exercised reasonably and bonafidely. The presumption that public officials will discharge their duties honestly, reasonably, bonafidely and in accordance with the law may be rebutted by establishing circumstances which reasonably probabalise the abuse of that power. If there is no credible explanation forthcoming the court can assume that the impugned action was improper [See Pannalal Binjraj Vs. Union of india (UOI),

21. In the instant case, no satisfactory explanation is forthcoming from the

Respondent bank to explain why the valuer gave the valuation of the house in question at Rs. 4,16,000 in September, 2005 when the same house was valued by the bank's approved valuer in June, 2003 at Rs. 6,14,294. The courts can always take cognizance of the fact that in the last five years the prices of the real estate are increasing day by day. When a house was purchased in 2003 for Rs. 6,00,000 how its value was assessed at Rs. 4,16,000 in the year 2005. The valuation report, dated 16th September, 2005 is apparently a procured one. In earlier valuation report, dated 9th June, 2003, the price of the land was assessed @ Rs. 1800 per sq. yards while in the subsequent valuation report, dated 16th September, 2005, the price of the land was assessed @ Rs. 1500 per sq. yards. In this case, no reason has been given for difference of valuation with the earlier report, and the house in question has been sold less than the value of the valuation report given at the time when the loan was obtained by the borrower. Therefore, the concatenation of inexplicable and unexplained circumstances is sufficient for us to hold that the auction/sale was conducted illegally, unreasonably, unfairly and mala fide and consequently the same is declared to be illegal and void. We are further of the opinion that in the instant case the borrower was a poor mason belonging to lower strata of the society and he had taken the small house loan for the purpose of purchasing the house in question. From the aforesaid facts and the stand taken by the Petitioner in the court that he is ready to regularize his account with agreed interest within four months, we are of the opinion that the borrower must be given an opportunity to clear the defaulted installments within a period of four months. In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , it was observed that the court may "assist the borrower who has intention to repay, but is prevented by insurmountable difficulties in meeting the commitments."

22. In view of the aforesaid, the petition is allowed and the auction/sale, dated 28th June, 2006 of the house in question in favour of Respondent No. 6 is set aside and the Respondent bank is directed to regularize the account of the Petitioner and his wife provided they clear the defaulted installments up-to-date within a period of four months from the date of pronouncement of this judgment. In case the Petitioner fails to regularize the accounts within the stipulated period, it will be open for the Respondent bank to proceed under the Act in accordance with law.

23. Before parting with the judgment, we are of the opinion that in this case the officers/officials of the Respondent bank, i.e., Mr. Parkash Singh, Branch Manager, Mr. Ashok Puri, Chief Manager, State Bank of Patiala and Mr. Gurdial Singh Sandhu, Valuer, have acted illegally and unfairly while conducting the auction/sale and giving the valuation report in illegal and arbitrary manner in collusion with one another with intention to defraud the borrower. Therefore, the disciplinary proceedings be initiated against them by the competent authority for their alleged misconduct and the action taken report be intimated to this Court. A copy of this order be sent to Respondent No. 1 for necessary action.