

(2012) 04 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1903 of 2011

Habib Khan

APPELLANT

Vs

The Debit Recovery Tribunal and Others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 30

Citation : AIR 2012 Raj 129 : (2013) 3 BC 48

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Kapil Mathur, for the Appellant; Arvind Gupta and V.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—The matter comes up on an application No. 16539 dated 11.04.2012 filed by the petitioner under Article 226 of the Constitution of India for taking additional documents on record. For the reasons stated in the application, the application is allowed and the documents are taken on record.

2. Heard the matter on admission.

3. The petitioner has approached this Court seeking a direction to restrain the respondents from dispossessing him from the land bearing Plot No. AMC No. 69/1, village Rati Dang, Alakhnanda Colony, Ajmer.

4. The facts of the case are that Plot No. 69/ 1, village Rati Dana, Alakhnanda Colony, Ajmer admeasuring 377.41 Sq. Mtr. was mortgaged with the State Bank of Bikaner & Jaipur (hereinafter "SBBJ Bank") in the course of a credit facility availed by M/s. Anita Syntex Pvt. Ltd. Jaipur. The plot in question was standing in the name of Shri Anil Modi who created equitable mortgage by deposit of title-deed of the plot in question with the Bank.

5. That on account of default of the borrower M/s. Anita Syntex Pvt. Ltd. in

failing to discharge repayment obligations on account of credit availed from the Bank, an application for recovery of outstanding due as payable to the Bank by the borrower was filed u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter "DRT Act of 1993") before the Debt Recovery Tribunal, Jaipur (hereinafter "DRT") on 23.04.2002 wherein Anil Modi, the mortgagor was also impleaded inter alia as a party-defendant (O.A. No. 160/2002). All the defendants contested the recovery application. The DRT Jaipur allowed the said O.A. issued a recovery certificate in favour of SBBJ Bank vide its judgment and order dated 13.05.2003 and against all the defendants including M/s. Anita Syntex Pvt. Ltd. and Anil Modi for recovery of an amount of Rs. 1,07,89,040/-with interest @ 10% per annum from 23.04.2002 till the date of final realization. The DRT, Jaipur also ordered that the amount indicated in the recovery certificate be realized from sale of all immovable property mortgaged with the Bank qua the outstanding. That the defendants did not discharge their liability on account of the amount of the recovery certificate issued against them despite notice. Consequently, an execution application was filed against all defendants by the SBBJ Bank before the Recovery Officer, DRT, Jaipur. During the pendency of the recovery application, the SBBJ Bank assigned its debts to ASREC (herein respondent No. 3) and therefore the said company was substituted as certificate holder in the said recovery / execution proceedings pending before the Recovery Officer, DRT, Jaipur. In compliance with the recovery certificate dated 13.05.2003, the property belonging to defendant No. 6, Anil Modi (Plot No. AMC, 69/1, village Rati Dang, Near Alakhnanda Colony, Ajmer) mortgaged with the SBBJ Bank was ordered to be put to auction by the Recovery Officer on 06.09.2010.

6. In pursuance to the order dated 06.09.2010, the Recovery Officer, DRT, Jaipur issued a proclamation of sale on 13.09.2010. The said proclamation of sale was also posted on the spot i.e. Plot No. AMC, 69/1, Rati Dang, Near Alakhnanda Colony, Ajmer on 20.09.2010 in the presence of two witnesses as required and was also got published in daily newspaper i.e. Dainik "Navjyoti, Ajmer" Ajmer Edition on 12.10.2010 with clear terms and conditions of the auction. The property was auctioned on 21.10.2010 and the highest amount of Rs. 12.10 lacs was offered by one Devendra Kumar Gelada (herein respondent No. 4) who deposited the entire sale consideration whereupon an order of confirmation of sale of immovable property i.e. Plot No. AMC, 69/1, Rati Dang, Near Alakhnanda Colony, Ajmer was issued in favour of Devendra Kumar Gelada on 16.12.2010 by the Recovery Officer, DRT, Jaipur. No objections to the auction/sale duly published appear to have been raised by the petitioner under the Provisions of Rules 60, 61, 62 of the Second Schedule to the income tax Act, 1961 which governs sales in pursuance of certificates of recovery by the DRT.

7. It is submitted that as per law the purchaser of the property was entitled to have a clear and peaceful possession of the auctioned property. It is submitted that however on the spot it was found that there was an encroachment on the plot in question. This fact was brought to the notice of the Recovery Officer, DRT,

Jaipur who vide order dated 02.02.2011 appointed the respondent No. 2 as Commissioner for taking physical possession of the plot in question. The Commissioner was directed to give a seven days notice to the person claiming to be in possession of the plot in question before taking possession. In pursuance to the order dated 02.02.2011 passed by the Recovery Officer, DRT, Jaipur, a registered notice with A.D, was issued by the respondent No. 2 to the petitioner on 05.02.2011 for handing over the peaceful possession of the plot in question.

8. In the aforesaid circumstances, the petitioner appears to have filed this petition on the ground of being in settled possession.

9. Mr. Kapil Mathur appearing for the petitioner has submitted that the petitioner is in settled possession of the property in question for the last several years as would be inter alia indicated from the fact that as early as year 2003, he had applied for and obtained a water connection from the Public Health Engineering Department (hereinafter "PHED"). Based on the aforesaid alleged "settled possession", it has been contended that the orders of dispossession passed by the Recovery Officer, DRT, Jaipur are in violation of principles of natural justice and this fact by itself occasions the petitioner's right to approach this Court by way of a writ petition and be protected by an order/direction of this Court.

10. I have heard the counsel for the parties and perused the writ petition as also reply thereto.

11. The facts of the case indicate that the proceedings for dispossessing the petitioner from plot No. AMC, 69/1, Rati Dang, Near Alakhnanda Colony, Ajmer are based on the recovery certificate dated 13.05.2003. The said recovery certificate is not under challenge before this Court. Even otherwise in my considered opinion, if the petitioner has any valid legal title to the plot in question at all, it was for him to approach the Recovery Officer or otherwise file an appeal u/s 30 of DRT Act of 1993 against the order of dispossession passed by the Recovery Officer, DRT on 02.02.2011. Apart from the aforesaid, it is evident even before this Court that the documents relied upon by the petitioner to prove his purported "settled possession" over the plot in question do not inspire any confidence as even the address of the plot where the water connection was applied for and granted by the PHED is not clear. This Court cannot in the exercise of its writ jurisdiction under Article 226 of the Constitution of India forestall the execution of a recovery certificate issued by a validly constituted Tribunal. Even otherwise the questions of title/possession are questions of fact where detailed evidence of the claimant, his cross-examination as also competing evidence is required to be recorded and evaluated before coming to a conclusion. This Court would loath to address such questions of fact in the exercise of its writ jurisdiction under Article 226 of the Constitution of India. The petitioner had and has his remedy under the Act of 1993 to approach the Recovery Officer, DRT with objections to his dispossession or file an appeal before the Presiding Officer, DRT u/s 30 of the Act of 1993. Reference for this proposition, well embedded in law, can be had to the judgment of the Apex Court

in the case of Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, A recovery proceeding cannot be stayed where the recovery certificate issued by the DRT under the Act of 1993 has attained finality. Reference in this regard can be had to the judgment of the Apex Court in the case Oriental Bank of Commerce Vs. Sunder Lal Jain and Another, It is for the petitioner to take his remedy as available in law.

12. The present petition is completely misdirected and without force and the same is liable to be dismissed.

13. Consequently, the writ petition is dismissed. Stay application is also dismissed.