(2025) 02 JH CK 1220

In the Jharkhand High Court

Case No : Writ Petition (C) No. 7608 Of 2023

Jogendra Singh APPELLANT

Vs

Punjab National Bank (E-United Bank of India) RESPONDENT

Date of Decision : 20-02-2025

Acts Referred:
Constitution of India, 1950 — Article 226
Recovery Of Debts And Bankruptcy Act, 1993 — Section 30, 30(1)
Limitation Act, 1963 — Section 5

Citation : (2025) 02 JH CK 1220

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Ajit Kumar, Amit Kumar Sinha, Saman Ahmad, Sahbaj Akhtar, P.A.S. Pati, Sumeet Kumar Gadodia, Shilpi Sandil Gadodia, Prakhar Harit

Final Decision : Dismissed

Judgement

Deepak Roshan, J

1. Petitioners have approached this Court for following reliefs:-

(i) For issuance of appropriate writ(s)/order(s)/direction(s) for quashing up of the letter No. 688, dated 21.07.2022 (Annexure-5)by which the Deputy Commissioner, SaraikellaKharsawan has illegally handed over the property of the petitioners to Respondent No.5 which was located at Plot No. M-18, 6th Phase, Adityapur Industrial Area, Jamshedpur, District-SaraikellaKharsawan being survey plot No. 2147 (P), Khata No. 744 measuring an area of land about 45000 square feet at Village Bara Gamharia, Thana No. 66, Thana Saraikella, P.S. Adityapur, District SaraikellaKharsawan (hereinafter to be referred to as 'the property);

(ii) For issuance of appropriate writ(s)/order(s)/direction(s) upon Respondent No.5 for restraining him from further construction on the property located at Plot No. M-18, 6th Phase, Adityapur Industrial Area, Jamshedpur, District-

SaraikellaKharsawan being survey plot No. 2147(P), Khata No. 744 measuring an area of land about 45000 square feet at Village Bara Gamharia, Thana No. 66, Thana Saraikella, P.S. Aditdyapur, District SaraikellaKharsawan.

(iii) For issuance of appropriate writ(s)/order(s)direction(s) upon the concerned respondents for handing over the possession of the property located at Plot No. M-18, 6th Phase Adityapur Industrial Area, Jamshedpur, District-SaraikellaKharsawan being survey plot No. 2147 (P), Khata No. 744 measuring an area of land about 45000 square feet at Village Bara Gamharia, Thana No. 66, Thana Saraikella, P.S. Adityapur, District-SaraikellaKharsawan to the petitioners during the pendency of the O.A. No. 64/2016 pending in the learned Debt Recovery Tribunal, Ranchi.

(iv) Any other relief(s)s for which the petitioners may be found entitled, may be granted.

2. On marshaling of the facts as available from the records, it would transpire that on 16.02.2015 a cash credit facility of Rs. 300.00 lakh and a term loan of Rs. 200.00 lakh was sanctioned to the loaneeM/s. Mountain Movers and Trainers Pvt. Ltd. by Respondent-Punjab National Bank. A landed property of the loanee-company, located at Plot No. M-18, 6th Phase, Adityapur Industrial Area, Jamshedpur, District Saraikela-Kharsawan, bearing survey plot no. 2147-C, Khata No. 744, measuring an area of 45,000 sq.ft. was mortgaged with Respondent-Bank. Loan advanced to the company turned into NPA and an Original Application, under Recovery of Debt and Bankruptcy Act, 1993 was filed before Debt Recovery Tribunal at Ranchi which was registered as O.A. No. 64/2016.

3. Initially proceeding in said Original Application was declared ex-parte against the Defendants vide order dated 18.07.2016, but same was recalled vide order dated 05.10.2016 and, thereafter, Judgment in O.A. No. 64/2016 was passed on 19.09.2017 issuing Certificate of recovery against the company, its Director and Guarantor namely, Dharamveer Singh (Petitioner No.2). Consequent upon issuance of Certificate for recovery, recovery proceeding was instituted before Recovery Officer,registered as R.C. Case No. 571/2017 and objection regarding valuation report was made by Petitioner No.1, being one of the Directors of the company and Petitioner No.2-Guarantor. Said objection towards valuation was dismissed by Recovery Officer vide order dated 16.03.2021. However, in the meantime, review application was filed only by Guarantor i.e. Petitioner No.2, namely, Dharamveer Singh for setting aside the ex-parte Judgment in O.A. No. 64/2016, which was registered as Review Application No. 02/2021.

4. In the said Review Application No. 02/2021, an order was passed by Debt Recovery Tribunal dated 25.03.2021 deferring e-Auction scheduled to be held by Bank on 30.03.2021. However, on 30.03.2021, auction process was completed and Respondent No.5 wasdeclared as successful bidder.

5. Since in the review petition filed by Guarantor, auction process was directed to

be deferred,, Recovery Officer, in R.C. Case No. 571/2017 passed an order dated 30.03.2021 recording, inter alia, that at the time the order staying auction was communicated to Recovery Officer, auction was already completed, but in view of stay order, direction was passed that sale shall not be confirmed in favour of auction purchaser till further orders of Tribunal.

6. Respondent-Bank, against order of stay of auction, preferred an appeal before Debt Recovery Appellate Tribunal, which was registered as Appeal Diary No. 192/2021. Said appeal was disposed of vide order dated 22.06.2021 recording, inter alia, that auction process was concluded and even auction amount was deposited by auction purchaser, but sale was not confirmed because of stay order and, accordingly, appeal was disposed ofwith an observation that till disposal of review application filed by Guarantor-Dharamveer Singh, Recovery Officer, Respondent-Bank and Respondent-Guarantor shall maintain status-quo qua the recovery proceeding.

7. Review application filed by Guarantor-Dharamveer Singh was converted into M.A. Case No. 05 of 2021, and, vide order dated 14.02.2022, ex-parte order dated 19.09.2017 in O.A. No. 64/2016 was set aside only qua the Applicant i.e. Guarantor.

8. In the said order, it was clearly recorded, inter alia, that all interims orders passed earlier would stand vacated.

9. Thereafter, Respondent-Bank filed an application before Recovery Officer in R.C. Case No. 571 of 2017 for confirmation of sale and also for handing over of actual physical possession of the property sold in favour of auction purchaser. Consequent upon such application filed by Respondent-Bank, a detailed order dated 22.03.2022 was passed by Recovery Officer in R.C. Case No. 571/2017 confirming the sale and also directing for handing over of actual physical possession of property sold in favour of auction purchaser.

10. In view of aforesaid order, Deputy Commissioner, Saraikela-Kharsawan, vide its Letter No. 688 dated 21.07.2022 (impugned in writ), directed for handing over of physical possession of property in favour of auction purchaser (Respondent No.5).

11. From the records of the case, it further transpires that auction purchaser was handed over physical possession of property on 05.08.2022 and, thereafter, Adityapur Industrial Area Development Authority transferred the land in favour of Respondent No.5, and, thereafter,Respondent No.5, after getting its Project sanctioned from AIADA, even commencedproduction of its industrial unit.

12. Mr. Ajit Kumar, Ld. Sr.Counsel, appearing for Petitioner, assisted by Mr. Amit Kumar Sinha, Advocate, vehemently submitted that order of Deputy Commissioner, Saraikela-Kharsawan, contained in Memo No. 688 dated 27.01.2022, issuing direction for handing over the property to Respondent No.5, is in utter violation of provisions of Recovery of Debt and Bankruptcy Act, 1993

(for short ‘RDB’ Act’).

13. It was further submitted that once Certificate of Recovery issued pursuant to order dated 19.07.2017 passed in O.A. No. 641 of 2016 was set aside by Debt Recovery Tribunal, there is no Certificate of Recovery in the eye of law and any order passed by Recovery Officer in recovery proceedings being R.C. No. 571/2017, is non-estand void ab initio.

14. It wasalso submitted that loan account was declared NPA in utter violation of the Reserve Bank of India guidelines and Respondent-Bank acted in a hurried manner not only in declaring the loan account as NPA, but also inhaste auctioned the property in question.

15. It was further contended that action of Respondent-Bank suffers from malice in law and, thus, order passed by Deputy Commissioner for handing over possession of the property in favour of auction purchaser (5thRespondent) is liable to be set aside and the property in question is liable to be restored to original borrower. Reliance was placed on following decisions:-

(i) Jehal Tanti and Ors Vs. Nageshwar Singh (Dead) through LRS, reported in (2013) 14 SCC 689.

(ii) Kishorilal Vs. Sales Officer, Disdtrict Land Development Bank &Ors., reported in (2006) 7 SCC 496.

(iii) PHR Invent Educational Society Vs. UCO Bank & Ors., reported in (2024) 6 SCC 579; and

(iv) Judgment of Hon’ble High Court of Jharkhand in L.P.A. No. 487 of 2012 (Sardul Auto Works Pvt. Ltd. Vs. State of Jharkhand & Ors.

16. Per contra, Mr. P.A.S. Pati raised objection to the maintainability of writ petition itself and contended, inter alia, that writ petition is not maintainable in view of Judgment of Hon’ble Supreme Court in the case of International Asset Reconstruction Company of India Limited vs. Official Liquidator of Aldrich Pharmaceuticals Limited and Others, reported in (2017) 16 SCC 137 and Assistant Commissioner (CT)Ltu, Kakinada and Others versus GlaxoSmithn Kline Consumer Health Care Limited, reported in (2020) 19 SCC 681.

17. It has been submitted that land in question was mortgaged by Borrower/ Loanee i.e. M/s. Mountain Movers and Trainers Pvt. Ltd. and it is the land of the said company which was sold in auction and was directed to be handed over pursuant to order of Recovery Officer, to Auction Purchaser.

18. Learned counsel for the Respondent-Bank vehemently submitted that company has not challenged the auction proceeding either before Recovery Officer or before any appellate forum, and, it is trite law that company is a juristic person having distinct legal entity than that of its Directorsand writ petition, at the behest of the Director of the company, is not maintainable.

19. Challenging the locus of the Guarantor, he reiterated that property in question belonged to the company and Guarantor is having no connection with the said property and it was submitted that it appears that Guarantor, in connivance with Director of the company, is somehow trying to stall the proceedings of recovery initiated by Bank in a surreptitious manner. It was also submitted that against any order passed by Recovery Officer, an appeal under Section 30 of R.D.B. Act lies before Tribunal and, admittedly, said Appeal is to be filed within a statutory period of 30 days against the order of Recovery Officer.

20. He contended that in the present case, order was passed by Recovery Officer for confirmation of sale as far back as on 22.03.2022 in R.C. Case No. 571/2017, wherein sale of property of the company was confirmed. Against the said order, Appeal could have been filed within 30 days either by company or Director, including Guarantor, but same was not filed and, thereafter, in a surreptitious manner, present writ application has been filed challenging the order of Deputy Commissioner, Saraikella-Kharsawan, contained in Letter No. 688 dated 21.07.2022, wherein order was passed for delivery of possession to Auction Purchaser.

21. It was submitted that Hon’ble Apex Court, in the case of International Asset Reconstruction Company of India Limited (supra), in categorical terms, held that no writ petition would be maintainable challenging an order of Recovery Officer beyond the statutory period of limitation of 30 days, and, in order to avoid aforesaid bar of maintainability of writ petition, present writ petition has been filed only challenging the consequential order of delivery of possession passed by Deputy Commissioner, Saraikella-Kharsawan.

22. Further, while controverting to the arguments advanced regarding setting aside of entire Certificate of Recovery consequent upon order dated 14.02.2022 passed in M.A. Case No. 05/2021, attention of this Court was invited to the said order, particularly, Para 37 of the order, which reads as under:-

“37. In view of the above findings this Tribunal is of the considered opinion that the Applicant should be granted opportunity to contest the OA as it was decided ex-parte against it due to non-action on behalf of the Advocate. Hence the final order dated 19.09.2017 passed in O.A. No. 64 of 2016 is set aside with all consequential effects thereof qua the Applicant.”

Emphasis Supplied

23. It was submitted that it was only the Guarantor which filed Miscellaneous Appeal for setting aside ex-parte order in O.A. No. 64/2016 and said ex-parte order was set aside only qua the Guarantor i.e. Petitioner No.2 and not against the Borrower which is the company, including its Director. Thus, contention regarding entire Certificate of Recovery being set aside, raised by Petitioners, has no substance.

24. Learned counsel appearing for the State supported the impugned letter No.

688 dated 21.07.2022 issued by Deputy Commissioner, Saraikella-Kharsawan and stated that said order was passed after following due process of law and in compliance of order passed by Recovery Officer and, hence, said order may not be set aside by this Hon’ble Court.

25. Mr. Sumeet Kumar Gadodia, counsel appearing for Auction Purchaser (5thRespondent) adopted the submissions of counsel for Respondent-Bank, and has further submitted that Auction Purchaser is a bona fide purchaser of property through public auction conducted by Recovery Officer, and, consequent upon purchase of said property, not only the sale has been confirmed in its favour, but, Auction Purchaser has been given possession of the property and even transfer of lease has been executed by AIADA in favour of Auction Purchaser.

26. It was further submitted that Auction Purchaser, subsequent to purchase of the said property, has made huge investments over the said property and has established an industrial unit which is undertaking commercial production.

27. Reliance was placed on following two decisions of Hon’ble Supreme Court, wherein it has been held that when Auction Purchaser is a stranger to the Title Suit or a third party to the proceedings, and has purchased the property in bonafide and good faith, said Auction Purchaser cannot be directed to restitute the property to Judgment Debtor, even if Judgment Debtor subsequently succeeds in appellate proceedings or otherwise. Relevant Judgments are as under:-

1. Padanathil RuqminiAmma v. P.K. Abdulla, reported in (1996) 7 SCC 668, (Relevant Paras 11 & 16), and

2. Ashwin S. Mwehta v. Custodian, reported in (2006) 2 SCC 385 (Relevant Para-70.)

28. I have carefully examined the submissions made by respective counsels at Bar and I am of the opinion that filing of present writ application is an abuse of the process of court.

29. From the facts already enumerated above, it would be evident that Borrower was one M/s. Mountain Movers and Trainers Pvt. Ltd. which obtained loan/credit facility from Punjab National Bank and its account was declared NPA, which led to filing of O.A. No. 642016 by Respondent-Bank before Debt Recovery Tribunal at Ranchi under the provisions of the R.D.B. Act. In the O.A., earlier proceedings were declared ex-parte, but the same was recalled by Tribunal, but, even thereafter, Borrower-company did not represent itself before Tribunal , which led to passing of ex-parte order dated 19.09.2017 in O.A. No. 64/2016.

30. Consequent upon passing of said ex-parte order and issuance of Certificate of Recovery, Recovery Officer initiated recovery proceeding being R.C. No. 571/2017, and, after following due process, published notice for auctioning of mortgaged property i.e. land of Borrower-company. It is, at this stage, that the Guarantor i.e. Petitioner No.2 initially filed a Review application, which was

subsequently converted into Miscellaneous application being M.A. No. 05/2021, praying therein for setting aside ex-parte order in O.A. No. 64/2016.

31. A perusal of cause title of M.A No. 05/2021 itself would reveal that said Miscellaneous application was filed only by Guarantor,and, Borrower-company including its Director were arrayed as 'Proforma Respondents'. Cause title of M.A. No. 05/2021 is quoted herein-below:-

"Dharamveer Singh, S/o Late Ajit Singh, R/o 17, C.H. Area (East), Bistupur, Jamshedpur, District-East Singhbhum.

….. Applicant

Vs.

1. Punjab National Bank, (e-United Bank of India, SASTRA, Ranchi South, Ranchi, 5th Floor, Nile Complex, H.B. Road, Kantatoli, Ranchi-834001 (Jharkhand).

…Respondent/C.H. Bank

2. Punjab National Bank (e-United Bank of India), having its branch office at Bistupur, R. Road, Jamshedpur, East Singhbhum.

3. M/s. Mountain Movers Trainers Pvt. Limited, a Company registered under the Companies Act, 1956, having its registered office at G (G+2), Shree Bimlanand Tower, Opposite Sadar Hospital, Purulia Road, Ranchi and also at M-18, Phase-VI, Industrial Area, Gamharia, Jamshedpur-832108.

4. ShriJogindra Singh, Director of M/s. Mountain Movers Trainers Pvt. Ltd., S/o Sri Pritpal Singh, R/o H.I.G., B-14, MadhavBagh Colony, Mango, Jamshedpur-831012.

5. Rajesh NathTiwary, Director of M/s. Mountain Movers Trainers Pvt. Ltd., S/o A.B. Tiwary, R/o Adarsh Nagar, Sonari, Jamshedpur-831011.

Proforma Respondents"

32. Thus, Borrower-company never challenged the order passed in O.A. No. 64/2016 and it also never challenged recovery proceedings initiated by Recovery Officer, except challenge being laid to valuation of property.

33. M.A. No. 05/2021 was allowed vide order dated 14.02.2022 and order dated 19.07.2017 in O.A. No. 64/2016 was set aside only qua the Applicant i.e. Borrower, Petitioner No.2. Thus, Certificate of Recovery as against the Borrower including its Directors attained finality. Setting-side of order in O.A. No. 64/2016 only qua the Guarantor was with definite purpose to enable the Guarantor to defend proceedingsof Recovery against him. However, by no stretch of imagination, it can be held that setting aside the order in M.A. No. 64/2016 only qua the Guarantor, could have an effect of setting aside the entire Certificate of Recovery itself.

34. Learned Tribunal,while disposing of M.A. No. 05/2021, clearly recordedthat all interim orders passed earlier would stand vacated, meaning thereby, the earlier stay towards auction/finalization of sale of mortgaged property was vacated. It is only thereafter that Recovery Officer, vide order dated 22.03.2022, passed order for confirmation of sale in Recovery Case No. 571/2017 and directed for handing over of actual physical possession of property in favour of 5th Respondent.

In terms of Section 30 of R.D.B. Act, said order of Recovery Officer could have been challenged by filing appeal under Section 30 before Debt Recovery Tribunal, but no appeal was filed against the said order. In fact, under Section 30 of R.D.B. Act, statutory period of limitation of 30 days has been prescribed for filing appeal, which is even not condonable.

35. Hon'ble Supreme Court, in the case of International Asset Reconstruction Company of India Limited (supra), while considering provisions of the R.D.B. Act including provisions of Section 30, held that the period prescribed of 30 days under Section 30(1) of R.B.D. Act for preferring appeal against the order of Recovery Officer cannot be condoned by filing application under Section 5 of Limitation Act.

36. Hon'ble Apex Court further, in the case of Glaxo Smith Kline Consumer Health Care Limited (supra) has held that a writ petition would not be maintainable challenging an order, against which, there is statutory remedy of appeal and period for filing of such appeal has expired.

37. In the present case, admittedly, order of carrying out auction of mortgaged land and subsequent order dated 22.03.2022 passed by Recovery Officer was not challenged either by Borrower-company, its Director or Guarantor by filing appeal under Section 30 of R.D.B. Act. After expiry of the period of limitation of 30 days, no appeal, otherwise, could have been filed challenging the aforesaid order and even writ petition under Article 226 would not be maintainable challenging the order of Recovery Officer dated 22.03.2022 of confirmation of sale.

38. I am convinced with the submissions of Respondent-Bank that present writ application has been filed in surreptitious manner in effect challenging the order of confirmation of sale by challenging Letter No. 688 dated 21.07.2022 issued by Deputy Commissioner, Saraikella-Kharsawan directing for handing over of physical possession of property to Auction Purchaser. This is clearly not permissible in law.

39. Even otherwise, Hon'ble Supreme Court, in the case of 'Padanathil Ruqmini Amma (supra), vide Paragraphs 11 and 16, has held as under:-

"11. In the present case, as the ex parte decree was set aide, the judgment-debtor was entitled to seek restitution of the property which had been sold in court auction in execution of the ex parte decree. There is no doubt that when the decree-holder himself is the auction-purchaser in a court auction sale held in execution of a decree which is subsequently set aside, restitution of the property can be ordered in favour of the judgment-debtor. The decree-holder auction-purchaser is bound to return the property. It is equally well settled that if at a court auction sale in execution of a decree, the properties are purchased by a bona fide purchaser who is a stranger to the court proceedings, the sale in his favour is protected and he cannot be asked to restitute the property to the judgment-debtor it the decree is set aside. The ratio behind this distinction between a sale to a decree-holder and a sale to a stranger is that the court, as a matter of policy, will protect honest outsider purchasers at sales held in the execution of its decrees, although the sales may be subsequently set aside, when such purchasers are not parties to the suit. But for such protection, the properties which are sold in court auctions would not fetch a proper price and the decree-holder himself would suffer. The same consideration does not apply when the decree-holder is himself the purchaser and the decree in his favour is set aside. He is a party to the litigation and is very much aware of the vicissitudes of litigation and needs no protection."

xxx xxx xxx

"16. The distinction between a stranger who purchases at an auction sale and an assignee from a decree-holder purchaser at an auction sale is quite clear. Persons who purchase at a court auction who are strangers to the decree are afforded protection by the court because they are not in any way connected with the decree. Unless they are assured of title; the court auction would not fetch a good price and would be detrimental to the decree-holder. The policy, therefore, is to protect such purchasers. This policy cannot extend to those outsiders who do not purchase at a court auction. When outsiders purchase from a decree-holder who is an auction-purchaser clearly their title is dependent upon the title of decree-holder auction-purchaser. It is defeasible title liable to be defeated if the decree is set aside. A person who takes an assignment of the property from such a purchaser is expected to be aware of the defeasibility of the title of his assignor. He has not purchased the property through the court at all. There is, therefore, no question of the court extending any protection to him. The doctrine of a bona fide purchaser for value also cannot extend to such an outsider who derives his title through a decree-holder auction-purchaser. He is aware or is expected to be aware of the nature of the title derived by his seller who is a decree-holder auction-purchaser."

40. Further, Hon'ble Apex Court, in the case of 'Ashwin S. Mehta' (supra), vide Paragraph-70, has held as under:-

"70. In that view of the matter, evidently, creation of any third-party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a bona fide purchaser for the value in an auction-sale is treated differently than a decree-holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction-sale is saved. (See NawabZain-ul-Abddin Khan v. Mohd. Asghar Ali Khan.

The said decision has been affirmed by this Court in Gurjoginder Singh v. JaswantKaur.”

41. Auction purchaser, in the present case, is a stranger to the proceeding between Bank and Borrower/Guarantor and is undoubtedly a bona fide purchaser of property.

42. In view of the aforementioned Judgments of Hon’ble Apex Court, even otherwise, restitution of property to the Borrower from Auction Purchaser is not permissible.

43. Having regard to the cumulative facts and circumstances mentioned hereinabove, I am of the firm opinion that filing of instant writ petition is an abuse of the process of court and no relief can be extended to writ petitioners.

44. Accordingly, the instant writ petition is dismissed with a cost of Rs.20,000 (ten thousand) each upon Petitioners to be deposited before the Jharkhand State Legal Services Authority, Ranchi within a period of six weeks from the date of the order.

45. Pending I.As., if any, stand disposed of.