
(2009) 04 BOM CK 0105
In the Bombay High Court
Case No : First Appeal No. 53 of 2009

Kinnariben Shantilal Patel

APPELLANT

Vs

Rajmal Premchand Surana

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Income Tax (Certificate Proceedings) Rules, 1962 — Rule 60, 61

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 29, 30

Citation : (2010) 1 BC 307 : (2009) 4 BomCR 711 : (2009) 6 MhLj 487 : (2010) 7 RCR(Civil) 792

Hon'ble Judges : Chandiwal K.U., J

Bench : Single Bench

Advocate : P.M. Shah for S.P. Shah, for the Appellant; S.V. Gangapurwala, for the Respondent

Final Decision : Dismissed

Judgement

Chandiwal K.U., J.—On 9.1.2009, while hearing the Senior Counsel, this Court has directed to dispose of the matter at the admission stage itself. Consequently, record and proceedings were called, and verified by both the Counsels. Both the Counsels agree that the matter should be disposed of finally.

2. Admit the appeal.

3. Heard the Counsel. The Bank initiated recovery proceedings against principal borrower and guarantors. The claim was decreed, excluding Smt. Kinnari Shantilal Patel (hereinafter referred to as Smt. Kinnari). Since the decretal amount was not paid, recovery proceedings were initiated. The Recovery Officer, based on the orders of the Tribunal, took requisite steps. The property was subject to attachment, notices were issued and it was auctioned on 21.7.2008 and confirmed on 25.8.2008.

4. Smt. Kinnari, felt aggrieved by the orders of Recovery Officer, wherein her share in the property was also put on auction, along with her other brothers or

other borrowers in the matter.

5. The Senior Counsel canvassed, the very order of the Recovery Officer being a nullity, without any jurisdiction, bar created by any Statute will not operate in instituting civil suit and resorting to remedies available under the Civil Court's jurisdiction. In order to substantiate his contentions, he has placed reliance to the judgments reported in *Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon*, and *Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon*, . He has also referred to the judgment of the Full Bench of this Court reported in *Gopinath Ganpatrao Pensalwar Vs. State of Maharashtra and Another*, .

6. There cannot be a quarrel on the proposition of law as has been enunciated by the Apex Court and also by Full Bench of this Court, about Civil Court's unbridled right to take up the matter, notwithstanding statutory inhibition, in the event of nullity.

7. The controversy in the matter at hand is not revolving to the point of illegality, if any, committed by the Recovery Officer. The point revolves to the jurisdiction of the Civil Court to entertain the matter on the alleged ground of so called illegality.

8. Though there is a finding in favour of the plaintiff Smt. Kinnari from the learned Member of the Debt Recovery Tribunal, exonerating her, she cannot be oblivious to the fact that she had a joint declaration with her brothers accepting Bank's charge on property in question when her brother availed loan facilities. The Senior Counsel canvassed that these matters were not in issue before the Court. The required point was whether the Civil Court has jurisdiction or not and whether the Court was justified in looking to other papers when under the law it was only the plaint which should have been the root cause to look into the controversy.

9. It is a matter of record that the plaintiff conveniently did not array the Central Bank as a party in the suit. All others, brothers, mother or the persons who have rights and stake in the property and any decision in the matter being adverse impact on such persons, are not made party to the said civil suit. Suit is against auction purchaser. The plaintiff asserts her right seeking 1/16th share in the joint Hindu family property. The plaintiff has also challenged validity of auction sale conducted by Recovery Officer pursuant to Recovery Certificate issued by Debts Recovery Tribunal, Aurangabad. This action, even otherwise, is not a valid action, which the learned Civil Judge, Senior Division, could have exercised.

10. The plaintiff has apparently remedies u/s 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, R.D.B. Act). Such remedies, the plaintiff could have exhausted which apparently has not been done. The provisions in RDB Act are mandatory, which have overriding effect on other statute.

11. That apart, Rules 60 and 61, under Second and Third Schedules to the Income Tax Act, 1961, and the Income Tax (Certificate Proceedings) Rules, 1962, which is applicable by virtue of Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, deals with making application to set aside sale of Immovable property on deposit or application to set aside sale of Immovable property on ground of non service of notice or irregularity can well be adjudicated upon by Recovery Officer as the Rules so contemplate. It is not the defaulter alone but any person whose interests are affected by the sale, can agitate the issue. This umbrella provided to any person, brings the rights, remedies available to the plaintiff (appellant herein) which could have been exhausted and not so done.

12. Learned Counsel for the auction purchaser (respondent) has harped, this is one of the dilatory proceedings initiated by the plaintiff to avoid execution and the confirmation of the sale. In order to stress his point, Counsel relied to the judgment reported in Allahabad Bank v. Canara Bank and Anr. 2000 DGLS (soft) 722 : AIR 2000 S.C. 1535 and he particularly referred to paragraph 25 therein which is as under:

25. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other Court or authority much less the Civil Court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act....

13. The contention that Civil Courts should have entertained the suit as there was apparent nullity of the order of the Recovery Officer, was not open to be agitated by the plaintiff as the plaintiffs hands are not as clean as it is expected when discretionary relief is sought. There was no reason for the plaintiff not to have added necessary parties when relief of declaration was sought, including the relief of setting aside sale. These aspects have diluted to the plaintiffs assertion of nullity. It is nowhere pointed that Recovery Officer has not followed provisions of R.D.B. Act or the Statutory Tribunal has not acted in conformity with fundamental principles of judicial procedure.

14. The principles of exclusion of jurisdiction need not be obliterated and shelved. There is an express bar of jurisdiction of Court, as highlighted in the scheme of the Act itself. Aggrieved person has remedy before the Tribunal or Appellate Tribunal where the record could well be scanned and discussed. The plaintiffs claim of non-service of notice, is factually incorrect as record of Debts Recovery Tribunal rebels against her. Since there is a machinery to take care of plaintiffs grievance, and no excess of authority is highlighted, the Civil Court rightly refused to entertain the suit.

15. In the above scenario, I do not find any merit in the appeal. It is accordingly dismissed with costs.

The plaintiff (appellant) having other exhaustive remedies under the very Statute

is at liberty to adopt. It is for the Tribunal to consider condoning delay owing to series of litigation.

The ad interim relief granted by this Court, on 9.1.2009 is continued upto 12th June 2009. Civil Application (C.A. No. 401/2009) dismissed.