(2012) 10 PAT CK 0027

In the Patna High Court

Case No : CWJC No. 18875 of 2012

Manju Devi @ Manju Kaur APPELLANT

Vs

The Chairman-cum-Managing Director and Others RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(3A), 13(4)

Citation : (2013) 2 BC 489 : (2013) 1 PLJR 240

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Daya Shankar Prasad and Arun Kumar, for the Appellant; Mahesh Narayan Parbat, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Singh, J.—In this writ application, petitioner has made following prayers:--

(a) Issuance of appropriate writ(s), order(s), direction(s) in the nature of RULE-NISI commanding the Respondent Authorities as to why the public auction noticed dated 20.7.2012 published in Hindustan Hindi Daily of the alleged equitable mortgaged property fully described in the said sale advertised notice in the name of dead person (Sanjeev Kumar Gupta) husband of the petitioner contained in Annex-1 be not quashed as it is nullity in the eyes of law.

(b) Issuance of an appropriate writ order(s) commanding the respondent authorities, direction(s) as to why impugned order dated 22.8.2012 passed in M.A. 186/2012 (Binay Kumar Gupta & Ors. vs. Punjab National Bank by the presiding office of "Debt Recovery Tribunal" Patna (hereafter refer to DRT) be not quashed as because the M.A. is not maintainable in the eye of law vis-a-vis the subsequent order dated 30.8.12 passed by the learned Presiding Officer in M.A. 375 of 2012 (Punjab National Bank vs. Binay Kumar Gupta & Others) making modification of the said order 30.8.12 be not quashed as it suffers from the vice of error of judgment contained in Annexures-2 & 3 as well as the whole exercise resorting to without affording any opportunity to the petitioner, the hapless widow is ab initio illegal, ultra vires and without jurisdiction, and it is in breach of Articles 14, 19, 21 and 301(A) of the Constitution of India.

(c) Issuance of an appropriate writ order(s), direction(s) commanding the respondent authorities as to why the entire proceeding being resorted to under the SARFAESI Act, 2002 with non observance of the mandatory provision envisaged to discharge liability within stipulated period of sixty days i.e. notice of the demand must be issued to the Borrower/Guarantors u/s 13(2), the condition precedent invoking Sec. 13(4) of the SARFAESI Act is being flouted with impunity, inasmuch as no such notice of demand containing the details of the liabilities under sub-section 3 of Sec. 13 of the SARFAESI Act, has never been issued to the petitioner or to her husband (late Sanjeev Kumar Gupta), the so-called borrower/guarantor, as lately been learnt and as such, there has been no occasion for petitioner to prefer objection/appeal under Sec. 17 of DRT Act, 1993 vis-a-vis the question of communication, by the respondent Bank to the petitioner as contemplated u/s. 13(3-A) of the SARFAESI Act remain in limbo because of the procedural lapses as mandated in the said Act with non-compliance of the same by the respondent Bank amount to utter violation of the statutory provision and rule framed in this regard vis-a-vis the element of transparency and fair play in implementation of SARFAESI Act without affording adequate opportunity of hearing particularly to the petitioner, is against the well settled philosophy of Natural Justice.

(d) Issuance of an appropriate writ(s), order(s), direction(s) commanding the respondent authority as to whether the respondent Bank can be permitted to invoke Section 13(4) before ever, the share of the debtor, crystalised in the partition suit, filed by coparcener of the Hindu joint family vide partition suit no. 365/2008 (2.11.2008) as against schedules 1 & 2 properties pending in the Court of Sub-Judge, Chhapra, vis-a-vis the property pledged by the so-called borrower/guarantors contained in Annexure-1 to the respondent Bank, is the subject matter of the partition on amongst, the legal heirs of their common Ancestral (Palak Sah) contained in Annex 4 & 5, the genealogical table, may ipso facto suggest that the entire joint family property is subjected to partition, and the same is sub judice before the competent Court of Civil Jurisdiction where the inter se claimant are fighting out litigation much prior, to the initiation of the proceeding by the Respondent Bank under the SARFAESI Act/DRT Act.

(e) issuance of an appropriate writ(s), order(s), direction(s) commanding the respondent authority as to why the possession notice (for immovable property) vis-a-vis taking possession of said property vide public notice dated 17.12.2008 contained Annexure-6 be not quashed as the whole exercise being resorted to by the respondent Bank without giving any information either by way of legal notice or otherwise nor afforded any opportunity to the petitioner after her husband death (21.1.2009), suffers from the vice of arbitrariness, unreasonable, unjustness, and unfairness, ab initio illegal, ultra vires and without jurisdiction.

(f) Issuance of an appropriate direction(s), order(s) commanding respondent authorities as to why no such notice or information was ever served to the petitioner in accordance with N.P.A. Act, the compliance of which is mandatory to be issued to liquidate and set-off secured assets made to the respondent Bank, and as such, any such impugned action resorted to by the authorized officer of the respondent Bank u/s. 13(2), 13(4) etc. of the SARFAESI Act, is wholly illegal, ultra vires and without jurisdiction inasmuch as the same is in breach of Articles 14, 19, 21 & 301(A) of Constitution of India.

(g) Issuance of an appropriate writ(s), order(s), direction(s) commanding the respondent authorities as to why the entire operation of an order passed in S.A. 39/2011, M.A. 186/12 and MA 375/12 by Presiding Officer of DRT be not stayed and quashed in view of the matrix fact, that the respondent Bank has already filed an application U/s. 19 of RDDBFI Act of 1993 before the DRT, Patna, which is pending for adjudication and at the same time the respondent Bank with the connivance of the borrower''s Damodar Prasad (now deceased) and his legal heirs have had a fraudulent deal in the disposal of the equitable mortgaged property inasmuch as allowed them to make an illegal withdrawals of large chunk of money from the C.C. Account No. 5617 of M/s. Anapurna Fertilizer Agency after being classified as N.P.A. on 30.6.2008 on different dates in the years 2008, 2009, 2010 & 2011 knowingly and deliberately vis-a-vis gave them an open graties to dispose of the mortgaged property by according permission to Sri Awadhesh Kumar Gupta son of Damodar Prasad Gupta the borrower (now deceased) measuring 8 Kattas 10 Dhurs & 9 Dhurkis out of total mortgaged land 17 Kattas, 17 Dhurs vide different sale deed executed on 30.3.06 and 23.11.06 (total 6 sale deeds) nor any such step taken by the respondent Bank to deposit the consideration money amounting to Rs. 31,22,600/- received, out of the sale proceeds with the connivance of the officials of the bank, defeating the very purpose of the sale of mortgaged property vis-a-vis the respondent Bank appear to be arrogant defying the order dated 6.1.2012 passed by the DRT in S.A. No. 39/2011 as no such FIR instituted as against the person involved in the disposal of the equitable mortgaged property, warranting legal and appropriate action in accordance with law by conducting high level inquiry through the instrumental, the intelligence agency of the Bank or the apex intelligence agency, like CBI as to how the interest of the bank, was undermined as well as the legal and rightful acts of petitioner being defeated in the whole episode.

(h) Issuance of an appropriate direction(s) as to why the respondent Bank be not taken to task by fixing accountability as against the errant officials for destroying the record, and the document/papers of an equitable mortgage of the alleged fire broken on 19.6.2009 engulfing the entire relevant record of the mortgaged property, which was revealed vide letter dated 30.9.2009 as sought for under R.T.I. Act, 2005 showing inability about the availability of the record to the so-called borrower/guarantor (Binay Kr. Gupta) vis-a-vis the callousness of the respondent Bank is writ large on the face of it, as the very next date of the alleged fire i.e. the respondent Bank taken possession of the mortgaged property on 20.6.2009 itself contained in Annexure-6 to this petition vis-a-vis the respondent Bank in its wisdom neither gave any information either to the borrower or to the petitioner or to the appropriate authority like police machinery regarding the alleged fire nor any steps taken as to under what mysterious circumstance the fire broke, thus creating humbug in the whole episode.

(i) To grant such relief the petitioner would be found entitled to in the facts and circumstances of the case and amount of cost and incidental to this case.

Learned counsel for the petitioner admits that the suit is pending for the properties of the joint family and partnership firm and some of the parties including guarantors have moved the Debt Recovery Tribunal.

2. Learned counsel for the Bank submits that three members of the joint family formed a partnership firm and in the name of partnership firm they took loan. They defaulted in repayment of loan and hence loan account was classified N.P.A. Thereafter Bank proceeded under SARFAESI Act as well as before the Debt Recovery Tribunal. He submits that the petitioner should, if necessary, intervene before the Debt Recovery Tribunal in which some of the partners and guarantors are already party. However, he submits that the petitioner has already appeared before the Debt Recovery Tribunal for intervention but her application has been rejected. Hence, she may have to move the Appellate Tribunal now.

3. Learned counsel for the petitioner submits that the petitioner had not moved the Debt Recovery Tribunal and she has no knowledge of the proceedings before it as no notice has been served on her of any pending proceeding. He further submits that in fact joint family property was mortgaged with the Bank. He submits that, after the death of husband of the petitioner, Bank officials, in connivance with other co-parceners of the family, committed several acts of forgery and manipulation in which property of the share of the other co-parceners were left out and property of the share of husband of the petitioner was auction sold without any notice to the petitioner.

4. Learned counsel for the Bank has disputed all submissions of learned counsel for the petitioner. He further submits that the possession of property was taken by the Bank during the lifetime of husband of the petitioner itself. Therefore, no further notice was required to be issued to the petitioner after his death.

5. From the submissions of learned counsel for the parties, it appears to this Court that several disputed questions of fact are involved in the matter. Moreover, it is also admitted that a suit is pending in the civil court between the family members in respect of the disputed property and the proceedings are pending before the Debt Recovery Tribunal. In the circumstances, this Court does not appreciate the family members, who are themselves borrowers and guarantors moving different courts for different reliefs. If the proceeding was

initiated by the Bank before the Tribunal, all the parties interested in the property ought to have appeared before the Tribunal and ought to have contested the matter. Besides, if any of the family member had any reasons to believe that the Bank officials had connived and had gone into hand in glove with some of the co-parceners of the family to get sold his share of land, he had the opportunity to make a complaint to the higher authority of the Bank. Above all, suit is also pending between the parties in which all the family members are involved. In the circumstances, this Court does not consider it appropriate to entertain this writ application by family member without taking any steps before the Tribunal. Writ application is accordingly dismissed with liberty to the petitioner to intervene in any pending proceeding before the Debt Recovery Tribunal or to move the Appellate Tribunal against any order of the Debt Recovery Tribunal by which she may be aggrieved.