(2024) 06 JH CK 0041

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2397 Of 2016

Regional Manager, Central Bank of India, Ranchi through Sri Jagdish Ram Daroch	APPELLANT
Vs	
State Of Jharkhand	RESPONDENT

Date of Decision : 25-06-2024

Acts Referred:
Code of Criminal Procedure, 1973 — Section 482
Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 14, 17, 32

Citation : (2024) 06 JH CK 0041

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : P.A.S. Pati, Rajesh Kumar, Akriti Shree

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. P.A.S. Pati, learned counsel for the petitioner, Mr. Rajesh Kumar, learned counsel for the State and Ms. Akriti Shree, learned counsel for opposite party no.2.

2. The prayer in the petition is made for quashing of the entire criminal proceeding arising out of Jharia P.S. Case No.185 of 2016, corresponding to G.R. No.3203 of 2016, pending in the Court of the learned Additional Chief Judicial Magistrate, Dhanbad.

3. The FIR was lodged on the basis of the written complaint alleging therein that the informant, namely, Lal Bahadur Singh had purchased a land vide registered deed no.6154 dated 31.07.2013 from one Rajesh Kumar Gupta, which has been mentioned in Book No.1, Volume No.208, Page No.169 to 196 and link deed no.1034 dated 14.06.2000 was also in the name of Rajesh Kumar Gupta, which has been mentioned in Book no.1, Volume No.82, Page No.127 to 133. The

informant after purchasing the land got mutation done vide mutation case no.56(11)/2014-15 and paid rent up to 2014-15. It was further alleged that the informant came to know from another person that another deed of the said land was deposited as mortgaged in the Central Bank of India, Jharia Branch on that basis Rajesh Kumar Gupta had taken loan from the bank. It was also alleged that on 07.11.2015, the informant received a letter from Bijay Kumar Das, Branch Manager of Central Bank of India and he was asked to appear before him on 19.11.2015 with all the original document thereupon the informant went there and produced original deed No.1034 dated 14.06.2000 and the bank has kept photo copy of deed signed by the informant with a view to get it verified, but the same was not done and the Branch Manager, namely, Vijay Kumar Das and Regional Manager, Jadgish Ram Daroch with connivance of accused Rajesh Kumar Gupta sent a fake enquiry report to the informant without his knowledge on 22.07.2016 through speed post. The informant has further alleged that after the above process, the informant came to know that deed no.1034 dated 14.06.2000 was mortgaged by accused Rajesh Kumar Gupta and obtained the amount of loan from the bank taking advantage of silence of accused, the then Branch Manager, namely, Ganga Balav Singh and Regional Manager, Jagdish Ram Daroch and did not pay the loan amount. The informant has also alleged that Rajesh Kumar Gupta got the loan amount sanction on the basis of forged document with the connivance of other accused persons named in the FIR and, as such, the FIR was lodged by the informant.

4. Mr. P.A.S. Pati, learned counsel for the petitioner submits that the petitioner at the time of filing of the present case was posted as Regional Manager of the Central Bank of India at Ranchi. He submits that one M/s Raj Steel Fabrication, Dhanbad a proprietorship firm made an application through Smt. Ritu Raj Gupa, the proprietor to the Central Bank of India, Jharia Branch for sanction of a case credit facility of Rs.25 Lakhs on 03.09.2008 and co-accused Rajesh Kumar Gupta and others were guarantors and have furnished mortgaged security and, hence, the liability of Rajesh Kumar Gupta is joint, several and co-existence. Upon sanction of the aforesaid credit facilities, both the borrower and guarantor executed and signed several security documents on 04.09.2008 in favour of the bank. He further submits that the accused Rajesh Kumar Gupta also with the intention to create security created equitable mortgage on 03.09.2008 and had deposited his title deeds i.e. sale deed no.1034 dated 14.06.2000 with the bank by way of an equitable mortgage. He also submits that the bank had taken due care to verify the title deed and after proper verification an Legal Scrutiny Report, the said property was mortgaged. He submits that the loan amount was disbursed, but the borrowers failed to repay the dues of the bank as per agreed terms and as the account became irregular and stick and, as such, it was declared NPA. The demand notice was issued by the bank. The guarantor also failed to honour his commitment with regard to deed of guarantee and, as such, O.A. No.247 of 2013 was filed on 05.08.2013 by the Central Bank of India before the Debts Recovery Tribunal at Ranchi, in which also, the other accused persons,

i.e. borrower and guarantor did not appear and order has been made ex parte on 26.03.2015 to make payment to the bank by the borrower and guarantor and to issue recovery certificate and defendant nos. 1 to 5 of the said O.A. Case have been restrained by means of injunction, contained in Annexure-3 of the petition. He further submits that during the pendency of the said O.A. Case, the Central Bank of India also initiated proceedings for recovery of the dues of the bank under the provisions of the Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for the sake of brevity hereinafter to be referred to as 'SARFAESI Act') and, as such, notice under Section 13(2) of SARFAESI Act was issued and the said notice was also published in the newspapers. He submits that in light of Section 13(4) of the SARFAESI Act, the aggrieved person is having remedy to challenge the possession of the property by way of an appeal under Section 17 of the SARFAESI Act. He submits that the procedure has been followed by the bank. He further submits that the property was put on auction sale by the bank for realization of its dues. He submits that the borrower, namely, Smt. Ritu Raj Gupta has filed SARFAESI Appeal No.59 of 2013 before the Debts Recovery Tribunal, Ranchi, which was dismissed vide order dated 06.01.2014, contained in Annexure-4 of the petition. He also submits that in view of dismissal of the said appeal, there was no impediment in proceeding with the auction sale of the property and, accordingly, the property was auction sold through e-auction whose auction notices were also published in the newspapers as per the mandate of SARFAESI Act for a sale price of Rs.27,50,000/- and sale certificate dated 07.02.2014 was issued in the name of the successful bidder, namely KIOSK VINCOM Pvt. Ltd., contained in Annexure-5 series of the petition. He submits that since no objection was received by the bank from the informant of the case or from any other person, the bank in discharge of its statutory duty to realize the dues and proceeded for auction sale of the property. He submits that the bank has proceeded bonafidely. He submits that after taking physical possession of the property, a petition was filed before the Deputy Commissioner under Section 14 of the SARFAESI Act and pursuant thereto an order dated 27.06.2015 was passed for deputing police officer for taking and handing over physical possession of the property and the physical possession of the property was taken on 08.07.2015. He also submits that the informant has filed the present criminal case against the bank official and others on the ground that on the forged deed, the loan was sanctioned. He submits that the said deed was verified by the panel Advocate of the bank, who has submitted report in positive and that is why, the said deed was mortgaged. He submits that the allegations are made in the FIR that the informant is the purchaser of the said property, however, Rajesh Kumar Gupta had taken loan on the basis of mortgaging forged deed and for that, the informant has moved before this Court in W.P.(C) No.3093 of 2015 for certain reliefs and the said writ petition was disposed of saying that it was not maintainable and direction was given to the informant to approach the bank. He submits that thereafter the informant approached the bank and the bank, at that point of time, has rejected the claim of the informant, thereafter, the present FIR was lodged and during pendency of the said FIR, the bank again verified the title deed and it has come to the knowledge of the bank that forged deed was produced by Rajesh Kumar Gupta and in view of that, the bank has taken a decision, which has been brought on record by way of filing supplementary affidavit, wherein, it has been stated that the bank has decided to cancel the auction and refund the money to the auction purchaser. He submits that it has also been stated in the said supplementary affidavit that S.A. No.72 of 2018 was preferred by the informant, which was disposed of on 13.12.2023 by giving direction to the bank not to proceed with the said property and withdraw all notices during pendency of the litigation between the parties. On these grounds, he submits that so far as the petitioner is concerned, who was posted as Regional Manager of the Central Bank of India at that time, he has been unnecessarily implicated in the present case and in view of that, entire criminal proceeding, so far as this petitioner is concerned, may kindly be quashed.

5. Mr. Rajesh Kumar, learned counsel for the State submits that the allegations are there of producing forged document before the bank on the basis of which cash credit facility was granted.

6. Ms. Akriti Shree, learned counsel for opposite party no.2, who is the informant, submits that the informant was compelled to file FIR as the informant's land was mortgaged with the bank on the basis of forged sale deed. She further submits that subsequently development has taken place and now the bank has stated in the supplementary affidavit that the auction sale will be cancelled and the amount of the said auction will be refunded back to the bidder, which is an afterthought of the bank. She submits that the case is made out and in view of that, this Court may not exercise its power under Section 482 Cr.P.C.

7. In view of the above submission of the learned counsel for the parties, the Court has gone through the materials on the record and finds that credit loan facility was granted by the Central Bank of India on the basis of sale deed produced by Rajesh Kumar Gupta. While taking that document as a mortgage deed, the bank has acted in terms of the procedure and the report was called from the panel Advocate of the bank and the panel Advocate has stated that the document is genuine and, thereafter, the bank has mortgaged the said property. When the said credit facility was not being handled properly and the amounts were not being paid and it was declared subsequently NPA and, thereafter, the bank moved in terms of the SARFAESI Act and notices were issued and the said O.A. Case was filed, which was in favour of the bank and subsequently the appeal filed by Rajesh Kumar Gupta was also dismissed and, thereafter, the said property was put on auction sale and for auction sale, the procedure prescribed in SARFAESI Act has been followed. Subsequently, it has come to the knowledge of the bank after filing of the FIR and on further enquiry, it has been revealed that the deed produced before the bank was forged one and in view of that, the bank has taken a decision not to proceed with the auction sale and to return the amount to the bidder with regard to the auction sale and to cancel the said

auction sale. Thus, it appears that the bank acted bonafidely and has taken a decision when these facts came into knowledge of the bank that the document produced before the bank is forged one.

8. In view of the above position as well as the facts and circumstances, it is evident that the main dispute is between the informant and accused no.1, namely, Rajesh Kumar Gupta, who has done all these mess. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of K. Virupaksha and another v. State of Karnataka and another, reported in (2020) 4 SCC 440, wherein, the Hon'ble Supreme Court in a case arising out of SARFAESI has held that for a civil nature of case, criminal case has been filed. Relevant paragraphs of the said judgment are as under:

"14. The issue, however is, as to whether such proceedings by the police in the present facts and circumstances could be permitted. At the outset, the sanction of loan, creation of mortgage and the manner in which the sanctioned loan was to be released are all contractual matters between the parties. The complainant is an industrialist who had obtained the loan in the name of his company and the loan account was maintained by Canara Bank in that regard. The loan admittedly was sanctioned on 16-3- 2009. When at that stage the amount was released and if any amount was withheld, the complainant was required to take appropriate action at that point in time and avail his remedy. On the other hand, the complainant had proceeded with the transaction, maintained the loan account until the account was classified as NPA on 15-1-2013. Initially, the issue raised was only with regard to the undervaluation of the property when it was brought to sale. On that aspect, as taken note, the writ proceedings were filed and the learned Single Judge having examined, though did not find merit had reserved liberty to raise it before DRT, which option is also availed. It is only, thereafter, the impugned complaint was filed on 20-5-2016.

15. The SARFAESI Act is a complete code in itself which provides the procedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance, as already taken note of by the High Court in writ proceedings, if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under Section 13 of the SARFAESI Act. This view is fortified by the decision of this Court in Indian Overseas Bank v. Ashok Saw Mill [Indian Overseas Bank v. Ashok Saw Mill, (2009) 8 SCC 366 : (2009) 3 SCC (Civ) 403] wherein it is held as hereunder : (SCC pp. 375-76, paras 34-37)

"34. The provisions of Section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower, but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising secured assets, subject to the conditions indicated in the two provisos to clause

(b) of sub-section (4) of Section 13.

35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

37. The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted."

(emphasis supplied)

16. We reiterate, the action taken by the Banks under the SARFAESI Act is neither unquestionable nor treated as sacrosanct under all circumstances but if there is discrepancy in the manner the Bank has proceeded it will always be open to assail it in the forum provided. Though in the instant case, the application filed by the complainant before DRT has been dismissed and Appeal No. 523 of 2015 filed before DRAT is also stated to be dismissed the appellants ought to have availed the remedy diligently. In that direction, the further remedy by approaching the High Court to assail the order of DRT and DRAT is also available in appropriate cases. Instead the petitioner after dismissal of the application before the DRT filed the impugned complaint which appears to be an intimidatory tactic and an afterthought which is an abuse of the process of law. In the matter of present nature, if the grievance as put forth is taken note of and if the same is allowed to be agitated through a complaint filed at this point in time and if the investigation is allowed to continue it would amount to permitting the jurisdictional police to redo the process which would be in the nature of reviewing the order passed by the learned Single Judge and the Division Bench in the writ proceedings by the High Court and the orders passed by the competent court

under the SARFAESI Act which is neither desirable nor permissible and the banking system cannot be allowed to be held to ransom by such intimidation. Therefore, the present case is a fit case wherein the extraordinary power is necessary to be invoked and exercised."

9. In view of the above judgment of the Hon'ble Supreme Court, it is crystal clear that SARFAESI Act is a complete Code in itself, which provides procedure to be followed by secured creditor and also the remedy to the aggrieved parties including the borrower.

10. Further, the petitioner was posted as Regional Manager of the Central Bank of India and he is not the person, who was on the spot to verify the documents etc. and in spite of that, he has been made accused.

11. So far as this petitioner is concerned, in view of the SARFAESI Act, the Court comes to a conclusion that the case of petitioner is fully covered in light of the judgment of the Hon'ble Supreme Court in the case of State of Haryana v. Bhajan Lal, reported in 1992 Supp (1) SCC 335. Further, Section 32 of the SARFAESI Act protects the authorized officer of the bank, as such, the entire criminal proceeding arising out of Jharia P.S. Case No.185 of 2016, corresponding to G.R. No.3203 of 2016, pending in the Court of the learned Additional Chief Judicial Magistrate, Dhanbad, so far as the present petition is concerned, is hereby quashed.

12. It is made clear that this Court has not interfered with the proceeding so far as other accused persons are concerned and the learned Court will proceed, in accordance with law.

13. Accordingly, this petition is allowed and disposed of.

14. Pending I.A., if any, is disposed of.

15. Interim order, if any granted by this Court, is vacated.