(2023) 08 DEL CK 0053

In the Delhi High Court

Case No : Civil Writ Petition No. 1904 Of 2023

Sanjeev Kumar Jain APPELLANT

Vs

Union Bank Of India And Ors. RESPONDENT

Date of Decision : 07-08-2023

Acts Referred:

Constitution of India, 1950 — Article 227
Security Interest Enforcement Rules, 2002 — Rule 8(1), 8(5), 9(2), 9(4)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 17
Recovery of Debts and Bankruptcy Act, 1993 — Section 19

Citation : (2023) 08 DEL CK 0053

Hon'ble Judges : Vibhu Bakhru, J;Amit Mahajan, J

Bench : Division Bench

Advocate : Sitab Ali Chaudhary, Gufran Ali Sadik, Samarendra Kumar, Mohit Chaudhary, Kunal Sachdeva, Srishti Bajpai

Final Decision : Disposed Of

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, impugning an order dated 01.02.2023 (hereafter 'the impugned order') passed by the learned Debts Recovery Tribunal -II, Delhi (hereafter 'the DRT') whereby the DRT dismissed the petitioner's miscellaneous application being MA/119/2022 in SA/113/2018

2. The petitioner had filed the aforesaid application, inter alia, praying that the direction be issued to respondent no.1 (hereafter 'the Union Bank') to refund the entire bid amount of Rs. 8.42 crores along with interest at the rate of 8% per annum in compliance with the earlier orders dated 12.09.2022 and 25.10.2022.

3. The Union Bank had provided cash credit facility to the extent of Rs. 7.98 crores to respondent no.4 (hereafter 'the Principal Borrower'). The said facility was secured by mortgage of the property described as Khasra No.150/79, Municipal No.XIV/11163-2, Block-D admeasuring 373 square yards located at

Sidhipura, New Rohtak Road, Karol Bagh, New Delhi (hereafter 'the mortgaged property'). The repayment obligation of the Principal Borrower was also guaranteed by respondent nos.2 & 3 (hereafter 'the Guarantors'). The Union Bank claims that the Principal Borrower had defaulted in its repayment obligations. Consequently, on 14.06.2017, the said account was classified as Non-Performing Asset (NPA) in terms of the guidelines issued by the Reserve Bank of India.

4. Thereafter, on 05.09.2017, the Union Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter 'the SARFAESI Act') calling upon the Principal Borrower and the Guarantors to repay the outstanding amount quantified at Rs. 8,39,22,454/- as on 04.09.2017.

5. The Guarantors claims that they did not receive the said notice. The demand raised by the Union Bank was not discharged. Accordingly, the Union Bank initiated steps for enforcement of its security interest in the mortgaged property. As the first step, on 09.01.2018, it issued a possession notice under Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Security Interest Enforcement Rules, 2002 (hereafter 'the Rules').

6. Thereafter, on 22.01.2018, the Union Bank filed an original application [OA/114/2018] under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (hereafter 'RDB Act') for recovery of its dues. The said application was allowed by an order dated 12.09.2022 passed by the DRT and the Recovery Certificate was issued. The Union Bank states that the amounts were also outstanding in three other accounts, the repayment of which was guaranteed by the Guarantors. The Union Bank had also filed Original Applications [OA/115/2018 and OA/824/2018] in respect of two of those accounts. The amount outstanding in the third account, was duly guaranteed by respondent no.2. The Union Bank filed proceedings [OA/885/2018] for recovery of the amounts outstanding in that account as well.

7. The Union Bank also issued a sale notice dated 08.03.2018 for sale of the mortgaged property but the same did not fructify. Thereafter, the Union Bank issued another sale notice dated 07.05.2018. The Guarantors and the Principal Borrower (hereafter collectively referred to as 'the Securitisation Applicants') filed a Securitisation Application [SA/113/2018] captioned Rajnish Gupta v. Corporation Bank under Section 17 of the SARFAESI Act, impugning the notice issued under Section 13(2) of the SARFAESI Act and also the steps taken pursuant thereto for taking possession of the mortgaged property. They, inter alia, sought that the auction of the mortgaged property, scheduled to be held on 24.05.2018, be cancelled and set aside. Similar applications under Section 17 of the SARFAESI Act were also filed in respect of auctions relating to other properties that were mortgaged with the Union Bank in connection with the other accounts.

8. It is stated that the Securitisation Applications were heard by the DRT on 27.06.2018 in respect of the interim reliefs. The Union Bank contends that the DRT had issued directions for the Securitisation Applicants to deposit the undisputed amount of Rs. 28 crores (including the amount outstanding against the facilities extended to the Principal Borrower) in four equal instalments and had restrained the bank/receiver from taking possession of the mortgaged property, subject to the amounts being paid.

9. The Union Bank claims that the Securitisation Applicants failed to pay the amount within the stipulated time. In order to seek further extension, the Securitisation Applicants filed an application [IA/1072/2018 in SA/93/2018] whereby they offered to pay a sum of Rs. 28 crores in seven equal monthly instalments of Rs. 4 crores commencing from 10.07.2018.

10. It is stated that the Guarantors had also made a statement that they were arranging the funds from a third party. The Union Bank states that a sum of Rs. 4 crores was deposited by a third party albeit in respect of the said two loan accounts (Roshni Jewellers Pvt. Ltd. and JB Gold Pvt. Ltd.) but no amount was paid in respect of the outstanding amount due from the Principal Borrower.

11. The Union Bank states that several sale notices were issued for attempting sale of the mortgaged property, however, the same did not fructify. The Union Bank issued the last notice for sale of the mortgaged property on 23.11.2021. The petitioner participated in the said auction and bid an amount of Rs. 8.42 crores. Since the petitioner was the sole bidder, the said bid being above the reserve price, was accepted. Accordingly, the Union Bank issued a letter dated 16.12.2021 confirming the sale of the mortgaged property in favour of the petitioner.

12. The petitioner deposited a sum of Rs. 2,10,50,000, being 25% of the bid amount pursuant to the said letter confirming the sale of the mortgaged property in its favour. The Union Bank granted time up to 15.03.2022 to the petitioner to deposit the balance amount.

13. The petitioner states that in the meanwhile, he approached various banks for availing loans to pay the balance sale consideration of the mortgaged property. He further states that he also had relationship with the Union Bank and therefore, approached the said bank for financial assistance. The Union Bank accepted the petitioner’s request for the loan and on 22.02.2022, extended a term loan facility for Rs. 5.3 crores for purchasing the mortgaged property. In addition to the funds borrowed from the Union Bank, the petitioner also borrowed a sum of Rs. 1,01,50,000 from the Axis bank to fund his purchase of the mortgaged property.

14. In the meanwhile, the Securitisation Applicants filed an application [IA/831/2022 dated 28.04.2022] seeking forfeiture of the sum of Rs. 2,10,50,000/- being 25% of the bid amount deposited by the petitioner on the ground that he had failed to deposit the balance amount by the fifteenth day of

the confirmation of sale. In response to the said application, the Union Bank confirmed that the competent authority had permitted the authorised officer of the Union Bank to extend the time for making the balance payment.

15. Apparently, in the meantime, the borrowers filed an application [IA/12/2022] for redemption of the mortgaged property. It was taken up by the DRT on 05.01.2022. Thereafter, by an order dated 03.03.2022, the DRT directed the Union Bank not to issue Sale Certificate or handover the possession of the mortgaged property till the next date of hearing.

16. The interim applications moved in Securitisation Application No.113/2018 were heard on various occasions and was allowed by the DRT's final order dated 12.09.2022. The said order indicates that the borrowers had filed an application seeking to redeem their mortgaged property and had also deposited a sum of Rs. 2.125 crores pursuant to the orders passed by the DRT.

17. The DRT found that the Union Bank had violated Rules 8(5) and 9(2) of the Rules. It found that the Union Bank had ignored the previous valuation report dated 29.09.2015, which assessed the value of the mortgaged property as Rs. 12.3 crores. The DRT also found that the petitioner had failed to deposit the entire sale consideration on or before the fifteenth day of the confirmation of sale, which was in violation of Rule 9(4) of the Rules. The DRT also noted that the valuation report furnished by the Securitisation Applicants on 29.03.2018 indicated that the market value of the mortgage property was Rs. 14.35 crores and its realisable value was Rs. 12.19 crores. The DRT also observed that the petitioner did not have the necessary funds to pay for the mortgaged property at the material time, which was evident from the fact that he had to arrange funds by way of loans from the Union Bank and the Axis Bank. In addition, the DRT made observations to the effect that the petitioner may not be the real purchaser of the mortgaged property and collusion between the officials of the Union Bank and the petitioner could not be ruled out.

18. The operative part of the final order dated 12.09.2022 passed by the DRT reads as under:

"21…….In view of the contravention made by respondent bank with respect to Rule 8(5) and Rule 9(2) the Security Interest (Enforcement) Rules, 2002, SA applicant has right to redeem his property by depositing the decretal amount passed in OA no.114/2018, vide detailed final order by this Tribunal on today, alongwith expenses/cost incurred by respondent bank, alongwith additional amount of 5% above the auction sale amount of Rs.8.42 Crores i.e. Rs.42,10,000/- within 30 days from the date of expiry of period of limitation for filing appeal, to respondent bank. In case of failure to deposit the said amount by SA, respondent bank is at liberty to transfer the subject property in its own name for sum of Rs.12.3 Crores as per its own valuation obtained on 29.09.2015, to use the said property for its own use in any manner, as it so desires. The 25% of the bid amount deposited by auction purchaser be returned to auction purchaser alongwith bank rate of interest and additional 5% of the bid amount, if so deposited by SA applicants for redemption.”

19. The Union Bank has not complied with the directions issued by the DRT. It has preferred an appeal [RA/171/2022] against the said order which is pending for consideration before the learned Debts Recovery Appellate Tribunal (hereafter ‘the DRAT’).

20. In the meantime, the petitioner filed a Miscellaneous Application [MA/107/2022 in SA/113/2018] seeking rectification of the DRT’s order dated 12.09.2022 to the extent it had directed refund of only 25% of the consideration paid for the mortgaged property. Since the petitioner had paid the entire sale consideration, the DRT by an order dated 25.10.2022 allowed the application moved by the petitioner and modified the order dated 12.09.2022 passed by the DRT in SA/113/2018 clarifying that the entire sale consideration paid by the petitioner was liable to be refunded to the petitioner along with interest at the rate of 8% per annum. The petitioner had also sought enhancement of the rate of interest to 10% p.a., however, the petitioner’s said prayer was rejected.

21. The Union Bank did not comply with the order dated 12.09.2022 as modified by the order dated 25.10.2022. Accordingly, the petitioner filed an application [MA/119/2022] before the DRT praying that the Union Bank be directed to return the entire bid amount of Rs. 8.42 crores along with interest at the earliest. The petitioner also prayed that further action be taken against the concerned officers for willful disobedience of the orders passed by the DRT. The said application was not taken up by the DRT and this led the petitioner to file a petition [CM(M) No.1463/2022] under Article 227 of the Constitution of India in this Court. This Court disposed of the said petition by an order dated 16.01.2023 with a request to the DRT to advance the date for hearing of the petitioner’s application to any date earlier to 06.03.2023 and to dispose of the said application within a period of two weeks thereafter.

22. The DRT considered the petitioner’s application and dismissed the same principally on two grounds. First that, the Union Bank had preferred an appeal before the DRAT and second that, the application was filed beyond the period of thirty days and therefore, the same raised the question of maintainability.

23. The petitioner has made it amply clear that he does not wish to proceed with the purchase of the mortgaged property and desires that the amounts paid by him be returned to him in terms of the order passed by the DRT.

24. It is material to note that the Union Bank has been unable to secure any orders for transfer of the mortgage property to the petitioner despite the petitioner having paid the entire consideration. Neither the Sale Certificate has been issued in favour of the petitioner nor has the possession of the mortgaged property been handed over to the petitioner. The Union Bank continues to retain the possession of the mortgaged property.

25. The petitioner claims that he had purchased the mortgaged property in the belief that possession of the same would be handed over to him immediately on his making payment of the sale consideration and the sale would be concluded in his favour. However, none of that has happened. Moreover, the petitioner is also prejudiced because while he continued to service the loans availed by him from Axis Bank and the Union Bank for purchase of the mortgaged property and yet is unable to secure the possession of the same.

26. It is contended on behalf of the petitioner that although the DRT by its order dated 12.09.2022, as modified / clarified by the order dated 25.10.2022, had directed the Union Bank to refund the amount collected from the petitioner along with interest at the rate of 8% p.a, the Union Bank did not comply with the said order and on the contrary continues to recover interest at the rate of 10% per annum on the loan extended to the petitioner towards purchase of the mortgage property.

27. Given the factual circumstances, we are of the view that the petitioner is not precluded to demand the refund of its amount as the sale of the mortgage property has not been concluded in his favour despite the lapse of the period of more than eighteen months.

28. Admittedly, the DRAT has not passed any interim order staying the operation of the order dated 12.09.2022, as modified/clarified by the order dated 25.10.2022 passed by the DRT in SA No.113/2018. It is not open for the Union Bank to willfully ignore the said order or selectively comply with the same. Thus, the Union Bank is liable to refund the consideration paid by the petitioner along with interest at the rate of 8% p.a.

29. In view of the above, we direct the Union Bank to refund the amount paid by the petitioner. We further clarify that this would not preclude the Union Bank from claiming costs and expenses or any loss suffered from the Securitisation Applicants, if they fail to pay the redemption amount.

30. It is clarified that all rights and contentions of the parties are reserved and this order will not preclude the Union Bank from pursuing its appeal before the DRAT. The DRAT shall also consider the petitioner’s contention that he is no longer interested in purchasing the mortgaged property and cannot be compelled to standby his offer, notwithstanding the delay in completion of the sale of the mortgaged property in its favour.

31. The petition is disposed of in the aforesaid terms.