
(2007) 10 AHC CK 0007
In the Allahabad High Court

Sharda Fuels Distributors Pvt. Ltd.

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 25-10-2007

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20

Citation : (2008) 1 AWC 820 : (2008) 3 BC 209 : (2009) 106 RD 357

Hon'ble Judges : V.M. Sahai, J;R.N. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ petition has been filed by the petitioner for order/direction in the nature of certiorari quashing the impugned order dated 30.5.2005 (Annexure No. 6), passed by respondent No. 3 and for a mandamus commanding respondent Nos. 1 and 2 not to proceed with the auction sale in view of proclamation dated 24.9.2007 regrading land Nos. 19, 22 and 23, situate in village Dando, Pargana and Tehsil Bara, District Allahabad.

2. We have heard Sri Salil Srivastava, learned Counsel for the petitioner and Sri S.K. Srivastava, learned Counsel appearing for respondent No. 1.

3. From the writ petition, it appears that the petitioner is a registered company under Companies Act 1956 and Sri L.R. Sonkar, Smt. Gyani Devi and Sri Rajendra Kumar are its Directors. The another company, the respondent No. 3 M/s Shailendra and Brothers had taken loan from Central Bank of India, Rani Mandi Branch, Allahabad, the respondent No. 1 amounting to Rs. 14 lacs under C.C. Limit by mortgaging its property in the year 1989. The respondent No. 4 Rajendra Kumar was also one of the partners of said company. The petitioner's company purchased aforesaid plots in the year 1993 and 1994. These plots are the property of petitioner and in the revenue records name of the petitioner has been mutated. The respondent No. 1 filed a suit for recovery of Rs. 14, 24, 352, only against respondent No. 3 in the year 1998, in which, the respondent No. 4

was also party. The suit was transferred to Debt Recovery Tribunal, which was decided on 22.2.2000 against respondent No. 3. The Recovery Officer issued recovery certificate dated 23.5.2003 for auction and sale of petitioner's property. The petitioner filed writ petition No. 25937 of 2003 before this Court and vide order dated 29.6.2003, the Bank was asked to furnish details of mortgaged property and that writ petition is still pending. The petitioner also filed objection on 30.6.2003 as third party against the attachment before the Recovery Officer, the respondent No. 2. The aforesaid objection was rejected on 26.10.2004 holding that the property was owned by respondent No. 4. The petitioner challenged the aforesaid order before this Court by filing Civil Misc. Writ Petition No. 55156 of 2004. This Court vide order dated 6.1.2005 directed the respondent No. 2 to decide the objection of petitioner afresh. The respondent No. 2 vide order dated 30.5.2005 rejected objection of the petitioner. The petitioner filed a suit No. 632 of 2005; before Civil Judge (Senior Division), Allahabad against Central Bank of India (respondent No. 1) which is still pending. The respondent No. 2 has issued a recovery certificate on 31.8.2007 as well as proclamation dated 24.9.2007 for auction of land referred to above. Since land is the property of the petitioner, therefore, that cannot be attached and auctioned for recovery of loan taken by respondent No. 3 from respondent No. 1. The petitioner wanted interim relief for stay of attachment, proclamation and sale.

4. Sri S.K. Srivastava, learned Counsel for the Bank has opposed the writ petition as well as stay application. The maintainability of writ petition has also been challenged by him.

5. From the writ petition itself, it is evident that the petitioner contested the case before Debt Recovery Tribunal, the respondent No. 2, and failed to get any relief from there. This fact is admitted that respondent No. 4 was also one of the partners of Firm M/s Shailendra and Brothers, the respondent No. 3. The respondent No. 1 had given the loan. To avoid re-payment of loan, the respondent No. 4 has been adopting various tactics. Annexure-2 is the copy of Judgment of Debt Recovery Tribunal in the suit of the Bank. In that suit also, respondent No. 4 of present writ petition was a defendant. The Tribunal held that Bank was entitled to recover amount of Rs. 14, 24, 352/ only from the defendant Nos. 1,12 and 14 to 18 of that suit jointly and severally. The respondent No. 12 of that suit was Rajendra Kumar son of Lalloo Ram, who is respondent No. 4 in the present writ petition. The objection raised by respondent No. 4 was rejected by respondent No. 2 vide order dated 26.10.2004. The writ petition No. 55156 of 2004 preferred by present petitioner was disposed of on 6.1.2005. Vide Annexure-5, the respondent No. 2 was directed to decide afresh objection filed by petitioner. Annexure-6 shows that respondent No. 2 decided objection of Rajendra Kumar and others. It was clearly held that the property under attachment belonged to respondent No. 4. No material was placed on record before respondent No. 2 to satisfy it that the property belonged to the earlier company M/s Sharda Fuels Distributors Pvt. Ltd. After that proclamation for sale of property was issued by the Recovery Officer, which is Annexure-8 to the writ

petition. In the meantime, the petitioner filed suit No. 632 of 2005 before Civil judge (Sr. Division), Allahabad, photo copy of which has been furnished by learned Counsel for the petitioner during the course of arguments which is made part of record. In the plaint of said suit, it has been clearly mentioned that the property under attachment was purchased by respondent No. 4 from personal income of his father, Lalloo Ram Sonkar, who has filed this writ petition as Director of the petitioner's company. Thus, the finding recorded by respondent No. 2 on the objection of the petitioner is fortified by the allegations made in the aforesaid original suit that the property under attachment is the property of respondent No. 4 and to avoid and delay payment of the Bank's loan, he has been adopting various modes and this writ petition is also one of them. The contents of para 1 of O.S. No. 632 of 2005 are quoted below:

;g fd oknh us dlhj /kujkf" k ds ek;/e ls vkjkth uacj 22] 23] 19 okds ekStk MkUMksa rglhy ckjk bykgkckn dks ctj;s cSukek fnukad 25-2-94] o 2-12-93 ds tfj;s [kjhmk vkSj mijksDr /kujkf" k oknh dks oknh ds firk yYyw jke lksudj }kjk iznku dh x;h D;ksfd oknh ds firk yYyw jke lksudj us viuh futh dekbZ ds :i;s ls mijksDr vkjkft;kr dks oknh ds uke [kjhmk mDr cSukektr dh Nk;kizfr vusDpj 1 yxkk;r 3 ds :i esa nkf[ky dh tkkrh gS A

Agin in para 3 of said suit, it has been mentioned that the property under attachment is in occupation and use of respondent No. 4 and his family members. The relevant lines of said para are quoted below:

;g fd mijksDr cSukektr ,oe~ vkjkft;kr ftdks oknh ds firk us vius iSl ls oknh ds uke [kjhmk mldk mi;ksx o miHkksx oknh ds leLr ifjokj ds lnL; djrs pys vk jgs gS A

6. The relief sought in the said suit is to restrain the Bahk or his officers or agents from realising loan by attaching and auctioning plot Nos. 19, 22 and 23 referred to earlier. It may be pointed out here that when respondent No. 2 rejected the objection; of the petitioner, it was open for him to file appeal, u/s 20 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The legal remedy available to the petitioner was not availed by him and instead of filing appeal, he adopted short cut mode by filing successive writ petitions before this Court and admittedly one of the writ petitions (Writ Petition No. 25937 of 2003) is Still pending.

Order XXI Rule 29 of C.P.C gives power to stay of execution pending suit between decree-holder and judgement debtor. The provisions is quoted below:

29. Stay of execution pending suit between decree-holder and judgement-debtor Where a suit is pending in any Court against the holder of a decree of such Court (or of a decree which is being executed by such Court), on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it things fit, stay execution of the decree until the pending suit has been decided:

Provided that if the decree is one for payment of money, the Court shall, if it

grants; stay without requiring security, record its reasons for so doing.

High Court amendments:

In Rule 29-

1. Insert the comma and thereafter the words " or any person whose interests are affected by the decree, or by any order made in execution thereof" after the words was passed" and before the words "the Court may";

2. delete the words on such terms as to security or otherwise" occurring in the rule;

3. substitute "if" for "as" before the words "it thinks fit"; and

4. add the following as proviso to the said rule, namely:

provided that in all cases where execution of the decree is stayed under this rule the Court shall require the person seeking such stay to furnish such security as it may deem fit.

7. When respondent No. 4 has already filed suit for injunction in respect of same properties, which have been attached and are likely to be solo in execution of decree, he can move the court concerned for appropriate interim order. However, this is for the trial court concerned, where suit is pending, to decide whether injunction can be granted on merits considering applicability of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or any other law for the time being in force.

8. In view of above we are of the opinion that this writ petition suffers from the principle "multiplicity of proceedings" and is devoid of merits. Consequently, the writ petition is dismissed.