(2002) 07 DEL CK 0061

In the Delhi High Court

Case No : C.W. 6369 of 2001 and C.Ms. 10974 and 10976 of 2001

Shyam Swarup Sharma and Another APPELLANT

Vs

Canara Bank and Others RESPONDENT

Date of Decision : 12-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19(7), 25, 29

Citation : (2002) 112 CompCas 668 : (2002) 99 DLT 475

Hon'ble Judges : Shamik Mukherjee, J;Devinder Gupta, J

Bench : Division Bench

Advocate : A.S. Chandhiok, A.K. Singh, Manmeet Arora and Aashish Chopra, for the Appellant; Valimiki Mehta and Sunil Magon, for Auction Purchaser, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners in this petition filed under Article 226 of the Constitution of India are seeking direction (i) to quash the order dated 16.2.2000 passed by Recovery Officer, Debt Recovery Tribunal in RC No.3/98 arising out of O.A. No.409/96; (ii) order dated 3.3.2000 passed by the Recovery Officer, Debt Recovery Tribunal, New Delhi rejecting petitioners'' objections and thereby directing the petitioners property to be put to sale; (iii) to release the petitioners'' flat B1 and B2 duplex in property bearing No.C-3, Kailash Colony, New Delhi, from attachment, sale or similar distress proceedings in RC No.3/98 titled as Canara Bank vs. Sagar Constructions Pvt. Ltd. & Ors.; and (iv) to quash and set aside the order dated 13.9.2001 passed by Debt Recovery Tribunal dismissing petitioners appeal along with all other orders passed subsequent thereto.

2. Facts in brief and in so far as they are relevant for deciding the controversy in question are that Canara Bank filed an application (O.A.409/96) under the

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the Act) against Sagar Constructions Co. Pvt. Ltd. (respondent No.2) in which an order for recovery of the debt was passed in favor of the Canara Bank against the said company. In order to recover its debt the Canara Bank appears to have taken out proceedings for recovery, in which a certificate appears to have been issued. Acting on the said certificate the Recovery Officer proceeded to recover the amount by one of the modes prescribed for recovering the amount, namely, attachment and sale of immovable property. On 27.1.2000 an order of attachment came to be passed by the Recovery Officer attaching 12 flats in the property constructed on plot No.C-3, Kailash Colony, New Delhi, which included the property in question.

3. Petitioners'' case is that they are owners in possession of two flats constructed on plot No.C-3, Kailash Colony, New Delhi. The plot was purchased on 12.12.1984by Shri Kishan Chand Jain from M/s. Sagar Construction Pvt. Ltd. Possession was also handed over to Shri KC. Jain. Documents annexures P-2 and P-3 have been appended in support of this stand taken by the petitioners. It is alleged that Kishan Chand Jain sold his rights, title and interest in favor of M/s. Peshawar Soap & Chemical Works, Adalat Bazar, Patiala, who in turn transferred its rights in favor of M/s. Sumangal Leasing Ltd. which is confirmed by the endorsement of Shri Kishan Chand Jain as is evidenced by document annexure P-5. It is stated that on 25.1.1997 the petitioner agreed to purchase the flats from M/s. Sumangal Leasing Ltd. and entered into a receipt cum agreement annexure P-4 dated 25.2.1997 and on 6.1.1998 two sale deeds were executed in favor of the petitioners in respect of the said flat No. B Duplex making it a property having two portions B1 and B2. Sale deed annexure P-6 was duly registered. Thus in nutshell the petitioners claim that they were owners in possession of the flats in question much prior to the date when order of attachment was passed by the Recovery Officer on 27.1.2000. It was not the property of the debtor and cannot be subjected to attachment and sale.

4. From the pleading of the parties it appears that the Recovery Officer on 16.2.2000 is purported to have appointed a Receiver to take possession of the flats on 27.2.2000. Few officials of the Recovery office are stated to have visited the flat in question and informed that the petitioners flat was to be put for auction and on 27.2.2000 officers of the Canara Bank also appears to have sealed the flat in question. The petitioners on coming to know of these facts filed objections on 2.3.2000 against the intended auction of the property before Recovery Officer, copy of which is attached as annexure P-7. Recovery officer on 3.3.2000 summarily dismissed the objections by his order, annexure P-8 observing:

"Attachment orders and notice for settling sale proclamation in respect of the property in question were ordered on 27.2.98. It was published on 5.5.98 in response thereto several other objectors have filed objections which are under consideration separately. Since no objections were filed in respect of Flat No. B and C it was decided to sell the same by public auction and accordingly sale proclamation was ordered vide orders dated 20.01.2000. Same has already been proclaimed by affixation on a conspicuous part of the property and also by publication in "The Economic Times" on 05.02.2000.

I have heard both the parties at length, in view of the fact that no objections were filed in respect of Flat No. B and C in response to the attachment notice, attachment orders and notice for settling sale proclamation issued on 7.2.98 and sale proclamation issued in pursuance thereto and there is no satisfactory Explanation for not filing the objections for the last one year objections and reply filed to be dismissed on the sole ground of deliberate delay in the filing the same."

5. Property was thus directed to be put to auction on6.3.2000. The petitioner felt aggrieved and had to challenge this order. It is stated that on 6.3.2000 there was no Presiding Officer of the Recovery Tribunal. The petitioners had to prefer a petition under Article 227 (C.M.(M) 122/2000) in this Court, which was taken up for consideration on the same day and the learned Single Judge on6.3.2000 while issuing notice for 23.5.2000 directed that there shall be stay of all further proceedings pursuant to the auction and in case it has already taken place. Confirmation of sale was also stayed until further orders. It is also stated that on 10.4.2000 the petitioner filed an appeal before the Debt Recovery Appellate Tribunal, Mumbai which was returned for being filed before the Debt Recovery Tribunal, Delhi. On 1.5.2000 the petitioner filed an appeal before the Debt Recovery Tribunal. On 10.10.2000 the learned Single Judge dismissed C.M.(M)122/2000, in view of the petitioner having filed an appeal before the Debt Recovery Tribunal. On 13.9.2000 the Presiding Officer, Debt Recovery Tribunal dismissed the petitioners'' appeal on the ground that it was barred by limitation. In the aforementioned background this petition was filed. There are certain other facts which have been alleged by the petitioner in the petition and have been stated in reply on behalf of the Auction Purchaser and by the Bank, which need not be gone into by us in this petition in view of the limited controversy which has arisen for our consideration. It was however pointed out that the conduct of the petitioners is such that no indulgence deserves to be shown in petitioners'' favor in these proceedings since they had knowledge of the attachment and had not acted promptly. Be that it may we are proceeding to dispose of this petition purely on legal grounds.

6. Chapter 5 of the Act deals with the mode and manner and procedure to be followed in recovering the debt, as determined by the Tribunal. On receipt of the certificate issued under Sub Section (7) of Section 19 the Recovery Officer is required to proceed by virtue of Section 25 of the Act to recover the amount specified in the certificate by any or more of the modes specified in Clauses (a), (b) and (c) of Section 25. One of the mode is the attachment and sale of movable and immovable property of the defendant. At this stage it may be pointed out that the defendant in recovery proceedings is M/s. Sagar

Constructions Company Pvt. Ltd. (respondent No.2). The petitioner is neither a party to the recovery proceedings nor a defendant. Provisions of Second and Third schedule of the Income Tax 1961 and the Income tax (Certificate proceedings) Rules 1962 are made applicable with necessary modifications by virtue of Section 29 of the Act as if the said provisions and the rules refer to the amount of debt due under this Act instead of to the Income Tax. Therefore, the precise procedure, which is required to be followed by the Recovery Officer, in case immovable property of the defendant is to be attached and sold is the one which is laid down in Second and Third Schedule of the Income Tax Act, 1961. Recovery of the amount and one of the mode is attachment and sale of the defaulters immovable property is one of the mode prescribed by para 4 of the Second Schedule of Income Tax Act 1961 to recover the amount from the defaulter. Sub para (1) of para 6 says that where property is sold in execution of a certificate there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of sale. Para 11 of Second Schedule lays down the procedure to be followed by the Recovery Officer in order to investigate any claim, which is preferred or objection which is made to the attachment or sale of any property in execution of a certificate. Sub para (1) of para 11 says that when any such claim is preferred the Recovery Officer shall proceed to investigate the claim or objection. This is subject to the proviso that no such investigation shall be made where the Recovery Officer considers that the claim or objection was designedly or necessarily delayed. Sub para (3) of para 11 also requires that the claimant or objector must adduce evidence to show that at the date of attachment he had some interest in or was possessed of the property in question. Recovery Officer on being satisfied that on the date of attachment the defaulter was not having any title to the property or was not possessed thereof is required to pass an order releasing the property or to pass such other orders as are envisaged in sub para (4) of para 11. A claim or objection, if preferred, the party against whom an order is made by the Recovery Officer is entitled to file a suit in civil court to establish a right which he claims to the property in dispute but subject to the result of such suit the order of the Recovery Officer is final.

7. The aforementioned provisions on the face of it suggest that the Recovery Office has no jurisdiction to recover the amount by attachment and sale of immovable property if it does not belong to the defaulter. The person who at the date of attachment had some interest in the attached property is entitled to lay a claim or file objections, which if filed, are required to be investigated upon and decided by the Recovery Officer. Needless to add at this stage that out of 12 flats which were attached 10 persons filed objections with respect to 10flats are still under consideration. Objections with respect to the 1st flat were dismissed but neither possession was taken nor the said flat has been auctioned. Only in the case of the petitioners who had filed objections the flat was auctioned after the Recovery Officer proceeded to dismiss the objections summarily without any adjudication, which in our view could not have been done. The Recovery Officer was bound to investigate upon the objections. As is apparent from the

objections, the objector had produced enough material before the Recovery Officer to show that as on the date of attachment of the property they had interest in the property, namely, they were the owners in possession pursuant to registered sale deeds, which allegedly were executed more than two years prior to the date of attachment. The Recovery Officer having failed to adjudicate upon the objections they acted with material irregularity in exercise of his jurisdiction in proceeding to reject the same summarily. The Tribunal also acted with material irregularity in dismissing the appeal on technical ground of limitation more especially when the petitioner had approached this court by filing petition under Article 227 of the Constitution of India. Rejection of objections and dismissal of appeal have thereby caused immense prejudice to the petitioners'' rights. The orders being bad in law having effected valuable rights of the petitioners are liable to be quashed.

8. Consequently the petition is allowed. The impugned orders passed by the Recovery Officer dismissing petitioners'' objections and that of the Tribunal dismissing appellants appeal, which are under challenge in this petition as well as all consequential proceedings including auction of the property in question are set aside with direction to the Recovery Officer to proceed to investigate the claim of the petitioners in consonance with law. Ordered accordingly. Resultantly the Recovery Officer is directed to refund the amount deposited by the auction purchaser.

9. Parties are left to bear their respective costs.

