(2014) 01 OHC CK 0061

In the Orissa High Court

Case No : W.P.(C) No. 9529 of 2008

Sudhindra Ku. Samal APPELLANT

Vs

Bank of Baroda RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2014) 01 OHC CK 0061

Hon'ble Judges : A.K. Goel, C.J;Akshaya Kumar Rath, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. This petitions seeks quashing of the notice dated 2.5.2008 (Annexure-3) and declaring initiation of the proceedings in O.A. No. 108 of 2008 before the Debt Recovery Tribunal. Learned counsel for the petitioners states that there is typing error in the prayer and the petitioner is seeking quashing of Annexure-1, which has been issued by the Debt Recovery Tribunal, Cuttack directing conditional attachment of the property and requiring the petitioner to furnish the security of Rs. 14,34,740/- failing which the hypothecated and mortgaged property shall be attached.

2. The case of the petitioners is that the petitioners were given a loan by opp. party no. 1-Bank against the property, which was to be purchased from opp. party no. 3. According to the petitioners, the notice could not have been issued by the DRT as the loan had not been recalled by the Bank and the petitioners were ready to re-pay the loan.

3. On 8.3.2001, it was brought to the notice of this Court by the learned counsel appearing for State Bank of Hyderabad that in a connected matter C.B.I. inquiry was going on regarding fraudulent activities of the petitioners and their allies. Learned counsel for the C.B.I. filed a memo in W.P.(C) No. 8673 of 2008, which is also listed today for hearing and is being disposed of by a separate order,

stating that Arun Kumar Swain-opp. party no. 3 with some other persons had played fraud with the Bank.

4. Accordingly, this Court directed the Superintendent of Police to inquire into the matter and initiate criminal proceedings against such persons who were found to be involved in fraud. Interim order was granted in favour of the petitioners, which has been continued.

5. Heard learned counsel for the parties.

6. Learned Counsel for the C.B.I. points out that charge sheet dated 30.5.2013 has been filed before the Special Judge (C.B.I.), Bhubaneswar as follows:

Investigation revealed that at the time of sanction of loan Sri Sudhindra Kumar Samal had submitted an affidavit to the effect that bank will not release the sale price to the seller Shri Arun Swain till he submits the Sale Deed with the bank and also to keep the said loan amount in the bank account of Shri Arun Swain. Investigation further revealed that in pursuance of the said criminal conspiracy, Shri Khageswar Panda and Shri Rajiv Ranjan Sinha abused their official positions as public servant and disbursed housing loan of Rs. 7 lakhs to Shri Sudhindra Kumar Samal on 19.03.2008 and Rs. 6 lakhs to Shri Arun Swain on 28.03.2008 before receipt of Sale Deed from the borrower Shri Sudhindra Kumar Samal. Although the Sale Deed did not materialize, Shri Arun Swain also did not repay Rs. 6 lakhs that he received in his account.

Investigation revealed that though the power of attorney holder Shri Arun Swain executed the Sale Deed vide No. 2313/2008 dated 04.03.2008 in favour of Shri Sudhindra Kumar Samal, but said Shri Sudhindra Kumar Samal dishonestly did not deposit the Sale Deed with the bank for creation of equitable mortgage. Investigation further revealed that Shri Dhirendra Swain, the original owner cancelled the said Sale Deed No. 2313/2008 vide Cancellation Deed No. 900 dated (sic).02.2010.

Investigation revealed that Shri Sudhindra Kumar Samal has not repaid the loan amount and an amount of Rs. 25,49,915/- is outstanding in the said loan account. Thus, the aforesaid acts of the public servants namely Shri Rajiv Ranjan Sinha and Shri Khageswar Panda in criminal conspiracy with the borrower Shri Sudhindra Kumar Samal has caused a wrongful pecuniary loss of Bank of Baroda to the tune of Rs. 25,49,915/- and corresponding wrongful gain to private persons namely Shri Sudhindra Kumar Samal and Shri Arun Swain.

The aforesaid acts on the part of Shri Khageswar Panda, Shri Rajiv Ranjan Sinha, Shri Sudhindra Kumar Samal and Shri Arun Swain constitute commission of offences punishable U/s. 120B, 420 of IPC and Sec. 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

7. Learned counsel for the Bank has brought to the notice of the Court that order dated 1.9.2008 issuing certificate of recovery had been passed against the petitioner, which has not been challenged.

8. Learned counsel for the petitioners submits that the said order was passed ex parte, the fact remains that the said order has not been challenged by the petitioners so far.

9. In view of the fact that the Tribunal has already passed order against the petitioner, which has not been challenged, no ground is made out to pass any further order in favour of the petitioners in these proceedings. This petition is disposed of without prejudice to rights and remedies of the parties in any other proceedings.

10. We also consider it appropriate to direct the Special Judge (CBI) to expedite the pending proceedings and conclude the same, as far as possible, within six months from today. Free copy of this order be supplied to the learned Sr. Counsel (CBI) for compliance.

