(2020) 08 CAL CK 0072

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 482 Of 2020, Civil Application (CAN) No. 4109, 4111, 4112 Of 2020

Sunil Kr. Shaw & Ors. APPELLANT

Vs

Punjab National Bank & Ors RESPONDENT

Date of Decision : 25-08-2020

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 17

Citation : (2020) 08 CAL CK 0072

Hon'ble Judges : Soumen Sen, J;Saugata Bhattacharyya , J

Bench : Division Bench

Advocate : Anjan Bhattacharya, Anita Shaw, Abhishek Banerjee

Final Decision : Disposed Of

Judgement

@JUDGMENT-JUDGMENT

The petitioner undertakes to affirm and stamp the petition/application as per Rules within one month of resumption of normal functioning of the Court. Subject to such undertaking, the application is taken up for hearing through video conference.

The bank in exercise of its power under the provisions of SARFAESI Act, 2002 has issued a sale notice inviting sale of different properties which, inter alia, include the property in question. The sale advertisement reads:-

"All that piece and parcel of land measuring 3 Cottahs 11 Chittaks 4 Sq. Ft. along-with two storied building (1st Floor incomplete) having covered area about 2000 Sq. Ft. at 5/6 Khardah Station Road, PS- Khardah, Kolkata - 700117 in the name of Pinaki Sadhukhan."

In the sale notice, it has been clearly mentioned that the properties shall be sold on "As is where is" and "As is what is" basis. The sale certificate was issued on 23rd March, 2017. Subsequent thereto, One Sri Pinaki Sadhukhan filed an application under Section 17 of the SARFAESI Act, 2002 before the Debt Recovery Tribunal (in short "DRT"), inter alia, for setting aside of the possession notice dated 2nd September, 2016 and auction sale notice dated 1st February, 2017 and a direction upon the respondent bank to restore back the possession of the mortgaged property.

It appears from the order of the Tribunal that the bank sanctioned a housing loan for a sum of Rs.14 lakhs in favour of SHAWs upon Sri Sadhukhan agreeing to secure by equitable mortgage that the developed portion of the land was inherited by Sri Pinaki Sadhukan by depositing its title deeds. The loan account became NPA on 31st March, 2005. The respondent bank invoked SARFAESI measures and issued demand notice under Section 13(2) dated 20th April, 2006 claiming Rs.11,74,562/- repayable within 60 days. Due to non-payment of dues, possession notice was issued on 2nd September, 2006 and subsequently, the bank on the strength of the order of the District Magistrate issued under Section 14 took physical possession of the property in question. The auction sale notice was published on 1st February, 2017 fixing reserved price at Rs.37 lakhs. The property was sold at Rs.41 lakhs in favour of the successful bidder and sale certificate was issued subject to outcome of the case. Sri Sadhukhan questioned the said statutory notice on the ground that the property has been wrongly described. It was contended before the Tribunal that the mortgaged property was created for a portion of total land in Dag No.3276/5880 which contains only 04 decimals of land with building, whereas respondent bank described that the land was 3.70 Cottah, which is equivalent to more or less 06 decimals. On scrutiny of the title deed, the Tribunal arrived at a finding that Dag No.3276/5580 land measurement was 04 decimals along with pucca building and pucca temple and rest of the land in other Dag numbers. In all the notices the respondent bank mentioned 3.70 Cottah of land which is equivalent to more or less 06 decimals. On scrutiny of the record, the Tribunal has observed that the respondent bank is entitled to take possession of only 04 decimals of land together with building which was mortgaged in favour of them and rest 02 decimals of land should be carved out from the 3.70 Cottah of land and return back to the applicant. The auction sale and the sale certificate issued in favour of the successful purchaser are otherwise valid except measurement of land. The dispute with regard to above will be redressed. Accordingly, the bank was directed to return 02 decimals of land to the applicant, namely, Sri Pinaki Sadhukhan. This order was challenged in a writ petition. The learned Single Judge observed that since the sale of the properties was "as is where is" basis, the applicants with their eyes wide open had purchased the property and at this stage the applicants cannot complain that the sale is vitiated by fraud.

It appears that the sale certificate was issued on 23rd March, 2017 and is now required to be amended in terms of the order dated 5th August, 2019. It may also result in dispossession of the appellants from the 02 decimals of the land, which according to the sale notice should have gone to the appellants. In view of the fact that the amendment of the sale certificate is likely to adversely affect the interest of the appellants, we direct the appellants to approach the DRT, Kolkata for the reliefs claimed in the petition regarding the refund of consideration. We, however, do not wish to restrict the reliefs that the applicants may claim before the Tribunal. With this observation, this appeal is disposed of.

The order of the learned Single Judge stands modified to the aforesaid extent.

The appeal being MAT 482 of 2020 along with applications being CAN 4109 of 2020, CAN 4111 of 2020 and CAN 4112 of 2020 are disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.