

(2024) 05 CAL CK 0055

In the Calcutta High Court

Case No : M.A.T. No. 799 Of 2024, IA No. CAN 1 Of 2024

Susanta Sengupta

APPELLANT

Vs

Canara Bank, Burrabazar Branch & Ors.

RESPONDENT

Date of Decision : 20-05-2024

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 — Section 13(4), 14, 14(1)
Indian Penal Code, 1860 — Section 120B, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2024) 05 CAL CK 0055

Hon'ble Judges : T. S. Sivagnanam, CJ;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Saibal Kumar Acharyya, Pradip Paul, Gourab Ghosh, Sudipa Sengupta, Renesa Dey, Subhas Chandra Sarkar, Jayita Roy, Rishav Ray

Final Decision : Disposed Of

Judgement

1. This intra-Court appeal by the writ petitioner is directed against the order dated 28th March, 2024 in W.P.A. 6966 of 2024. In the said writ petition the respondent bank viz. the Canara Bank sought for a direction upon the District Magistrate, North 24 Parganas to consider their application filed under Section 14 of the SARFAESI Act. The learned writ court by the impugned order directed the District Magistrate, North 24 Parganas to dispose of the application filed by the bank under Section 14 of the SARFAESI Act within the time frame and to pass consequential orders to ensure implementation of any order which might have already been passed by the District Magistrate, North 24 Parganas under Section 14(1) of the said Act.

2. Aggrieved by such order, the appellant had preferred this appeal.

3. On the last occasion, the matter was heard at length and an order was passed on 29.04.2024 and for the purpose of disposal of this appeal, it would be relevant to take note of the said order and, therefore, the same is quoted

hereinbelow:

1. This intra-Court appeal by the private respondent in W.P.A. 6966 of 2024 is directed against the order dated 28th March, 2024 by which the writ petition filed by the Canara Bank was allowed with a positive direction to the District Magistrate, North 24 Parganas to dispose of the application under Section 14 of the SARFAESI Act filed by the bank as expeditiously as possible but positively within four weeks from date and to pass consequential orders to ensure implementation of any order, which might have already been passed by the District Magistrate under Section 14(1) of the Act.
2. The learned advocate appearing for the appellant had made a mention before this Court seeking leave to file this appeal and expressing extreme urgency as the appellant is likely to be dispossessed from his residential premises.
3. Leave was granted by this Court to file Memo of Appeal without certified copy on 23rd April, 2024, which leave was availed by the respondent and the Memo of Appeal was filed. Thereafter, a mention was made on 25th April, 2024 requesting the Court to take up the matter urgently. As the appellant is facing severe threat of dispossession from residential premises, the Court directed the matter to be listed today (29th April, 2024).
4. The learned advocate for the appellant submitted that instead of informing the appellant, it appears that the respondent/bank has proceeded further and thrown out the movable articles of the appellant in the street and dispossessed the appellant.
5. The learned advocate for the respondent/bank submitted that the property has already been sold.
6. It is rather surprising that the respondent/bank has acted in such a hurried manner in spite of the bank having been put on notice that the Court will hear this appeal today. One more aspect, which has prima facie convinced to entertain this appeal is the involvement of the bank officials in a well-planned fraud and in this connection, a charge-sheet has been laid by the C.B.I. before the Special Judge (C.B.I. Court No.3), Bankshall Court, Kolkata. In the said case, all the bank officials have been arrayed as accused and the appellant is also one of the accused i.e. A-15. The consistent case of the appellant is that no loan was availed by the appellant, either the property loan or the vehicle loan and it is a well-planned fraud committed by the bank officials and the appellant has been made a scapegoat.
7. Considering all these factors, we are of the view that this is a peculiar case, which has convinced us to entertain this appeal and hear the parties so that the appeal can be disposed of.
8. Considering the peculiar facts and circumstances, as narrated above and also the complicity of the bank officials, this Court is of the view that the appellant should be restored possession and this will be subject to whatever action as

already taken by the respondent/bank and subject to the outcome of this appeal, the appellant shall be restored possession by 4.00 p.m. on 2nd May, 2024.

9. The alleged auction purchaser be also intimated about this order and leave is granted to the auction purchaser to implead himself in this appeal.

10. When the appeal will be heard on the next hearing date, the respondent/bank shall produce the original loan file pertaining to the appellant and one of the officers of the bank, who is well-conversant with the facts, should be present in Court to assist their Counsel.

11. The learned advocate for the respondent/bank produced a copy of the pronote dated 5th March, 2014 alleged to have been signed by the appellant/Susanta Sengupta. Curiously, it is seen that the first witness to the promissory note is Mr. Mainak Ghosh, who is the first accused. He is the accused no.1 in the criminal case registered by the C.B.I. and the 2nd witness is Mr. Kripa Charya Ghosh Hazra, who is also an officer of the respondent/bank, who is arrayed as accused no.2 in the C.B.I. case. It is rather surprising as to how the officers of the bank are witnesses to a promissory note alleged to have been signed by the appellant, who is a borrower.

12. Therefore, there is something more than what meets the eyes, which has prompted us to issue the above direction, as mentioned above.

13. Though the property is alleged to have been sold, everything seems to have taken place in such a haste and, therefore, the respondent/bank has to obtain the keys from the alleged purchaser and hand over the same to the appellant within the time stipulated above.

14. List the matter on 20.5.2024.

4. In terms of the directions issued above, the matter was listed today and we have elaborately heard the learned counsel appearing for the respective parties. In terms of the directions issued in the above order, a Senior Officer from the Canara Bank is also present and we have also heard his submissions.

5. The CBI has registered a case and as of now, a chargesheet has been laid in which there are several accused including the Senior Officers of the respondent bank and the appellant has been arrayed as A-50. The appellant has also initiated proceedings before the Debt Recovery Tribunal (in short, the D.R.T.) in SA No. 122 of 2019 in which the appellant had challenged the notice issued under Section 13(4) of the said Act. In the said application the respondent bank had filed their affidavit-in-opposition and the appellant has also filed a rejoinder contending that serious fraud was committed by the bank officials viz. Mr. Mainak Ghosh (A-1) and Mr. Kripa Charya Ghosh Hazra (A-2) in connection with two loan accounts open/operated/managed by them and also the original title deed of the appellant's property as the same was in custody of UCO Bank on 05.03.2014. IA No. 173 of 2023 was filed by the appellant in SA 122 of 2019 praying for submission of additional documents relating to the two loan accounts including

the title deed of a property so as to verify the genuineness. In the meantime, the learned District Magistrate passed the order under Section 14 of the SARFAESI Act on 10.02.2020.

6. The D.R.T. by order dated 11.02.2020 in IA No 173/12020 in SA No. 122 of 2019 directed the appellant to file documents relating to the title deed of the property which has been mortgaged with UCO Bank. The appellant challenged the order passed by the learned District Magistrate dated 10.02.2020 by filing IA No. 475/2020 before the D.R.T. The D.R.T. by order dated 23.02.2020 granted an order of stay of the order passed by the learned District Magistrate dated 10.02.2020. The appellant lodged a Police complaint on 11.07.2020 complaining of fraud and loss of original title deed committed by A-1 and A-2 in respect of two loan accounts. On 15.09.2020, chargesheet was submitted by the CBI before the 3rd Special Court, CBI, Kolkata for offences under Section 120(B), 420, 468, 471 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. In terms of the directions issued by the D.R.T. by order dated 11.02.2020, the appellant on 18.01.2021 filed a supplementary affidavit stating that on the purported sanction by the respondent bank i.e. on 05.03.2014, the title deed of the residential building of the appellant was originally deposited with the UCO Bank, Belghoria Branch and certain documents were annexed to establish such stand. The respondent bank filed their reply to IA 173/2020 and IA 475/2020 alongwith certain other documents. On 15.03.2021, the appellant received summons from the CBI Court arraying him as A-15. On 19.05.2022, the D.R.T. vacated the interim order granted on 23.02.2020. For modification of the said order, the appellant filed IA 1767/2020 seeking for a direction to hear out and dispose of IA No 173/12020 wherein the appellant requested the bank to submit the original title deed of the appellant's residential property with a view to clear the cloud about the mortgage of the property. The appellant alleges that IA No 173/12020 and IA 1767/2020 was not heard and the appellant did not have an opportunity to prove that the respondent bank does not have the original title deeds deposited with them and for which there is no mortgage on the suit property could be established. Learned tribunal was of the opinion that the verification of the title deed would be a futile exercise. The respondent bank thereafter issued an e-auction sale notice on 27.06.2020 which was challenged by the appellant by filing WPA 13427 of 2020. In the said writ petition, an order of stay was granted on 11.07.2020 as there was cease work before D.R.T.-3. The appellant has filed a review application in RA No. 4 of 2022 before the tribunal in connection with SA No. 122 of 2019 which according to the appellant is still pending.

7. Learned counsel appearing for the respondent bank has produced an extract from the Website of the Debt Recovery Tribunal, D.R.T.-3 stating that RA No. 4 of 2022 has been disposed of on 18.10.2023. This is disputed by the learned counsel for the appellant stating that the RA is still pending but only IA, the Interlocutory Application has been disposed of. However, it will be well open to the appellant to seek for appropriate orders before the D.R.T., if according to the

appellant that RA No. 4 of 2022 is still pending. In terms of the directions issued on 29.04.2024, as quoted above, the possession of the residential building has been handed over to the appellant and the appellant is in possession. Now, the issue would be as to what remains to be done in this appeal.

8. Learned counsel appearing for the respondent bank placed reliance on the decision of the Hon'ble Supreme Court in the case of United Bank of India vs. Debts Recovery Tribunal & ors. reported in AIR 1999 Supreme Court 1381 to explain the meaning of the expression "Debt". Reliance was also placed on the decision of the Bombay High Court in the case of Amit H. Jhaveri vs. Bank of Baroda reported in AIR 2011 Bombay 11 for the proposition that even if there was a fraudulent transaction still the same would be covered within the definition of the debt. Reliance was also placed in the decision of the Hon'ble Supreme Court in the case of United Bank of India vs. Satyawati Tondon reported in (2010) 8 SCC 110 for a proposition that when a statutory remedy is available under the SARFAESI Act, the writ petition should not be entertained. So far as the definition of the expression "Debt" is concerned, the law is well settled on the said aspect and it will be well open to the respondent bank to raise such contention in the proceedings which have been initiated or pending before the D.R.T. So far the decision of the Amit H. Jhaveri (supra) is concerned, we find that factually the said case was slightly different wherein the petitioner therein admitted that they had availed monetary benefits out of the alleged transactions but contended that the said transactions cannot be a lawful transaction as no documents were executed by the petitioners therein and, therefore, the proceedings before the D.R.T. are not maintainable under the provisions of the Recovery of Debts due to Banks & Financial Institution Act, 1993. However, in the instant case, the facts are slightly different where the appellant has alleged fraud, apart from that the senior officials of the respondent bank are also party to the fraud and they have been arrayed as accused and the appellant has also been arrayed as accused in the CBI case.

9. Learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of United Bank of India Ltd. vs. Lekharam Sonaram & Co. reported in AIR 1965 Supreme Court 1591 for the proposition that the essence of mortgage by deposit of title deeds is the actual handing over by the borrower to the lender the documents of title to the immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. According to the learned counsel for the appellant, there is no case of a valid mortgage created by the appellant.

10. All these issues which have been arisen during the course of these proceedings are matters which are clearly outside the scope of this appeal, as this appeal has arisen out of an order passed by the learned Single Judge in a writ petition filed by the respondent bank to dispose of their application filed under Section 14 of the SARFAESI Act. In the light of the interim directions given

by us on 29.04.2024, the order passed by the learned District Magistrate, North 24 Parganas has worked itself out and the appellant has been put back in possession of the property in question and the appellant shall continue to hold the same and leaving it open to the appellant to raise all points before the Debt Recovery Tribunal as well as before the Special Court for CBI cases in which the appellant has been arrayed as an accused. It is also submitted that the Officers of the respondent bank who are allegedly involved in this fraud, have been dismissed from their services.

11. In the result, the appeal stands disposed of by setting aside the order dated 10.02.2020 passed by the learned District Magistrate under Section 14 of the SARFAESI Act leaving it open to the respondent bank to initiate fresh action subject to the outcome of the other proceedings which are pending before the D.R.T. and the Special Court for the CBI cases. The appellant and the respondent bank are entitled to canvas all issues before the concerned forum. It is needless to state that the symbolic possession of the property continues to remain with the respondent bank though the actual physical possession is with the appellant.

12. Consequently, the connected application also stands disposed of.