2022 LiveLaw (SC) 13

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., M.M. SUNDRESH; J.
JANUARY 05, 2023
CIVIL APPEAL NOS. 7402 & 7404 OF 2022 (@ SLP (Civil) No. 14695 & 13508 of 2020)
K. SREEDHAR *versus* **M/S RAUS CONSTRUCTIONS PVT. LTD. & ORS.**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Section 31(i) - When it was the case on behalf of the borrowers that in view of Section 31(i) of the SARFAESI Act, the properties were agricultural lands, the same were being exempted from the provisions of the SARFAESI Act, the burden was upon the borrower to prove that the secured properties were agricultural lands and actually being used as agricultural lands and/or agricultural activities were going on. *(Para 7-8)*

Constitution of India, 1950; Article 226, 227 - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - In view of alternative statutory remedy available by way of appeal before the DRAT, the High Court ought not to have entertained the writ petition under Article 226/227 allowing the borrower to circumvent the provision of appeal before the DRAT under the provisions of the SARFAESI Act. *(Para 6)*

For Parties Mr. Yelamanchili Shiva Santosh Kumar, Adv. Mr. Rudrajit Ghosh, Adv. Mr. Yatinder Chaudhary, Adv. Mr. Davinder Singh Khurana, Adv. Mr. Abhishek Sharma, Adv. Mr. Tarun Gupta, AOR Mr. Himanshu Munshi, AOR Mr. Krishna Kumar Singh, AOR

J U D G M E N T

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.03.2020 passed by the High Court for the State of Telangana at Hyderabad in Writ Petition No.12081/2019 by which the High Court has allowed the said writ petition preferred by the debtor and has quashed and set aside the order passed by the Debts Recovery Tribunal – I (hereinafter referred to as "DRT-I") in SA No.171/2016 as well as the Possession Notice dated 05.02.2016 and the Sale Notice dated 10.01.2017 issued by the Indian Bank (hereinafter referred to as "secured creditor") and also the sale of Item No.8 property mentioned in the Sale Notice pursuant to the auction held, the auction purchaser as well as the secured creditor have preferred the present appeals.

2. The facts leading to the present appeals in nut-shell are as under:

2.1 That, the respondent No.1 herein – M/s. Raus Constructions Private Ltd. (hereinafter referred to as "Debtor") availed financial assistance, credit facilities in the year 2012 from the Indian Bank i.e. the secured creditor. Due to defaults on the part of the borrowers in servicing the loan account, the same was classified as NPA. The secured creditor initiated the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") and issued the demand Notice to the borrowers including the mortgagors and the guarantors, calling upon them to pay the outstanding amount. As the amount of the Demand Notice was not paid, the secured creditor issued Notice to the borrowers / mortgagors / guarantors. That, the Possession Notice

was issued with respect to Item Nos.1 to 8. The secured creditor on 05.02.2016 issued a consolidated Possession Notice detailing the possession of 12 items of properties and the dates on which the possession of the same was taken. The Possession Notice was published in newspapers. Thereafter, the secured properties including the property Item No.8 (property in question) was put to auction through e-auction notice dated 28.03.2016. That, the borrowers filed the writ petition before the High Court being aggrieved by the e-auction and sought stay of all further proceedings initiated by the secured creditor under the provisions of the SARFAESI Act and pursuant to the Possession Notice dated 05.02.2016, including e-auction Notice, till the disposal of SA No.171/2016 on the file of DRT-I, Hyderabad. That, the writ petition came to be dismissed by the High Court in view of the pendency of SA No.171/2016 before the DRT-I, Hyderabad. A fresh eauction Notice was issued. That, the property Item No.8 was purchased by the auction purchaser (appellant herein) in Civil Appeal arising out of Special Leave Petition No.14695/2020 on 17.02.2017. The e-auction was conducted on 17.02.2017 in which the auction purchaser was declared the successful bidder. He was issued the Letter of Acceptance on 18.02.2017. The auction purchaser deposited 25% of the amount of sale consideration on 18.02.2017. The sale in favour of the auction purchaser came to be confirmed on 08.03.2017. On deposit of the entire/full sale consideration, the sale certificate came to be issued in favour of the auction purchaser on 23.03.2017.

2.2 By an order dated 16.05.2019, the DRT-I, Hyderabad dismissed SA No.171/2016 filed by the borrowers and confirmed the sale certificate issued in favour of the auction purchaser. At this stage it is required to be noted that before the DRT-I, it was the case on behalf of the borrowers that the property Item No.8 was the agricultural land and therefore, the same could not have been the subject matter of auction under the provisions of the SARFAESI Act. However, the DRT-I while dismissing the aforesaid SA No.171/2016 did not accept the same by observing that apart from the revenue records, the borrowers did not file any evidence to prove that the agricultural activity was going on in the land mortgaged with the secured creditor whereas the secured creditor filed photographs showing no agricultural activities were going on. Therefore, the DRTI held that the lands in question (property Item No.8) were not exempted from the provisions of the SARFAESI Act.

2.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the DRT-I, Hyderabad dated 16.05.2019 dismissing the SA No.171/2016, the borrowers filed the writ petition being Writ Petition No.12081/2019. By the impugned judgment and order, the High Court has allowed the said writ petition and has quashed and set aside the order passed by the DRTI dismissing the SA No.171/2016. By the impugned judgment and order the High Court has also set aside the Possession Notice as well as the Sale Certificate issued in favour of the auction purchaser with respect to the Sale of Item No.8 property mentioned in the auction Notice. While allowing the writ petition, the High Court has observed and held that there was non-compliance of the Rule 9(3) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as “Rules, 2002”) *inter alia* on the ground that 25% of the amount of sale price and thereafter 75% of the balance sale price was not deposited within the time stipulated under Rule 9 of the Rules, 2002. The High Court also observed and held that in view of Section 31(i) of the SARFAESI Act, the property Item No.8 being an agricultural land could not have been put to auction.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court quashing and setting aside the sale with respect to property Item No.8, auction purchaser as well as secured creditor have preferred the present appeals.

3. Shri Dhruv Mehta, learned senior counsel appearing on behalf of the auction purchaser and learned senior counsel appearing on behalf of the secured creditor have vehemently submitted that the High Court has materially erred in entertaining the writ petition against the judgment and order passed by the DRT-I. It is submitted that against the order passed by the DRT-I, the borrower was required to prefer an appeal before the Debts Recovery Appellate Tribunal (hereinafter referred to as "DRAT"). It is submitted that only with a view to circumvent the provisions of the appeal before the DRAT and to get out of the deposit of the pre-deposit amount, the borrower straightway preferred writ petition before the High Court against the judgment and order passed by the DRT-I, which ought not to have been entertained by the High Court in view of availability of alternative statutory remedy under the provisions of the SARFAESI Act.

3.1 It is further submitted that even on merits also, the High Court has materially erred in holding that there was breach of Rule 9(3) and Rules 8(1) & (2) of the Rules, 2002.

3.2 It is submitted that the High Court has not properly appreciated and/or considered the amendment in 2016 with respect to Rule 9(3) whereby 25% of payment could be made within next day of auction. It is submitted that therefore the High Court has materially erred in setting aside the sale transaction on the basis of such manifest ignorance.

3.3 It is submitted that in the present case, the auction purchaser deposited the amount within the time prescribed under Rule 9(4) of the Rules, 2002 and thereafter the sale certificate was issued on 23.03.2017 for the said item which was registered on 07.02.2018 and the possession was also handed over to the auction purchaser.

3.4 It is further submitted by the learned senior counsel appearing on behalf of the auction purchaser that in the present case the auction purchaser quoted Rs.2,76,10,000/- for item No.8 of the Possession Notice. He deposited on 14.02.2017, prior to the auction on 17.02.2017 , Rs.26 lakh vide RTGS; that he deposited after the auction was held on 17.02.2017 pursuant to the letter dated 18.02.2017 an amount of Rs.45 lakh again through RTGS. It is submitted that the respondent secured creditor – Bank vide communication dated 08.03.2017 directed the auction purchaser to deposit balance 75% of the bid amount within 15 days and he gave cheque dated 23.03.2017 for an amount of Rs.2,05,10,000/-. It is submitted that therefore the entire amount was deposited within the time stipulated. It is submitted that therefore in the facts and circumstances of the case the High Court has materially erred in quashing and setting the sale on the ground that there was violation of Rules 8(1) & (2) and 9(3) of the Rules, 2002.

3.5 It is further submitted by the learned senior counsel appearing for the auction purchaser that the High Court ought to have appreciated that after the payment of full sale consideration, the sale certificate was issued in favour of the auction purchaser on 23.03.2017 which was registered on 07.02.2018 and after the possession was handed over to him, he spent huge amount in leveling the plot; applied for permission

to the Municipal Authorities to construct the house in the plot. It is submitted that therefore the High Court has seriously erred in quashing and setting aside the sale.

3.6 Learned senior counsel appearing on behalf of the auction purchaser has further submitted that the High Court has also erred in setting aside the Sale Notice, Possession Notice etc. on the ground that the properties were exempted from the provisions of the SARFAESI Act in view of Section 31(i) of the SARFAESI Act.

3.7 It is submitted that as such the scheduled properties were not actually put to use for agricultural purposes. It is submitted that there was no proof filed to prove that agriculture is being done in the scheduled properties in question. It is submitted that there was no agricultural activity taking place. It is submitted that in fact the photographs were filed which proved that no agricultural activities were going on. It is submitted that therefore when the secured properties in question were not put to use for agricultural purposes and/or no agricultural activity was going on, the properties in question were not exempted under Section 31(i) of the SARFAESI Act. Heavy reliance is placed on the decisions of this Court in the case of ITC Limited vs. Blue Coast Hotels Limited and Others reported in (2018) 15 SCC 99 (Para 36) and Indian Bank and Another vs. K. Pappireddiyar and Another reported in (2018) 18 SCC 252 (Paras 7 & 8).

3.8 Now, so far as taking the possession of Item Nos.1 to 12 and the issuance of Possession Notice on 05.02.2016 and the findings recorded by the High Court on Section 13(4) of the SARFAESI Act that the Possession Notice was issued after a period of one year is concerned, it is submitted that there was a typographical error in mentioning the possession date. It is submitted that instead of 03.02.2016, 04.02.2016 and 05.02.2016, dates were mentioned as 03.02.2015, 04.02.2015 and 05.02.2015 , which were nothing but typographical error. It is submitted that therefore the Possession Notice cannot be said to be in breach of Section 13(4) of the SARFAESI Act.

Making above submissions, it is requested to allow the present appeals.

4. Present appeals are vehemently opposed by Mr. Pratap Narayan Sanghi, learned senior counsel appearing on behalf of the borrower. It is submitted that in the facts and circumstances of the case and having found that there was a breach of Rules 8(1) & (2) and 9(4) of the Rules, 2002 and Section 13(4) of the SARFAESI Act, the High Court has not committed any error in entertaining the writ petition under Article 226 of the Constitution of India against the judgment and order passed by the DRT-I.

4.1 It is further submitted that so far as the property Item No.8 is concerned, there was a clear breach of Rules 8(1) & (2) and 9(4) of the Rules, 2002. It is submitted that therefore the High Court has not committed any error in quashing and setting aside the sale with respect to the property Item No.8.

4.2 It is further submitted that so far as other properties are concerned, as the said properties were agricultural lands / properties, in view of Section 31(i) of the SARFAESI Act, with respect to those properties / agricultural lands, the SARFAESI Act would not be applicable. It is submitted that in the revenue records, properties in question were shown as agricultural lands and therefore, the said properties were exempted from the provisions of the SARFAESI Act in view of Section 31(i) of the SARFAESI Act.

Making above submissions, it is requested to dismiss the present appeals.

5. We have heard the learned counsel appearing on behalf of the secured creditor – Bank as well as the learned senior counsel appearing on behalf of the auction purchaser of property at Item No.8 and learned senior counsel appearing on behalf of the borrower.

6. At the outset, it is required to be noted that what was challenged before the High Court by the borrower in a writ petition under Article 226 of the Constitution of India was the judgment and order passed by the DRT-I. Against the judgment and order passed by the DRT-I dismissing the application, the borrower had a statutory remedy available by way of appeal before the DRAT. If the borrower would have preferred an appeal before the DRAT, he would have been required to deposit 25% of the debt due. To circumvent the provision of appeal before the DRAT and the pre-deposit, the borrower straightway preferred the writ petition before the High Court under Article 226/227 of the Constitution. Therefore, in view of alternative statutory remedy available by way of appeal before the DRAT, the High Court ought not to have entertained the writ petition under Article 226/227 of the Constitution of India challenging the judgment and order passed by the DRT-I. By entertaining the writ petition straightway under Article 226/227 of the Constitution of India challenging the order passed by the DRT-I, the High Court has allowed / permitted the borrower to circumvent the provision of appeal before the DRAT under the provisions of the SARFAESI Act.

6.1 Even on merits also, for the reasons stated hereinafter, the impugned judgment and order passed by the High Court is unsustainable.

6.2 By the impugned judgment and order, the High Court has set aside the sale in favour of the auction purchaser with respect to the property at Item No.8 on the ground that there was a violation of Rules 8(1) & (2) and 9(4) of the Rules, 2002. However, while observing so, the High Court has not properly appreciated that in the present case, the Possession Notices were published in two leading newspapers having sufficient circulation in the locality. Even the Possession Notices were also served upon the borrowers also. Therefore, the High Court has materially erred in holding that there was a breach of Rules 8(1) & (2) of the Rules, 2002.

6.3 Now, so far as the finding recorded by the High Court on Rules 9(3) and 9(4) of the Rules, 2002 is concerned, the findings recorded by the High Court are just contrary to the provisions of Rule 9 of the Rules, 2002. The High Court has observed that 25% of the amount was not deposited on the date of auction and that balance 75% amount was not deposited on or before 15th day of confirmation of the sale. Both the aforesaid findings are just contrary to Rules 9(3) and (4) of the Rules, 2002. Rules 9(3) and 9(4) read as under:

"9. Time of sale, issue of sale certificate and delivery of possession, etc.

(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable

property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months."

The purchaser was required to deposit 25% of the amount of the sale price on the same day of sale or not later than the next working day. Therefore, 25% of the sale price could have been deposited either on the same day of the sale or on the next working day. In the present case, the auction was held on 17.02.2017. The auction purchaser deposited Rs.26 lakh through RTGS on 14.02.2017 i.e. prior to the auction on 17.02.2017. He deposited a further sum of Rs.45 lakh again through RTGS on the very next day of the sale i.e. on 18.02.2017 itself. Therefore, the entire 25% of the sale price came to be deposited by 18.02.2017. Therefore, the deposit of 25 % was permissible not later than next working day and the entire 25% was deposited on 18.02.2017 i.e. on the next day of the sale dated 17.02.2017. Therefore, the High Court has committed an error in observing and holding that there was a breach of Rule 9(3) of the Rules, 2002.

6.4 Similarly, the High Court has also erred in holding that there was a breach of Rule 9(4) of the Rules, 2002. The High Court has held so by observing that the auction purchaser did not deposit the balance 75% of the sale price on or before 15th day of confirmation of sale. However, it is required to be noted that by communication / letter dated 08.03.2017, the secured creditor – Bank directed the auction purchaser to deposit the balance 75% of the bid amount within 15 days and the auction purchaser deposited the balance 75% of the sale price on 23.03.2017, i.e., on the 15th day from the date of communication by the secured creditor – Bank to deposit balance 75% of the bid amount within 15 days. As per Rule 9(4) of the Rules, 2002, the balance amount of purchase price payable shall be paid by the purchaser to the Authorized Officer on or before 15th day of confirmation of sale of the immovable property or such extended period, in any case not exceeding three months. Therefore, the communication dated 08.03.2017 can be said to be the extended period by the secured creditor / Bank. Therefore, on the 15th day from the date of communication dated 08.03.2017, when the entire 75% of the sale price was deposited, it can be said that the entire sale price was deposited within the time prescribed under Rules 9(3) and (4) of the Rules, 2002. Therefore, the High Court has committed an error in holding that there was a breach of Rules 9(3) & (4) of the Rules, 2002.

7. Now, so far as with respect to remaining properties / secured assets viz. Item Nos.3 and 9 to 12 and the submission on behalf of the borrowers that as the said scheduled properties were agricultural properties, therefore the said properties were exempted from the provisions of the SARFAESI Act in view of Section 31(i) of the SARFAESI Act is concerned, at the outset, it is required to be noted that except the revenue records, the borrowers did not file any evidence to show that the agricultural work was being done in the said properties. On the contrary, the secured creditor produced the photographs to show that there was no agricultural activities being done and no agricultural activity was going on. The High Court has observed and held that the scheduled properties in question were exempted from the provisions of SARFAESI Act in view of Section 31(i) of the SARFAESI Act on the ground that the revenue records and *Pattadar* pass-books and the title deeds show that the properties were agricultural properties / lands and that no evidence is produced by the secured creditor that these properties are nonagricultural lands and have been put to non-agricultural use after obtaining permission from the competent authorities. Therefore, the High Court has shifted the burden upon the secured creditor to prove that the properties

are non-agricultural lands. The view taken by the High Court is just contrary to the two decisions of this Court in the case of Blue Coast Hotels Limited and Others (Supra) and K. Pappireddiyar and Another (Supra). In both the aforesaid decisions, this Court has specifically observed and held after considering the object and purpose of Section 31(i) of the SARFAESI Act that merely because in the revenue records the secured properties are shown as agricultural land is not sufficient to attract Section 31(i) of the SARFAESI Act. In the aforesaid decision, it is specifically observed and held that for the purpose of attracting Section 31(i) of the SARFAESI Act, the properties in question ought to be actually used as agricultural lands at the time when the security interest was created. In the case of Blue Coast Hotels Limited and Others (Supra), it is also further observed by this Court that since no security interest can be created in respect of agricultural lands and yet it was so created, goes to show that the parties did not treat the land as agricultural land and that the debtor offered the land as security on this basis. After following the decision of this Court in the case of Blue Coast Hotels Limited and Others (Supra), in the case of K. Pappireddiyar and Another (Supra), it is observed and held in paragraphs 8 and 9 as under:

"8. The expression "security interest", both before and after the amendment, excludes what is specified in Section 31. Clause (i) of Section 31 stipulates that the provisions of the Act will not be applicable to any security interest created in agricultural land. The statutory dictionary in Section 2 does not contain a definition of the expression "agricultural land". Whether a particular piece of land is agricultural in nature is a question of fact. In the decision of this Court in *Blue Coast Hotels Ltd.,*[4] a security interest was created in respect of several parcels of land which were meant to be a part of a single unit, for establishing a hotel in Goa. Some of the parcels were purchased by the debtor from agriculturists and were entered as agricultural lands in the revenue records. The debtor had applied to the revenue authority for the conversion of the land to non-agricultural use, but the applications were pending. This Court held that the fact that the debtor had created a security interest was indicative of the position that the parties did not treat the land as agricultural land. The undisputed position was that the hotel was located on 1,82,225 sq m of land of which 2335 sq m were used for growing vegetables and fruits for captive consumption. In this background, the two-Judge Bench of this Court held that:

"49. The mortgage is thus intended to cover the entire property of the Goa Hotel. Prima facie, apart from the fact that the parties themselves understood that the lands in question are not agricultural, it also appears that having regard to the use to which they are put and the purpose of such use, they are indeed not agricultural."

The Court further held that: (SCC OnLine SC para 57)

"57. …having regard to the character of the land the purpose for which it is set apart, we are of the view that the land in question is not an agricultural land. The High Court misdirected[5] itself in holding that the land was an agricultural land merely because it stood as such in the revenue entries, even though the application made for such conversation lies pending till date."

9. The classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply. Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart."

7.1 The purpose of enacting Section 31(i) of the SARFAESI Act has been considered by this Court in the case of Blue Coast Hotels Ltd. (Supra) in paragraph 36, which reads as under:

"36. The purpose of enacting Section 31(i) and the meaning of the term "agricultural land" assume significance. This provision, like many others is intended to protect agricultural land held for agricultural purposes by agriculturists from the extraordinary provisions of this Act, which provides for enforcement of security interest without intervention of the Court. The plain intention of the provision is to exempt agricultural land from the provisions of the Act. In other words, the creditor cannot enforce any security interest created in his favour without intervention of the court or tribunal, if such security interest is in respect of agricultural land. The exemption thus protects agriculturists from losing their source of livelihood and income i.e. the agricultural land, under the drastic provision of the Act. It is also intended to deter the creation of security interest over agricultural land as defined in Section 2(1)(zf)[35]. Thus, security interest cannot be created in respect of property specified in Section 31."

7.2 Thus, as per the law laid down by this Court in the aforesaid two decisions, only in a case where the secured property is actually put to use as agricultural land and solely on the basis of the revenue records / *Pattadar* and once the secured property is put as a security by way of mortgage etc. meaning thereby the same was not treated as agricultural land, such properties cannot be said to be exempted from the provisions of the SARFAESI Act under Section 31(i) of the SARFAESI Act. Applying the law laid down in the aforesaid two decisions to the facts of the case on hand and when no evidence was led at all on behalf of the borrowers that the secured properties in question were actually put to use as agricultural land and/or any agricultural activity was going on, the High Court has committed an error in applying Section 31(i) of the SARFAESI Act and quashing and setting aside the entire Possession Notice, Auction Notice as well as Sale etc.

7.3 The High Court has also materially erred in shifting the burden upon the secured creditor to prove that the properties were not non-agricultural lands or have been put to non-agricultural use. When it was the case on behalf of the borrowers that in view of Section 31(i) of the SARFAESI Act, the properties were agricultural lands, the same were being exempted from the provisions of the SARFAESI Act, the burden was upon the borrower to prove that the secured properties were agricultural lands and actually being used as agricultural lands and/or agricultural activities were going on. Therefore, the High Court has materially erred in shifting the burden upon the secured creditor to prove that the properties are non-agricultural lands or have been put to non-agricultural use.

8. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside. Accordingly, the impugned judgment and order dated 06.03.2020 passed by the High Court for the State of Telangana at Hyderabad in Writ Petition No.12081/2019 is hereby quashed and set aside and the judgment and order dated 16.05.2019 passed by the Debts Recovery Tribunal-I, Hyderabad dismissing SA No.171/2016 is hereby restored.

Presently appeals are allowed accordingly. No costs.