

Bank of Baroda v. PARASAADILAL TURSIRAM SHEETGRAH PVT. LTD 2022 PLRonline 0606 (SC)

SUPREME COURT OF INDIA

Before : Justice B.R. Gavai and Justice Pamidighantam Sri Narasimha.

BANK OF BARODA & Anr. – Petitioner

Versus

M/S PARASAADILAL TURSIRAM SHEETGRAH PVT. LTD. & Ors. – Respondents

Civil Appeal No. 5240 of 2022 Arising Out of SLP (C) No. 6368 of 2017.

11.08.2022.

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 17 - DRT dismissed the application under Section 17 having being filed after the prescribed 45-day limitation period mandated by Section 17(1) - On review DRT reversed its decision on the basis that a director, had passed away prior to the auction and that his legal representatives were not duly notified of the proceedings - DRAT allowed appeal holding that there was no error apparent on the face of the record - High Court in Writ jurisdiction stayed the appellate order - *Held*, High Court was not justified in staying the operation of the order of the DRAT which came to the conclusion that there was no error apparent on the face of record for the DRT to invoke the review jurisdiction and recall its order dismissing the application under Section 17 of the Act. [Para 14]

Held, DRT allowed the review on the ground that RS had expired before the auction had taken place and that his legal representatives were not issued notice. It is rather strange that the DRT not only entertained the Review Petition, but has allowed the same on the aforesaid ground.

Case referred to:-

1.(2007-1)145 PLR 222 (SC), *Transcore v. Union of India*

For the Appellant:- Mr. Arun Aggarwal, Advocate.

For the Respondent:- Mr. Arjun Garg, Advocate and M/s. AP & J Chambers.

ORDER

Leave granted.

2. This appeal by Bank of Baroda is against an Interlocutory Order of stay passed by the High Court of Judicature at Allahabad, Lucknow Bench pending disposal of a Writ Petition. The Writ Petition was filed by the Respondent Company against the order in appeal by the Debt Recovery Appellate Tribunal dated 02.12.2016. By this order the challenge laid to the Sale Certificate issued in favour of the Auction Purchaser under section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was dismissed on the ground of limitation. While issuing notice, this Court had stayed the impugned interim order dated 19.12.2016 passed by the High Court of Judicature at Allahabad, Lucknow Bench and the order of stay continues to hold the field.

3. The short facts leading to the filing of the appeal are as follows. The first Respondent Company availed certain credit facilities for which the Directors of the Company gave personal guarantees along with an equitable mortgage of immovable property. As the Company defaulted in repayment of the loan, the Bank issued notice under Section 13(2) of the Act demanding an amount of Rs. 2,34,15,456/- from the Company and its Directors. For non-payment, a notice under Section 13(4) of the Act demanding actual physical possession was also issued. It is the case of the Bank that the actual physical possession of

the secured asset was obtained by its authorized officers on 30.08.2010.

4. The Company along with one of its Directors filed a Civil Writ Petition No. 56410/2010 challenging the issuance of the notices under Sections 13(2) and 13(4) of the Act and sought a writ of mandamus restraining the Bank from taking any coercive action for the recovery of the amount. The Writ Petition was disposed of with the only direction that the entire dues will be paid back in four equal installments, and if the Company fails to pay up the dues within the time prescribed, the Bank shall be at liberty to proceed in accordance with law.

5. As the Company and its Directors failed to comply with the schedule as determined by the High Court, the Bank proceeded further and issued a sale proclamation which culminated in Respondent No. 7 being declared the successful bidder. A sale certificate was also issued in his favour.

6. The present proceedings commence with a challenge to the above referred sale certificate in an application under Section 17 of the Act by the Respondent Company and the Directors. It is important to mention at this stage that, the application under Section 17 was filed by the Company, its three Directors, being Sri Vinod Kumar, Smt. Gayatri Devi and Sri Rameshwar Prasad. The other Director Sri Rakesh Sharma, who expired on 18.09.2012 was represented by his legal representatives.

7. After hearing the Company, its Directors and the legal representatives of the deceased Director, the DRT dismissed the Section 17 application on the ground that it was filed beyond the statutory period of limitation of 45 days. According to Section 17(1), the period of 45 days is mandated to commence from the date on which a measure under Section 13(4) has been adopted, which in the facts of the present case is the date when the secured asset is sold in favour of Respondent No.7.

8. The above referred order was challenged in review. The DRT by its order dated 08.08.2016 allowed the review on the ground that Sri Rakesh Sharma had expired before the auction had taken place and that his legal representatives were not issued notice. It is rather strange that the DRT not only entertained the Review Petition, but has allowed the same on the aforesaid ground.

9. The order in review was challenged before the DRAT, which found no difficulty in allowing the appeal on the ground that there has never been an error apparent on the face of record for exercising the review jurisdiction. It is this order of DRAT that was challenged before the High Court in the Writ Petition filed by the Company, its Directors and also the legal representatives of the deceased Director. This very same ground was raised, that one of the Directors had expired and that his legal representatives were not given notice before the secured asset was brought to sale.

10. On the above referred question, the High Court admitted the Writ Petition and proceeded to grant the following interim order, which is the order impugned before us.

“In the aforesaid circumstances, it is provided that till further orders of this Court, the operation and implementation of the appellate order dated 02.12.2016 passed in Appeal No.210 of 2016 shall remain stayed and the Debts Recovery Tribunal shall proceed with the Securitization Application.”

11. We are only concerned with the limited question as to whether the High Court was justified in passing the interim order as extracted herein above. This is a case where the Company, with its own independent identity, is contesting the proceedings. It is apparent that the Directors were also contesting the matter by filing the Section 17 application. Even the legal representatives of one of the deceased Directors were party to the application under Section 17. Further, DRAT came to the conclusion that the original order passed by the DRT has been arrived at after a detailed consideration and that there is no justifiable

ground for invoking the review jurisdiction. For granting or refusing to grant an interim order, the above referred facts were more than sufficient.

12. The reason for providing a time limit of 45 days for filing an application under Section 17 can easily be inferred from the purpose and object of the enactment. In ***Transcore v. Union of India and Anr. (2007-1)145 PLR 222 (SC), (2008) 1 SCC 125***, this Court held that the SARFAESI Act is enacted for quick enforcement of the security. It is unfortunate that proceedings where a property that has been brought to sale and third-party rights created under the provisions of the Act, have remained inconclusive even after a decade.

13. Though the Special Leave Petition was pending in this Court since the last five years, this Court at the stage of admission had granted a stay of the impugned order, the consequence of which would be that the High Court's interim order has not come into operation. The effect of the interim order passed by this Court is that the order of DRT upholding the dismissal of the application under Section 17 dated 26.11.2015 would continue to operate.

14. For the reasons stated above, we are of the opinion that the High Court was not justified in staying the operation of the order of the DRAT which came to the conclusion that there was no error apparent on the face of record for the DRT to invoke the review jurisdiction and recall its order dismissing the application under Section 17 of the Act.

15. In conclusion, we allow the appeal and set aside the impugned interim order dated 19.12.2016 passed by the High Court of Judicature at Allahabad, Lucknow Bench pending disposal of the W.P. Misc. Single No. 29911 of 2016 and request the High Court to dispose of the Writ Petition expeditiously, preferably within a period of three months from the date of receipt of this order.

16. Needless to say, that we have not expressed any opinion on the merits of the case.

17. No order as to costs.

2022 AIR SC 3803 , 2022 INSC 819 ,