

2021 PLRonline 5002 (ALL.)

ALLAHABAD HIGH COURT

Before:- Siddhartha Varma, J.

Authorized Officer, SBI - Petitioner

Versus

Rakesh Singh And Another - Respondents

Writ-C No.23199 of 2020.

9.11.2021.

1. **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Dead person - Sale - . The proceeding conducted against a dead person is bad in law - LRs of borrowers/respondent not brought on record - After the sale notice was issued on 6.11.2018 and thereafter on 26.11.2018, the respondent no.1 had informed the Bank about the death of the deceased KD on 21.11.2018 and the Bank had also asked for the details of the legal heirs and representatives of the deceased - It was imperative for the Bank to have substituted the legal heirs and representatives of the deceased - Bank had sold the property of a dead person on 10.12.2018 - The purpose of giving a 30 days' sale notice is that the owner/borrower be given an opportunity to plead before the Bank to liquidate the dues and give an opportunity to the persons to whom the notice had been issued may point out any discrepancy in the proceeding - Since the legal heirs and representatives had not been brought on record, the auction was definitely erroneously done and so was the sale certificate issued erroneously**

2. **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Issuance of sale certificate does not oust the borrower and the guarantors to raise issues with regard to discrepancy, if any, committed by the Bank in the proceedings.**
3. **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Borrower/guarantor always had the right to get the dues paid off before the auction of the property was done as till the auction, no third party right had been created.**

[Para 7]

Cases Referred :-

1. *Kamal Krishan Rastogi v. State of Bihar 2008 (15) SCC 105*
2. *M/s. L&T Housing Finance Ltd. v. M/s. Trishul Developers Civil Appeal No.3413 of 2020 decided on 27.10.2020*
3. *Sk. Sakir Ali v. Punjab National Bank Writ Petition No.2923 (W) of 2019, decided on 8.2.2019*

For the Petitioner:- Tarun Varma and Kaushalendra Nath Singh, Advocates.

For the Respondent:- Amit Kumar Asthana and Kushal Kant, Advocates.

JUDGMENT

Siddhartha Varma, J. - The respondent no.1-Rakesh Singh along with his father Bal Govind Singh and mother Kanti Devi took a housing loan from the petitioner-Bank. The mother Smt. Kanti Devi pledged the title deeds of her property as a collateral security. When the borrowers failed to pay the loan in terms of the repayment schedule, the Bank issued a demand notice on 6.10.2008 under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter

referred to as the "SARFAESI Act") and demanded a sum of Rs.16,34,145.77. Thereafter a notice for possession was issued under section 13(4) of the SARFAESI Act on 14.6.2018 and symbolic possession of the property was taken. The mother Smt. Kanti Devi along with the respondent-Rakesh Singh and Sunita Singh, the wife of Rakesh Singh, filed a writ petition for the quashing of the recovery notice dated 15.6.2018. Along with this prayer, it was also prayed that the Bank may not take actual physical possession of the property. This writ petition was numbered as Writ-C No.23133 of 2018. However, the writ petition was dismissed on 10.7.2018 as being premature. Thereafter the mother of the respondent no.1, Smt. Kanti Devi along with two others filed one more writ petition being Writ-C No.38431 of 2018 which the counsel for the petitioners got dismissed on 26.11.2018 by stating that Smt. Kanti Devi had died after the filing of the writ petition and that the petitioners' counsel had instructions to withdraw the writ petition as there was a likelihood of a settlement with the Bank. In the meantime, the Bank had issued sale notice on 6.11.2018 and had scheduled the auction for 10.12.2018. Since the borrower Kanti Devi who was also a person who had kept her personal property as a collateral security had expired on 21.11.2018, the respondent no.1 informed the Bank on 26.11.2018 to defer the auction. The Bank on 3.12.2018 requested the respondent no.1 to furnish the details of the legal heirs of Smt. Kanti Devi but did not defer the auction and on 10.12.2018 the property of Smt. Kanti Devi was auctioned as per the earlier fixed schedule. The respondent no.2 was declared the highest bidder. He, as a consequence thereof, deposited the entire amount and a sale certificate was also issued on 24.12.2018 in his favour. Challenging the action of the Bank, the

respondent no.1-Rakesh Singh filed a Securitisation Application No.903 of 2018 and therein alleged that before the auction took place on 10.12.2018 and after the sale notice was issued on 6.11.2018, Smt. Kanti Devi had died on 21.11.2018 and without impleading the legal heirs and representatives of the deceased Kanti Devi, the auction had taken place which was bad in law. It was also alleged that in the period of 30 days after the sale notice the owner of the property or the borrower could have pleaded before the Bank for the liquidation of the dues. Also during the period of 30 days of notice, the owner of the property or the borrower could point out the discrepancy, if any, if was there in the proceedings. It was also alleged that the auction was bad as the owner of the property Kanti Devi had died on 21.11.2018 and the legal heirs and representatives of hers were not brought on record. Further it was argued that even the possession notice was bad in law as Sri Bal Govind Singh had died on 2.4.2015. It was, therefore, alleged that the possession notice; the sale notice and thereafter the auction, all were bad on account of the fact that Sri Bal Govind Singh had died on 2.4.2015 and Smt. Kant Devi had expired on 21.11.2018. The Securitisation Application was, however, dismissed by the Debts Recovery Tribunal. Viz.-a-viz. the possession notice it was dismissed saying that the respondent no.1 did not inform about the death of the co-borrower Bal Govind Singh to the Bank at any point of time; the respondent-Bank had proceeded against the secured asset owned by the mortgagor Smt. Kanti Devi and she was very much alive and, therefore, no illegality was found in the sale notice dated 6.11.2018. So far as the challenge to the sale notice and the auction was concerned, the Debts Recovery Tribunal rejected the claim of the respondent no.1 on the ground that the sale notice was issued on

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6.11.2018 in terms of Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 by giving a clear notice of 30 days during the lifetime of the mortgagor Smt. Kanti Devi which was duly served on the present applicant also and the mortgagor through registered-post. Therefore, the Debts Recovery Tribunal had held that since the notice was issued in the lifetime of Smt. Kanti Devi and since the Bank was not having any details of her legal heirs and representatives prior to the issuing of the sale notice, there was no illegality in the auction proceedings.

2. The respondent no.1 filed an appeal. The Appellate Tribunal, even though maintained the order of the Debts Recovery Tribunal with regard to the legality of the possession dated 15.6.2018, it reversed the finding with regard to the fact that the auction dated 10.12.2018 was correct despite the fact that Smt. Kanti Devi had died on 21.11.2018 and thereafter allowed the appeal; set-aside the order dated 4.11.2019 of the Debts Recovery Tribunal and also quashed the sale notice dated 6.11.2018. The auction dated 10.12.2018 and the sale certificate which was issued to the respondent no.2 on 24.12.2018 were also set aside. The Debts Recovery Appellate Tribunal also directed that the sale price which was deposited by the respondent no.2 be returned to him with interest at the rate of 9% per annum from the date when the respondent no.2 had deposited the amount till the date of actual payment.

3. Aggrieved thereof, the petitioner-Bank has filed the instant writ petition.

4. Learned counsel for the petitioner submitted that since the respondent no.1 had concealed the filing of the Writ Petition Nos.23133 of 2018 and 38431 of 2018, there was a concealment before the Debts Recovery Tribunal and also before the Debts Recovery Appellate Tribunal. He also

submitted that as per the judgment of Calcutta High Court in **Sk. Sakir Ali & Ors. v. Punjab National Bank & Ors. (Writ Petition No.2923 (W) of 2019, decided on 8.2.2019)**, the death of the guarantor or the borrower does not vitiate proceedings under the SARFAESI Act. Learned counsel for the petitioner also relied upon a judgment of the Supreme Court in **M/s. L&T Housing Finance Ltd. v. M/s. Trishul Developers & Anr. (Civil Appeal No.3413 of 2020 decided on 27.10.2020)** and submitted that technicalities would not come in the way of the recovery of dues by the Bank. Still further, learned counsel for the petitioner argued that the borrower had failed to comply with the provisions of section 13(8) of the SARFAESI Act and the Debts Recovery Appellate Tribunal had committed a manifest error in allowing the appeal. In the end, learned counsel for the petitioner submitted that in the event the writ petition was dismissed, at least one month's time be granted to the Bank to return the money to the auction purchaser.

5. Learned counsel appearing for the respondent no.1 Sri Kushal Kant, however, submitted that when Smt. Kanti Devi, the mother of respondent no.1 had expired on 21.11.2018 leaving behind two sons and four daughters then all the legal heirs and representatives of Kanti Devi ought to have been arrayed in the proceedings so that they could have availed the opportunity which is granted by the Statute for either paying the loan or for objecting to the procedure and since this opportunity was not made available to the legal heirs and representatives of the deceased Kanti Devi, the sale notice; the auction and the sale certificate were rightly set-aside by the Debts Recovery Appellate Tribunal. He once again reiterated before the Court that proceedings initiated against a dead person were vitiated in law. Learned counsel appearing for the respondent no.1 relying

upon a decision of the Supreme Court in ***Kamal Krishan Rastogi & Ors. v. State of Bihar & Anr. reported in 2008 (15) SCC 105*** submitted that the proceedings against a dead person were unsustainable. He, therefore, submits that the sale notice was vitiated and so was the auction and the sale certificate.

6. Learned counsel appearing for the auction purchaser Sri Amit Kumar Asthana has supported the judgment of the Debts Recovery Appellate Tribunal and has submitted that since the auction sale had been set-aside, the respondent no.2 be given the amount which was required to be refunded as per the order of the Debts Recovery Appellate Tribunal.

7. Having heard learned counsel for the parties, this Court is of the view that since the portion of the order which was upheld by the Debts Recovery Appellate Tribunal of the Debts Recovery Tribunal by which it was held that the possession was correctly taken has not been challenged by the respondent no.1, no further finding is required to be given with regard to that. However, the Court is definitely of the view that as after the sale notice was issued on 6.11.2018 and thereafter on 26.11.2018, the respondent no.1 had informed the Bank about the death of the deceased Kanti Devi on 21.11.2018 and the Bank had also asked the respondent no.1 to provide the details of the legal heirs and representatives of the deceased, it was imperative for the Bank to have substituted the legal heirs and representatives of the deceased Kanti Devi in the proceedings. It was, thus, clear that the Bank had sold the property of a dead person on 10.12.2018. The purpose of giving a 30 days' sale notice is that the owner/borrower be given an opportunity to plead before the Bank to liquidate the dues. The further purpose is that the persons to whom the notice had been issued may point out any discrepancy in the proceeding.

In the instant case, the owner of the property Kanti Devi had died on 21.11.2018 and since the legal heirs and representatives had not been brought on record, the auction was definitely erroneously done and so was the sale certificate issued erroneously. The proceeding conducted against a dead person is bad in law. The argument of the petitioner-Bank that the respondent no.1 and other legal heirs and representatives had lost their right of redemption of issuance of auction notice is also not tenable. The issuance of sale certificate does not oust the borrower and the guarantors to raise issues with regard to discrepancy, if any, committed by the Bank in the proceedings. Further the borrower/guarantor always had the right to get the dues paid off before the auction of the property was done as till the auction, no third party right had been created.

8. Under such circumstances, no interference is warranted in the writ petition. The writ petition is, accordingly, dismissed. However, since the petitioner-Bank had prayed that a month's further time be provided to pay off the amount as was payable to the respondent no.2, it is directed that unless the amount had already been paid, the same be paid with all the interest calculated within a period of one month.