



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

NON-REPORTABLE

CIVIL APPEAL NOS. 6244-6245 OF 2021

BOMBAY MERCANTILE COOPERATIVE BANK LTD.
THROUGH ITS AUTHORIZED SIGNATORY

APPELLANT(S)

VERSUS

M/S U.P GUN HOUSE & ORS.

RESPONDENT(S)

O R D E R

We have heard learned counsel for the appellant - Bombay Mercantile Cooperative Bank Ltd.¹, Saeedul Hasan Khan, the sole proprietor of respondent no. 1 - M/s. U.P. Gun House², who appears in person and Mr. Shubhranshu Padhi, learned *amicus curiae*.

The facts of the present case are peculiar.

In 1996, Saeedul Hasan Khan, sole proprietor of the Gun House took loan of Rs. 2,00,000/- (rupees two lakhs only) from the Cooperative Bank to establish a firearms business. The loan was secured by mortgaging immovable property³.

On 30.02.2002, the loan was declared a Non-Performing Asset, as an amount of Rs.2,39,812.41 (rupees two lakhs thirty nine thousand eight hundred twelve and forty one paisa only) was due and payable.

One-time settlement offer did not materialise due to the respondent's failure to pay.

1 For short, "Cooperative Bank" or "appellant".

2 For short, "Gun House" or "respondent".

3 Measuring 3300 square feet, situated at Plot Nos. 25 and 26, Khasra no. 419, Nagaria, Radhagram Yojna, Thakurganj, Lucknow, Uttar Pradesh (for short, "the property").

On 22.03.2006 notice *in re* the property was issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002⁴. By then, the outstanding amount had increased to Rs.6,23,809/- (rupees six lakhs twenty three thousand eight hundred nine only).

On 09.07.2009, upon the respondent's failure to pay, Cooperative Bank took symbolic possession of the property. On 22.07.2009, possession notice was published in the newspaper, namely, Rashtriya Sahara.

The appellant approached the Court of District Magistrate/Collector, at Lucknow by filing a petition⁵ under Section 14 of the SARFAESI Act for taking physical possession. Despite service, the respondent did not appear and an *ex parte* order was passed on 02.12.2010. The respondent filed an application⁶ for recall of this order, which was dismissed on 07.07.2011, observing that the respondent had been granted sufficient time to make payment but had failed.

Pursuant to the respondent's request letter dated 03.11.2011, the appellant accepted the respondent's One Time Settlement⁷ proposal of Rs.6,36,860/- (rupees six lakhs thirty six thousand eight hundred sixty only). At that time, the total outstanding amount was Rs.15,37,083.41 (rupees fifteen lakhs thirty seven thousand eighty three and forty one paisa only). The respondent

4 For short, "SARFAESI Act".

5 Petition No. 499/2010.

6 Petition No. 16/2011.

7 For short, "OTS".

made initial payment of Rs.50,000/- (rupees fifty thousand only), but failed to pay the balance amount of Rs.5,86,860/- (rupees five lakhs eighty six thousand eight hundred sixty only), which was due and payable on or before 29.03.2012.

On 07.04.2012, the appellant informed the respondent that the OTS proposal stood revoked and the respondent was as on 31.03.2012 liable to pay Rs.15,91,424/- (rupees fifteen lakhs ninety one thousand four hundred twenty four only).

On 14.07.2012, the appellant took possession of the property, and inventory of the immovable assets was made.

A valuation report estimated the value of the property to be Rs.29,70,000/- (rupees twenty nine lakhs seventy thousand only). However, the forced sale value of the property was fixed at Rs.22,28,000/- (rupees twenty two lakhs twenty eight thousand only).

On 30.11.2012, the appellant states that they had sent an auction notice to the respondent, indicating that an auction of the property was scheduled to be held on 31.12.2012. On 30.11.2012 itself, auction sale notice was published in two newspapers.

On 14.12.2012, the respondent challenged the auction sale by filing a writ petition⁸ before the Lucknow Bench of the High Court of Judicature at Allahabad. The writ petition was dismissed *vide* order dated 20.12.2012 as not maintainable.

At this stage, we must notice, that the respondent disputes service of notice dated 30.11.2012 for the auction. The appellant

⁸ Writ Petition No. 10530 (M/B)/2012.

was unable to produce documents, showing actual service, though the letter dated 30.11.2012 is available on their records.

We have also perused the writ petition filed by the respondent before the Lucknow Bench of the High Court of Judicature at Allahabad. We find that the averments made in the writ petition on service of the notice dated 30.11.2012 are rather ambiguous and unclear. However, it is obvious that the respondent knew about the auction and had accepted having read the notice for sale published in newspapers on 30.11.2012.

During the course of hearing, the respondent has stated that he had entered into an agreement for sale of the property for Rs. 29,00,000/- (rupees twenty nine lakhs only) with the Respondent No.3 in these appeals, namely, Abdul Haleem Siddiqui and had received advance of Rs.1,00,000/- (rupees one lakh only).

Abdul Haleem Siddiqui despite service has not entered appearance before this court and is accordingly proceeded *ex parte*.

Abdul Haleem Siddiqui had participated in the auction held on 31.12.2012 and was the highest bidder. His bid of Rs.42,00,000/- (rupees forty two lakhs only) was accepted.⁹

The respondent accepts and admits that he was also present at the auction.

After the auction, the respondent had written a letter to the appellant expressing willingness to pay Rs.6,23,809/- (rupees six lakhs twenty three thousand eight hundred nine only) and had

⁹ Abdul Haleem Siddiqui is referred to as "auction purchaser" or "Abdul Haleem Siddiqui".

sent a cheque for the amount. The appellant returned the cheque and the respondent was informed that the total amount due and payable was Rs.19,30,995/- (rupees nineteen lakhs thirty thousand nine hundred ninety five only).

Subsequently, the appellant handed over possession of the property to the auction purchaser, and a sale deed was executed in his favour on 21.03.2013. The auction purchaser had constructed flats on the property, which have been sold and transferred to third parties.

As noticed above, the respondent had challenged the service of auction notice dated 30.11.2012, which plea has been accepted by the Debts Recovery Tribunal at Lucknow, by quashing the auction *vide* judgment and order dated 30.10.2017. This order has been upheld by the Debts Recovery Appellate Tribunal at Allahabad and the High Court.

In view of the facts of the present case, we are satisfied that the respondent was fully aware of the auction notice dated 30.11.2012. He had, within 14 days thereafter, filed a writ petition before the High Court and was aware of the auction notice from before. He had also entered into an agreement with Abdul Haleem Siddiqui, who later on became the auction purchaser. The respondent was present at the time of the auction. The auction purchaser, has constructed flats on the property and transferred the same to various third parties, though it is stated that some flats are yet to be sold. At the same-time as noticed above there is no proof that notice dated 30.11.2012 was served by the

appellant on the respondent.

As per the appellant, after adjusting the amount due and payable by the respondent, a sum of Rs.22,53,004/- (rupees twenty two lakhs fifty three thousand and four only), is due and payable and has been with them since 21.03.2013. By letter dated 21.03.2013, the appellant had sent a cheque of the aforesaid balance amount to the respondent, which was not accepted.

The respondent has relied upon the decision of this Court in *Mathew Varghese v M. Amritha Kumar & Ors.*¹⁰, which had interpreted Rule 9(1) of the Security Interest (Enforcement) Rules, 2002¹¹, and holds that service of notice in terms of Rules 8 and 9 of the 2002 Rules is mandatory. To us, it does appear that there is lapse on the part of the appellant, as they did not maintain proper records of the service of notice dated 30.11.2012. Parallely, we cannot be oblivious to the fact that the respondent was entirely aware of the auction process in terms of the notice dated 30.11.2012. We are also conscious that the auction purchaser had constructed flats, which had been sold to various third parties.

In view of the aforesaid facts and exercising our power under Article 142 of the Constitution of India, we direct that the appellant - Cooperative Bank will pay an amount of Rs.54,00,000/-¹² (rupees fifty four lakhs only) to the respondent in full and final settlement of his claims. This payment will be made within a period

¹⁰ (2014) 5 SCC 610.

¹¹ For short, "2002 Rules".

¹² The appellant will be entitled to deduct Tax At Source on this amount and will furnish certificate to this effect to the respondent.

of five weeks from the date when a copy of this order is received. The amount may be transferred electronically to the bank account of the respondent, details of which will be furnished to the counsel for the appellant within a period of one week from today. In case, payment is not made by the appellant within the aforesaid period, they shall be liable to pay an interest on Rs.54,00,000/-, at the rate of 12% (twelve percent) per annum, from the date of this order till the date of actual payment.

The impugned order dated 02.07.2019 passed by the High Court in Misc. Single no. 25784/2018 and the order dated 25.11.2019 passed in review application, C.M. Application no. 102770/2019, are set aside. The sale by the appellant in favour of Abdul Haleem Siddiqui is upheld and confirmed.

The appeals are allowed and disposed of in the above terms. There shall be no order as to costs.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
JANUARY 22, 2024.

ITEM NO.46

COURT NO.2

SECTION III-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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VERSUS

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RESPONDENT(S)

(IA No. 187153/2023 - EARLY HEARING APPLICATION, IA No. 159102/2023 - EARLY HEARING APPLICATION, IA No. 98567/2023 - EARLY HEARING APPLICATION, IA No. 82005/2020 - EXEMPTION FROM FILING O.T., IA No. 3628/2021 - PERMISSION TO APPEAR AND ARGUE IN PERSON, IA No. 114983/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 82006/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 22-01-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Appellant(s)

Mr. Talha Abdul Rahman, AOR
Mr. M. Shaz Khan, Adv.
Mr. Adnan Yousuf, Adv.
Mr. Waseem Ahmed, Adv.

For Respondent(s)

Mr. Shubhranshu Padhi, Adv./A.C.

Respondent-in-person

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed and disposed of in terms of the signed non-reportable order.

Pending application(s), if any, shall stand disposed of.

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(signed non-reportable order is placed on the file)