IN DEBTS RECOVERY APPELLATE TRIBUNAL, LLAHABAD

Appeal Dy. No. 412/2019

Mr. Bharat, S/o Moti Lal, R/o 63/03, The Mall, Kanpur-208001.
……………………………………………………………………………….Appellant

Versus

1. M/s Simran Food Products, through its proprietress Smt. Mantosh Gupta, W/o Umesh Kumar Gupta, R/o 128 Block D Gujaini Kanpur Nagar-208022.
2. Umesh Kumar Gupta, S/o Dwarika Prasad Gupta, 128 Block D, Gujaini, Kanpur Nagar-208022.
3. The Ld. P.O., DRT, Allahabad through its Registrar DRT, Allahabad, 9/2-A Panna Lal Road, Allahabad.
4. The Authorized Officer, Allahabad Bank, Barra Colony, Hemant Vihar Barra-2, Kanpur-208027
5. The Zonal Manager, Allahabad Bank, Zonal Office, The Mall, Kanpur-208001.

……………………………………………………………………………Respondents

Advocates, who appeared in this case

For the appellants	Shri D.N. Awasthi, Advocate
For the respondents No. 1 & 2	Shri R. K. Tiwari, Advocate
For the respondents No. 4 & 5	Shri P.K. Srivastava, Advocate

JUDGMENT

Date of Decision: 04.03.2020

R. S. KULHARI, CHAIRPERSON

ORAL

1. The present appeal has been preferred by the appellant under section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") challenging the order dated 08.05.2019 passed by the Presiding Officer, DRT, Allahabad, whereby the auction held by the Bank was set aside.

2. The respondent-Bank granted certain financial assistance to M/s Simran Food Products(respondent no. 1), which was secured by mortgage of some immovable properties

belonging to the respondents/guarantors. The loan was not repaid in time, hence the Bank issued the demand notice dated 17.02.2018 under section 13(2) of the SARFAESI Act and the symbolic possession of the property was taken on 20.04.2018 under section 13(4) of the said Act. Thereafter, the sale notice was issued on 19.09.2018 and the property was sold in favour of the auction purchaser (appellant herein) on 3.11.2018. After deposit of complete sale price, the sale certificate was issued on 4.2.2019 and the sale deed was also executed on 14.02.2019 in favour of the auction purchaser and the possession was also handed over.

3. The borrowers challenged the possession notice by filing the S.A. on 30.05.2018 and during the pendency of the S.A., the property was sold as stated above. The auction purchaser filed an application for impleadment, which was allowed on 8.5.2019. However, at the same time, the S.A. was allowed and the sale was set aside on the ground that the symbolic possession was taken before expiry of 60 days from the issuance of demand notice. Thus, all the consequential proceedings were quashed and the Bank was directed to refund the amount to the auction purchaser with interest as applicable on FDR, after taking possession of the property from the auction purchaser. Being aggrieved by the said order, the present appeal has been filed by the auction purchaser.

4. Learned counsel for the appellant submits that the demand notice was issued on 17.02.2018 and the symbolic possession was taken on 20.04.2018, so it was beyond 60 days. Though it was dispatched on

19.02.2018, but the dates of dispatch and receipt of notice are not relevant. Thus, the Tribunal has erred in computing the period of 60 days and consequently setting aside the sale.

5. Learned counsel contends that even if the sale is set aside on technical ground, the violation of mandatory rules is attributable to the Bank and there was no fault on the part of the auction purchaser. The auction purchaser has obtained housing loan from the respondent-Bank itself for depositing the remaining 75% of the sale price, on which the Bank is charging 8.75% interest with cumulative effect, whereas the Tribunal below has allowed the interest applicable on FDR, which is hardly 6% per annum as on today, therefore, the interest as applicable on the housing loan ought to have been allowed. It was further contended that the Tribunal below has not considered the expenses incurred by the auction purchaser towards the stamp duty and the registration fee, which was **Rs. 267400/- plus Rs. 20,000/-.** Such amount was also liable to be borne by the Bank or the borrowers. The auction purchaser, after taking possession of the property, has paid arrears of the electricity charges and has also invested a huge amount in addition, alteration and renovation of the property, **which is supported by the bills, total amounting to Rs. 1,93,282/-.** Thus, the appellant is entitled for all the charges incurred in the process in case of re-delivery of the possession of the property.

6. Learned counsel for the Bank contends that the reasonable rate of interest has been allowed by the

Tribunal below. Thus, the appellant is neither entitled for any enhanced rate of interest nor for registration charges and other allied expenses, as the appellant is enjoying the possession of the property from the date of possession till date.

7. Learned counsel for the borrowers supported the judgment of the Tribunal below.

8. I have considered the rival contentions of the learned counsels for the parties and perused the record.

9. There is no dispute on the point that the demand notice dated 17.02.2018 was dispatched on 19.02.2018 and the symbolic possession was taken on 20.04.2018. The contention of the borrowers was that it was received on 21.02.2018, but in any case, it was not received before 20.02.2018. As per proforma appendix –IV of the Rules, 2002, the date of receipt of demand notice is relevant for calculating the period of 60 days given to the borrowers to deposit the amount before taking the symbolic possession. The copy of the possession notice, placed at page 100, also mentions that the borrowers were required to repay the amount within 60 days "from the date of receipt of notice dated 17.02.2018". The month of February, 2018 being of 28 days, the possession was taken on 20.04.2018 by the Bank before expiry of 60 days from the date of receipt of the demand notice. Thus, the possession was not taken as per the mandatory provisions of the SARFAESI Act. Since the sale notice and the auction sale was conducted in furtherance of the said symbolic possession and not after taking the physical possession in compliance of the DM's order, therefore, all

the subsequent proceedings conducted on the basis of the defective possession notice were rightly set aside by the Tribunal below.

10. However, it is pertinent to note that the judgment was passed on the same day, when the appellant was impleaded as party, so no opportunity was given to the appellant to pursue its case or to file the relevant document before the Tribunal below, but since there is no dispute on the execution of the sale deed and its expenses and also on the fact that the Bank had granted housing loan to the appellant, therefore, I deem it appropriate to decide the issues of interest and expenses at this appellate level without remanding the matter back to the Tribunal below.

11. The sale is being set aside because of the lapses on the part of the Bank and there was no fault on the part of the auction purchaser. In such a situation, the auction purchaser is entitled for reasonable interest on the amount along with adequate compensation or the expenses incurred by him, of-course, taking into consideration the aspect of physical possession enjoyed by the appellant.

12. In the instant case, the Bank is charging interest @ 8.75% with cumulative effect on the housing loan given to the appellant, therefore, it is in the fitness of the things that the Bank should also pay the interest on the deposited amount at the same rate, which is applicable in the housing loan account of the appellant.

13. Further, the appellant has incurred an amount of Rs. 20,000/- as registration fee and Rs. 2,67,400/- as stamp duty, which was effectuated, as the appellant had purchased the property under the perception that there is no defect in the sale. Since the sale is being set aside for fault on the part of the Bank, therefore, the Bank has to bear these charges and the appellant is entitled for refund of the same.

14. The appellant has submitted various bills for purchase of articles used in addition, alteration and renovation of the property, total amounting to Rs. 1,93,282/-. The Bank has not disputed these bills. Thus, it is apparent that the appellant has invested substantial amount in the property after taking possession, simultaneously, the appellant is also enjoying the possession and is utilizing the house, therefore, I deem it appropriate to allow lump sum amount of Rs. 1.00 lac to the appellant as compensation towards expenses incurred in renovation.

15. The appellant has also claimed some amount towards expenses of electricity bills as arrears, but the appellant has consumed the electricity and is also enjoying the possession, so he is not entitled for reimbursement of electricity bills and expenses of transfer of account in its name.

16. In view of the aforesaid, the appeal is partly allowed in the manner that the respondent-Bank shall pay the interest on the sale price to the appellant at the same rate, which is applicable on the housing loan granted to the appellant from the date of deposit till the date of payment. The Bank is also directed to pay a sum of Rs.

2,67,400/- plus Rs. 20,000/- plus Rs. 1.00 lacs, total Rs. 3,87,400/- within two months from today to the appellant, failing which the appellant shall be entitled for interest @ 8% per annum simple for the delayed period after expiry of two months.

17. The Bank shall receive the possession of the property before payment to the appellant as aforesaid and is also free to first appropriate the amount in the housing loan account towards the outstanding due against the appellant.

18. Parties are left to bear their costs of the present litigation.

19. A copy of this judgment be forwarded to the parties as well as to the DRT concerned.

CHAIRPERSON

Date: 04.03.2020

All corrections have been made/incorporated in the order/judgment.

VN Giri