IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 153 of 2023
(Arising out of S.A. 251 of 2022 in DRT-II, Hyderabad)

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

State Bank of India, Stressed Asset Recovery Branch (SARB), Vardhaman Building, 2nd Floor, Seven Loves Chowk, Mahatma Phule Peth, Shankarsheth Road, Pune - 42.

… Appellant

-Versus-

Bailpati Devadas, Son of Late B. Ramaswami, R/o H.No. 1-8-2/34, Sarvodaya Colony, near Suryanagar, Chikkadpally, Hyderabad- 500 020.

… Respondent

Counsel for Appellant … Ms. Deblina Lahiri
Mr. Mrinmoy Chatterjee

Counsel for Respondent … Mr. Nemani Srinivas
Mr. Tirthankar Das

JUDGMENT : 22nd April, 2025

THE APPELLATE TRIBUNAL :

1. Heard the Learned Counsel for the parties and perused the record.

2. Instant appeal has arisen against judgment and order dated 19.4.2023, passed by Learned DRT-II, Hyderabad, partly allowing the Securitization Application No. 251 of 2022 (Bailpati Devdas -vs- State Bank of India).

3. As per the pleadings of the parties, Respondent herein, namely Bailpati Devadas, participated in the auction on 7.12.2021 conducted by the Appellant Bank in pursuance of the sale notice dated 21.11.2021. Earnest Money of Rs.4,39,000.00 was deposited on 1.12.2021. Respondent was declared as highest bidder for Rs.44,14,000.00. An amount of Rs.6,65,000.00 was paid on 8.12.2021.

Accordingly 25% of the bid amount of Rs.11,04,000.00 was deposited by the Respondent.

4. Respondent applied for Housing Loan from State Bank of India, Nallakunta Branch, Hyderabad but his application was rejected on 7.01.2022for want of certain documents. Respondent further applied for Housing Loan from Union Bank of India, Jubilee Hill Branch which was duly sanctioned on 22nd February, 2022. He was asked to deposit the Link document legal heir certificate, in original. When the Respondent asked for the document from the Appellant Bank they refused by saying that they do not have any such document. Respondent got suspicious about the title of the property. Through an e-mail on 2.3.2022 Appellant was asked by Bank to pay the 25% bid amount on or before 6.3.2022. On 3.3.2022 Respondent herein communicated all the facts to the Appellant Bank. Since link documents were not made available to the Union Bank of India, Respondent made a prayer for refund of 25% of the bid amount but the Appellant Bank cancelled the sale and also forfeited the 25% of the bid amount, i.e. Rs.11,03,500.00. A legal notice was also issued but of no consequence.

5. Respondent filed the Securitization Application challenging the cancellation of sale letter dated 7.3,2022 and forfeiture of 25% of the bid amount paid within the stipulated period. It is alleged that auction was conducted on ‘as is where is’ and ‘as is what is’ basis. Respondent herein agreed to the terms and conditions of the auction notice and participated in the auction. He was the successful bidder. Appellant herein has no role in the transaction of loan

applied by the Respondent to any other Bank or any other branch of State Bank of India. It was never brought to the notice of the Appellant that State Bank of India, Nallakunta Branch, Hyderabad rejected the loan application of the Respondent on 7.01.2022. This fact was brought to the notice of the Appellant for the first time in the legal notice sent by the Respondent. Time for deposit was extended till 15.2.2022. Again Respondent sought time on the ground that Sanctioning Officer is suffering from Covid-19 and the time was extended till 25.2.2022. On the request of the Respondent time was further extended till 6.3.2022. On 3.3.2022 a mail was sent by the Respondent alleging that the original deed documents are not available hence loan could not be processed by the Union Bank of India. This mail was duly replied by the Appellant Bank. Time could not be extended beyond the period of three months from the date of auction as per Rule 9 (4) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules'). Respondent has never asked for any particular document except for general statement that certain link documents are not in possession of the Appellant. Since remaining 75% of the bid amount was not deposited within the stipulated period, sale was cancelled and 25% of the bid amount was forfeited in accordance with law.

6. Learned DRT framed the following issued :

i) *Whether the applicant can claim both reliefs as prayed for in the application?*

(ii) *Whether the respondent bank justified in its action of forfeiting 25% of bid amount and the applicant is entitled for refund of the amount?*

(iii) *To what relief?*

7. Learned DRT recorded a finding that the prayers made by the Respondent are contradictory in nature. There is no question of setting aside the letter of cancellation of sale only prayer for refund of the 25% bid amount could be considered. It is further held by the Learned DRT that some known litigation in the title of the auctioned property was within the knowledge of the Secured Creditor which ought to have been put in the notice of the intended bidder as per Rule 8 (7) (a) and (f) of the Rules. No efforts are made by the Secured Creditor to remove the actual litigation. Bank cannot shirk its responsibility by simply stating that the auction was held on 'as is where is' and 'as is what is' basis. Accordingly, Learned DRT partly allowed the Securitization Application with a direction to the Bank to refund the 25% amount of the bid amount with interest.

8. Learned Counsel for Appellant at the very outset would submit that Securitization Application was filed with delay and the delay was condoned by the Learned DRT which could not have been done; it was an illegal order. It is further submitted that the only ground taken by the Securitization Applicant is that when he applied for the loan from the State Bank of India, Nallakunta Branch, Hyderabad, the same was refused by them for want of link document of title. Further, Union Bank of India, although sanctioned the loan but did not disburse the same for want of the link document. It is submitted that auction was conducted on 'as is where is' and 'as is what is' basis. There was no encumbrance in the property. Non-availability of the link document could not be a ground for allowing this Securitization Application.

9. Learned Counsel for Respondent submits that the order for condonation of delay in preferring the Securitization Application was not challenged by the Appellant Bank; hence, now it could not be challenged. There was a waiver of right by one Bank by not challenging the order. Even in the appeal no relief is sought for setting aside the order condoning the delay in preferring the Securitization Application. It is further submitted that the delay was condoned after considering the facts and circumstances of the case which was in accordance with the law. It is further submitted that connected link document was sought for by a different branch of the same State Bank of India but was not made available by the Secured Creditor. It was a title document; it was the responsibility of the Secured Creditor to obtain the same at the time of disbursing the loan to the Borrower, which was not done.

10. Learned DRT has recorded a finding on issue number one that as far as relief for cancellation or setting aside the letter of cancellation of sale is concerned; this relief could not be granted as it is self contradictory with the relief of refund of 25% of the bid amount. Accordingly, Learned DRT only considered the relief on refund of the 25% of the bid amount. This finding is not challenged by the Auction Purchaser by preferring a cross appeal; hence attained finality.

11. As far as issue of Section 5 of the Limitation Act in condoning the delay in preferring the Securitization Application is concerned, delay in filing the Securitization Application was condoned by the Learned DRT on 18.10.2022. Securitization Application was filed on 8.9.2022 with a delay of 142 days. Order dated 18.10.2022, allowing Section 5 Application, was not challenged by the Bank. Learned Counsel for Appellant would submit that even if the order, condoning the delay, is not challenged by the Bank, it does not preclude the Bank from challenging the same in this appeal. It is submitted that this is a question of law which can be raised at any stage.

12. I am unable to accept the submission made by the Learned Counsel for the Bank. Issue of condonation of delay under Section 5 of the Limitation Act is a mixed question of law and fact. When the application under Section 5 of the Limitation Act was allowed and it was within the knowledge of the Bank and if the Bank was not satisfied with the order, it should have been challenged by the Bank at that very stage. When the order is not challenged by the Bank, Bank has waived its right to challenge the same. Further, Learned DRT found the ground sufficient and in view of the law laid down in ***Smt. Sajida Begum -vs- State Bank of India (AIR 2013 AP 24)*** delay, by filing application under Section 5 of the Limitation Act, is condonable. Learned Counsel for

Appellant has placed reliance upon ***Akshat Commercial Private Limited -vs- Kalpana Chakraborty (AIR 2010 Cal 138)*** which is not applicable in the facts of the present case as the Hon'ble Andhra Pradesh Court in the case of *Sajida Begum* (supra) has held that delay in filing the Section 5 application is condonable. Present case relates to Hyderabad. Accordingly, I am of the considered view that the delay in filing the Section 17 Application is condonable under Section 5 of the Limitation Act and accordingly, Appellant Bank has waived its right to challenge the order dated 18.10.2022 by not preferring an appeal against the order.

13. It is undisputed that the Respondent herein is a successful Auction Purchaser who participated in the auction conducted on 7.12.2021. He deposited 25% of the bid amount in accordance with law. For depositing remaining 75% amount, he approached the State Bank of India, Nallakunta Branch, Hyderabad, on 7.1.2022 wherein in the letter dated 7.1.2022 it was mentioned that Legal Heir Certificate in the Link document is not sufficient for the transfer of properties, hence, the request for loan could not be considered. In the meantime, request was made for extension of time. Lastly on 2.3.2022 Appellant Bank asked the Auction Purchaser to deposit the amount by 6.3.2022 failing which sale shall be treated as cancelled and amount already deposited will be forfeited. In response thereto on 3rd March, 2022 Respondent herein informed the Secured Creditor about the non-availability of the original linc document due to which even Union Bank of India did not disburse the loan amount. Accordingly it was informed that the State Bank of India has played fraud upon the Respondent/Auction Purchaser. It was further informed that due to non-availability of the original link document Auction Purchaser has no right to purchase the property. In response the Bank informed that the fact that one of the documents, link document, was not available with the Bank which was informed to the Auction Purchaser and the same ground cannot be considered as a valid reason for cancellation of the auction as it does not affect the marketability of the title of the property. Thereafter, on 7.3.2022 auction was cancelled and Rs.11,03,500.00, i.e. 25% of the bid amount, was forfeited by the Bank.

14. Only ground for making a request by the Auction Purchaser to the Bank for canceling the auction and refund of the bid amount was that original link document was not made available by the Secured Creditor at the time of sanction of loan either by the State Bank of India, Nallakunta Branch, Hyderabad or Union Bank of India. No doubt, as has been held by the Hon'ble Apex Court in ***Authorised Officer, State Bank of India -vs- C. Natarajan & Another (2023 SCC OnLine SC 510)*** that, *the tribunals/courts ought to be extremely reluctant to interfere unless, of course, a very exceptional case for interference is set up. What would constitute a very exceptional case, however, must be determined by the tribunals/courts on the facts of each case and by recording* *cogent reasons for the conclusion reached.* The same was reiterated by the Hon'ble Allahabad High Court in ***Nishant Kumar -vs- State of Uttar Pradesh [(2024) 3 All LJ 605]*** but in that case that the mortgaged property belonged to the firm of his father and there was every likelihood that the bid was made to create obstacle in the way of the secured creditor in recovering its dues. In the present case, there is no such circumstance, hence, the case of *Nishant Kumar* (supra) is not applicable in the present case.

15. When the loan was sanctioned by the Secured Creditor to the Borrower, it was the duty of the Authorised Officers to collect all the link documents of title at the time of sanctioning and disbursing the loan. Any missing link document of title may render the whole exercise futile. When an equitable mortgage is created in favour of the Secured Creditor, it is the duty of the Secured Creditor to ascertain from all the lawful owners about the valid title in favour of the Borrower/mortgagors/guarantors. If there is any document missing then the loan could not be said to be a secured loan. Further, in such case when the secured assets are auctioned even on 'as is where is' and 'as is what is' basis, it does not make a Secured Creditor exempted from its liability of securing the valid documents of title. Due non encumbrance certificate should have been obtained by the Authorised Officer about the secured assets. Non-encumbrance certificate along with all the documents for the link documents of title should have been brought to the notice of the bidders at the time of conducting the auction/e-auction. No doubt if an Auction Purchaser is conniving with the Borrower to defeat the purpose of the Securitization Act, he is not entitled for any relief under the law. But at the same time, if Auction Purchaser is a bona fide person who participated in the auction proceedings genuinely and bonafidely, then he has every right to know about the valid title of the secured assets which he is going to purchase. Secured Creditor cannot escape its liability by saying that they have shown the title documents to the Auction Purchaser. Had it been so, then the same should be brought on record by producing the relevant documents. But in the present case, as per the report dated 3rd March, 2022 Authorised Officer has strongly asserted that the sale was conducted on 'as is where is' and 'as is what is' basis and all the documents were available for inspection. It is not denied that the link document was available with the Bank. Even the Authorised Officer pleaded that the link document was not available with the Bank and the copy of the same is being filed before the Tribunal. It is further stated that the Gmail dated 2.3.2022 in para 4 that:

> *"The auction was conducted by the bank on "as is where is" basis and all the available documents were available for your inspection. The fact that one of the chain link document was not available with the bank was informed to you and the same cannot be considered as a valid reason for seeking cancelation of auction as it doesn't affect the marketability of the title of the property."*

The bank has provided all the available documents required by you and your inability to acquire the loan on the

16. A bare perusal of the communication would reveal that it was admitted by the Authorised Officer that the chain link document was not available with the Bank. That the chain link document was not available with the Bank, this fact was not mentioned in the sale notice. Even there is no communication on record to show that prior to the e-auction sale, this fact was brought to the notice of the Auction Purchaser or the bidders in the auction proceedings. When Auction Purchaser communicated this fact to the Authorised Officer, only then it was admitted that the link document was not available with the Secured Creditor. It means that all the documents of title of secured assets were not available with the Bank. In such circumstances, Auction Purchaser was well within its rights to ask for the documents within the stipulated period of ninety days and the same were not made available to him. Hence, the Auction Purchaser was entitled to refund of his bid amount by preferring a Securitization Application under Section 17 of the SARFAESI Act, 2002. Learned DRT rightly allowed the Securitization Application and directed the Bnk to refund the 25% of the bid amount with interest accrued to the Auction Purchaser.

17. Accordingly, I do not find any illegality or impropriety in the order. Appeal lacks merits and is liable to be dismissed.

O R D E R

Appeal is dismissed. The impugned judgment and order dated 19.4.2023, passed by Learned DRT-II, Hyderabad, partly allowing the Securitization Application

No. 251 of 2022 (Bailpati Devdas -vs- State Bank of India), is affirmed.

No order as to costs.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

File be consigned to Record room.

Order signed, dated and pronounced in open Court.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 22nd April, 2025
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