

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3045 OF 2017

(Arising out of SLP (C) No. 5700 of 2014)

SANJAY

... Appellant

VERSUS

ANIL S/O SHANKARSA PAWAR AND ORS.

... Respondents

O R D E R

Leave granted.

We have heard learned counsel for the parties finally.

The facts in brief which need to be noted for the purpose of disposal of this appeal are that the appellant is a judgment debtor against whom decree dated 31<sup>st</sup> January, 2001 was passed by the Court of Civil Judge, Senior Division, Amravati, Maharashtra. This decree was passed in favour of respondent No. 2 who was the plaintiff in the said suit. Respondent No. 2 had filed the suit on the ground that the appellant had taken a loan of Rs.1,00,000/- from him which was not returned. The suit was filed for the recovery of Rs.1,16,520/-. Decree for the aforesaid amount was passed along with interest at the rate of 6 per cent per annum from the date of decision of the suit till the realization of the said amount. However, the appellant did not pay the money and, therefore, respondent Nos. 2 was forced to file execution petition in the Civil Court. In the said execution

petition, property belonging to the appellant, i.e., agricultural land bearing gut No. 53/2/A at Mouza Nimghora admeasuring 40 R, was attached. This property was ultimately auctioned by the Court. Respondent No. 1 was one of the bidders whose bid was highest in the sum of Rs.5,50,000/- which was accepted by the Court. We may note at this stage that the aforesaid execution proceedings were ex-parte as the appellant did not appear. However, in July 2009, application for setting aside of the sale was filed. As the appellant had approached the Court after five years, he gave the explanation for this delay by contending that he was under mental depression and, therefore, could not maintain any contact with his counsel and moreover his counsel had not informed him about the progress of the case and, therefore, he was not having any knowledge of sale of his land by public auction and the issuance of sale certificate by the trial Court in favour of respondent No. 1. He also submitted that the actual value of the land was Rs.64,60,000/- which was sold at a partly sum of Rs.5,50,000/- and therefore, it was an unconscionable sale. The Trial Court vide orders dated 30.07.2009 dismissed the said application. Aggrieved thereby, the appellant filed Miscellaneous Civil Appeal before the court of District Judge, Amravati. This appeal was allowed by the District Judge vide orders dated 27.06.2012 primarily on the following grounds:

(a) no public notice was issued inviting general public;

(b) the valuation report filed on record states that the value of the land is more than one crore whereas the same has been sold for Rs.5,50,000/-;

(c) the boundaries of the land has been altered in the sale certificate without even attaching the property;

(d) the sale certificate is not in the name of the highest bidder present at the bidding; and

(e) the sale certificate has been issued in name of a person who never participated in the auction proceedings.

This judgment of the District Judge was challenged by respondent No. 1 by filing Civil Revision Application in the High Court. The High Court has, by the impugned judgment dated 04.12.2013, allowed the revision application thereby setting aside the order of the District Judge and restoring the orders passed by the Executing Court. It is in this backdrop that this Court is concerned with the validity and correctness of the sale.

Though there may be some dispute as to what was the actual value of the property that was sold in auction at the time of sale, it could not be disputed at the Bar that actual value of the property in question was much more than

Rs.5,50,000. We also find that no proper valuation was done of this property at the time of sale. In fact, the valuation report filed by the appellant shows that it is more than Rs.1 crore, as observed by the learned District Judge. This according to us, is sufficient ground to set aside the sale. While doing so, we are supported by the following observations of this Court in '*J.Rajiv Subramanian and Anr. v. Pandiyas and Ors.*' [2014 (5) SCC 651]:

"18.It must be emphasized that generally proceedings under the SARFAESI Act, 2002 against the borrowers are initiated only when the borrower is in dire-straits. The provisions of the SARFAESI Act, 2002 and the Rules, 2002 have been enacted to ensure that the secured asset is not *sold for a song*. It is expected that all the banks and financial institutions which resort to the extreme measures under the SARFAESI Act, 2002 for sale of the secured assets to ensure that such sale of the asset provides maximum benefit to the borrower by the sale of such asset. Therefore, the secured creditors are expected to take bona fide measures to ensure that there is maximum yield from such secured assets for the borrowers. In the present case, Mr. Dhruv Mehta has pointed out that sale consideration is only Rs.10,000/- over the reserve price whereas the property was worth much more. It is not necessary for us to go into this question as, in our opinion, the sale is *null and void* being in violation of the provision of Section 13 of the SARFAESI Act, 2002 and Rules 8 and 9 of the Rules.

We also find that the amount under decree which was payable was not much and was even less than Rs.4 lakhs as on the date of the sale. That becomes an added reason to set aside the sale of the property, the value of which was much higher. Learned counsel for the appellant fairly stated at

the Bar that the appellant was ready to refund the amount paid by respondent No.1. We are of the opinion that the equity would be balanced by directing the appellant to refund the said amount along with interest at the rate of 12 per cent from the date of payment and also the cost of litigation to respondent No. 1, which is quantified at Rs.1 lakh. The setting aside of the sale is conditioned upon the payment of the aforesaid amount by the appellant to respondent No. 1 within a period of three months from today.

The appeal stands disposed of in the aforesaid terms.

We may record at this stage that the Maharashtra State Finance Corporation has appeared in the matter and submitted that the property in question was already mortgaged to it. If that is correct and any right accrues in favour of the said Financial Corporation as a reason thereof, this Court is not making any comment about the same.

....., J.  
[ A.K. SIKRI ]

....., J.  
[ ASHOK BHUSHAN ]

New Delhi;  
February 20, 2017.

ITEM NO.49

COURT NO.8

SECTION IX

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

Petition(s) for Special Leave to Appeal (C) No. 5700/2014

(Arising out of impugned final judgment and order dated 04/12/2013 in CRA No. 68/2012 passed by the High Court of Bombay at Nagpur)

SANJAY

Petitioner(s)

VERSUS

ANIL S/O SHANKARSA PAWAR AND ORS.

Respondent(s)

(With appln. (s) for exemption from filing O.T., impleadment, permission to file additional documents, interim relief and office report) (For final disposal)

Date : 20/02/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. Satyajit A. Desai, Adv.  
Ms. Anagha S. Desai, Adv.  
Mr. Avtar Singh Chauhan, Adv.

For Respondent(s) Mr. Santosh Paul, Adv.  
Mr. Arvind Gupta, Adv.  
Mr. Piyush Sharma, Adv.  
Ms. Swati Singh, Adv.  
Mr. M. J. Paul, Adv.  
  
Mr. Nitin Bhardwaj, Adv.  
Mr. Baij Nath Patel, Adv.  
Mr. Shwet Kumar, Adv.  
  
Mr. Praveen Chaturvedi, Adv.  
  
Mr. Chinmay K., Adv.  
Mr. Aniruddha Deshmukh, Adv.  
Mr. Mohit D. Ram, Adv.  
Ms. Monisha Handa, Adv.

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

Leave granted.

The appeal stands disposed of in terms of the signed order.

In view thereof, pending applications stand disposed of.

(Nidhi Ahuja)  
Court Master

(Mala Kumari Sharma)  
Court Master

[Signed order is placed on the file.]