

Ajitsinh Kumarsinh Sisodia v. Bank of India & Anr.

Ajitsinh Kumarsinh Sisodia

...Appellant

Bank of India & Anr.

...Respondent

Case No: Appeal on Diary No. 986/2023

Date of Judgement: 10/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr O.A. Das, Advocate.

For Respondent: Mr Dharmendra Tiwary, i/b Mr Santosh Thakur, Advocate.

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Facts:

The matter relates to an appeal filed by Ajitsinh Kumarsinh Sisodia (Appellant) challenging the judgment dated 15.05.2023 passed by the Debts Recovery Tribunal No. I, Ahmedabad (DRT) in Appeal No. 03 of 2023. The DRT had dismissed the Appellant's appeal, which challenged the order of the Recovery Officer to set aside the sale in Recovery Proceedings No. 482 of 2018. The Appellant is the borrower, and Original Application (O.A.) No. 347 of 2017 was decreed by the DRT vide judgment and order dated 14.08.2018 for a sum of ₹18,95,569/- together with interest @11.15% per annum against the Appellant, jointly and severally recoverable from the secured assets, personal assets, and hypothecated goods. The Appellant contends that the demand notice issued by the Recovery Officer directing the certified debtors to appear was served on him after the date fixed for appearance, and the attachment and proclamation of sale notices were also served

belatedly. Consequent to the sale, the Appellant moved before the Recovery Officer for setting aside the sale on various grounds, including the ground of non-service of notices. The Appellant further contends that as per the order in the O.A., ₹6,99,256/- was to be recovered from the charged property, and ₹11,96,313/- was to be recovered from the hypothecated car. Therefore, the recovery of the entire amount together with interest from the mortgaged property was not permissible. The Recovery Officer disregarded the objections and proceeded with the confirmation of the sale. The sale certificate has been issued to the second Respondent and registered. The Appellant approached the DRT with a prayer to set aside the order of the Recovery Officer under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act). However, the DRT dismissed the appeal. To entertain the present appeal, the Appellant needs to comply with the mandatory provision under Section 21 of the RDB Act for pre-deposit. The amount has been determined as ₹18,95,569/- as of 19.09.2018, and interest @11.15% per annum is also due thereon. According to the counsel for the Respondent Bank, the total amount due would be approximately ₹35 lakhs. The counsel for the Respondent Bank insists that the Appellant should be directed to deposit 50% of the amount (₹35 lakhs) as pre-deposit for entertaining the appeal. The counsel for the Appellant has submitted that the Appellant is entitled to a complete waiver of pre-deposit because there is no amount due from the Appellant. The counsel for the Respondent Bank wanted to file a detailed reply to the application for waiver but could not do so due to the insistence of the Appellant's counsel on an urgent hearing. The counsel for the Respondent Bank has submitted that to get the sale set aside, the Appellant will have to comply with the mandatory provisions of Rules 60 and 61 of the Income Tax Rules, which has not been complied with. The counsel for the Appellant has submitted that it is borne out from the orders of the Recovery Officer that a sum of ₹32,68,000/- was deposited by way of demand draft by the Appellant.

Court's Elaborate Opinions:

The court has observed that when the Appellant is challenging the sale, the proceeds of the sale cannot be deducted from the amount due

from the borrower, and therefore, the sale amount has to be disregarded for calculating the amount due from the borrower. If the sale amount is disregarded, the amount due is approximately ₹35 lakhs, as claimed by the Respondent Bank. The court has considered the objections raised regarding non-service or belated service of notices but has pointed out that even though the notices were served belatedly, the Appellant did not appear before the Recovery Officer until he applied for setting aside the sale after much delay. Hence, the mere fact of non-service or belated service of notices cannot be grounds for setting aside the sale unless there are other grounds available to the Appellant. All matters of contention will have to be decided in the appeal after allowing the Respondent Bank to file a detailed reply. Considering the entire facts and circumstances of the case, the court has directed the Appellant to deposit a sum of ₹15 lakhs as pre-deposit within a week, on or before 17.07.2023. Failure to pay the said amount shall result in the dismissal of the appeal without any further reference to the court. On deposit of the aforesaid amount, the Appellant shall be entitled to an ad-interim stay from being dispossessed, unless already dispossessed. Since the auction purchaser is already a party, the court has also directed that the auction purchaser shall not create any third-party interest in the property. The amount shall be deposited in the form of a Demand Draft with the Registrar of the Debts Recovery Appellate Tribunal (DRAT). The amount deposited shall be invested in term deposits in the name of the Registrar, DRAT, Mumbai, with any nationalized bank, initially for 13 months, and thereafter to be renewed periodically.

Arguments by All Parties:

Appellant's Arguments:

The Appellant has challenged the judgment dated 15.05.2023 passed by the DRT, Ahmedabad, dismissing the appeal against the order of the Recovery Officer to set aside the sale in Recovery Proceedings No. 482 of 2018. The Appellant contends that the demand notice, attachment notice, and proclamation of sale notices were served belatedly, and therefore, the sale needs to be set aside. The Appellant further argues that as per the order in the O.A., only a portion of the amount

was to be recovered from the charged property, and the remaining amount was to be recovered from the hypothecated car. Therefore, the recovery of the entire amount together with interest from the mortgaged property was not permissible. The counsel for the Appellant has submitted that the Appellant is entitled to a complete waiver of pre-deposit because there is no amount due from the Appellant. The counsel for the Appellant has insisted that it is borne out from the orders of the Recovery Officer that a sum of ₹32,68,000/- was deposited by way of demand draft by the Appellant.

Respondent No. 1's (Bank) Arguments:

The counsel for the Respondent Bank has insisted that the Appellant should be directed to deposit 50% of the amount (₹35 lakhs) as pre-deposit for entertaining the appeal. The counsel for the Respondent Bank has submitted that to get the sale set aside, the Appellant will have to comply with the mandatory provisions of Rules 60 and 61 of the Income Tax Rules, which has not been complied with. The counsel for the Respondent Bank wanted to file a detailed reply to the application for waiver but could not do so due to the insistence of the Appellant's counsel on an urgent hearing.

Respondent No. 2's Arguments:

No specific arguments have been mentioned for Respondent No. 2 in the order.

Cases Cited:

No specific cases have been cited in the order.

Sections and Laws Referred:

Recovery of Debts and Bankruptcy Act, 1993 (RDB Act)

- Section 21 (Deposit of amount of debt due)
- Section 30 (Appeal against the order of Recovery Officer)

Income Tax Rules

- Rules 60 and 61 (regarding setting aside of sale)