

Central Bank of India v. Purnima Sharad Halkarni & Ors.

Central Bank of India

...Appellant

Purnima Sharad Halkarni & Ors.

...Respondent

Case No: Appeal No. 40/2022

Date of Judgement: 16/06/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Senior Counsel Mr Umesh Shetty, i/b Mr V.K. Nair, Advocate.

For Respondent: Mr Puneet Gogad, Advocate.

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Facts:

The matter pertains to I.A. No. 166/2022 (Stay) in Appeal No. 40/2022 and I.A. No. 281/2023 (Stay) in Appeal No. 29/2023 before the Debts Recovery Appellate Tribunal (DRAT), Mumbai. The appeals are filed by Central Bank of India (Appellant) against Purnima Sharad Halkarni & Ors. (Respondents). Appeal No. 40/2022 challenges the order of the Debts Recovery Tribunal (D.R.T.), Aurangabad, allowing Appeal No. 10 of 2015 vide order dated 17/01/2022. Appeal No. 29/2023 challenges a subsequent order in the same appeal, directing the Appellant Bank to recover possession of the property from the auction purchaser after refunding the sale consideration paid in full. The First Respondent and others had obtained a loan from the Appellant Bank under two

facilities: a cash credit facility of ₹32.50 lakhs and a term loan of ₹7.50 lakhs on 14/10/2002. The properties belonging to late Sharad Ramachandra Halkarni, the husband of the First Respondent and the father of Respondents Nos. 2 and 3, were mortgaged as security for the loan on 10/12/2002. The repayment was defaulted, resulting in the filing of O.A. No. 120 of 2004 on 23/04/2004, which was allowed by the D.R.T. vide judgment and order dated 07/06/2006. A Recovery Certificate was issued, and the certified creditor Bank filed Recovery Proceeding No. 54 of 2006 before the Recovery Officer, D.R.T., Aurangabad. The mortgaged property was put up for sale in 2010, but the attempt failed for want of bidders. A third party raised a claim before the Recovery Officer, which was rejected, and the subsequent appeal before the Presiding Officer, D.R.T., was also dismissed. During the pendency of a writ petition filed by the third party, the Bank got information about the demise of Sharad Ramachandra Halkarni and filed an application to bring the legal representatives on record. Notices were issued to the proposed legal representatives (Respondents 1 to 3), but they did not appear. The auction sale was conducted and confirmed in favor of the highest bidder, the Fourth Respondent. Respondents 1 to 3 challenged the sale after the sale certificate was issued and possession was handed over to the Fourth Respondent. In the impugned order dated 17/01/2022, the Presiding Officer, D.R.T., set aside the sale on the ground that the legal representatives were not served, and the auction was carried out in the name of the deceased. The Bank was directed to refund the purchase amount to the auction purchaser (Fourth Respondent) together with interest. The Fourth Respondent filed an application before the D.R.T. for refund of the purchase price, and the D.R.T., vide order dated 13/04/2023, directed the Bank to recover possession of the property from the auction purchaser after refunding the sale consideration.

Arguments by the Parties:

Appellant Bank's Arguments:

The sale proclamation was not made in the name of the deceased person as pointed out by the Presiding Officer. The property still stands in the name of the deceased, and unless mutation was affected, it could

not have been described otherwise. Reliance on the decisions in Kadir Mohideen Marakkayar vs. N.V. Muthukrishna Ayyar & Ano. ILR 26 Mad. 230 and Daya Ram & Ors. Vs. Shyam Sundari & Ors. (1965) 1 SCR 231: AIR 1965 SC 1049 to argue that if one legal representative is on the party array, it sufficiently represents the estate of the deceased. The First Respondent, being a co-borrower and the mother of Respondents 2 and 3, sufficiently represented the estate of the deceased. The sale can be set aside only under Rules 60 and 61 of the Second Schedule to the Income Tax Act, 1961, and no such application was filed within the stipulated period. Reliance on the decision of the Bombay High Court in Writ Petition No. 3080 of 2014 dated 18/02/2016.

Fourth Respondent's (Auction Purchaser) Arguments:

No infirmity in the impugned orders of the D.R.T.

No irreparable injury would be caused to the Appellant Bank because the property would fetch a higher price.

Reliance on the decision of the Gujarat High Court in Ritesh Oil Mills Private Limited vs. Dena Bank & Ors. AIR 2016 Guj 158 to argue that even without raising a challenge to the sale under Rule 60, an appeal could be filed under Section 30 of the RDB Act before the Presiding Officer, D.R.T.

Court's Elaborate Opinions:

The Appellate Tribunal considered the decisions in Kadir Mohideen Marakkayar vs. N.V. Muthukrishna Ayyar & Ano. ILR 26 Mad. 230 and Daya Ram & Ors. Vs. Shyam Sundari & Ors. (1965) 1 SCR 231: AIR 1965 SC 1049. The Tribunal found that prima facie, there was substantial representation of the legal representatives of the deceased borrower, as the First Respondent, a co-borrower, was contesting the matter before the Recovery Officer. The Tribunal observed that the impugned order did not specifically set aside the sale, and no applications were made under Rules 60 & 61 of the Second Schedule to the Income Tax Act. A borrower or a person claiming under the borrower can get the sale set aside only on limited grounds of fraud, and there was no such allegation pleaded by the Respondents. The Tribunal noted that while

describing the property in the proclamation and sale notice, it was described as belonging to the deceased, which did not mean that the proclamation was in the name of the deceased. The name of the deceased in the property card would continue until mutation is effected by the legal representatives. The Appellate Tribunal found that the Presiding Officer had not considered the aspects raised by the Appellant and the decisions in Kadir Mohideen (supra) and Daya Ram (supra). The Tribunal held that it was in the interest of justice to stay the impugned orders of the D.R.T., Aurangabad, till the disposal of these appeals. Consequently, the stay applications were allowed, and the impugned orders of the D.R.T., Aurangabad, dated 17/01/2022 in Appeal No. 10 of 2015 and the order dated 13/04/2023 in M.A. No. 19 of 2023, along with all subsequent orders, were stayed till the disposal of the appeals.

Sections and Laws Referred:

Rules 60 and 61 of the Second Schedule to the Income Tax Act, 1961

Section 30 of the Recovery of Debts and Bankruptcy Act, 1993

Cases Cited:

Kadir Mohideen Marakkayar vs. N.V. Muthukrishna Ayyar & Ano. ILR 26 Mad. 230

Daya Ram & Ors. Vs. Shyam Sundari & Ors. (1965) 1 SCR 231: AIR 1965 SC 1049

Writ Petition No. 3080 of 2014 dated 18/02/2016 (Bombay High Court)

Ritesh Oil Mills Private Limited vs. Dena Bank & Ors. AIR 2016 Guj 158