

Central Bank of India v. Pushpa Shamrao Raykar

Central Bank of India

...Appellant

Pushpa Shamrao Raykar

...Respondent

Case No: Misc. Appeal No. 96/2017

Date of Judgement: 31/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Meghnath Navlani, Advocate.

For Respondent: Mr Sanjay Anabhawane, i/b Mr Nikhil Salvi, Advocate.

Download Court Copy [CLICK HERE](#)

Facts:

Central Bank of India (Appellant) initiated recovery proceedings against M/s Atharva Trading Pvt. Ltd. (the borrower) for defaulting on loan repayment. The Appellant Bank put up four flats (Flat Nos. 18 and 19 in Maurya Classic, and Flat Nos. I-21 and I-22 in Maurya Vihar, Kothrud, Pune) for auction sale as secured assets. The Respondents (Pushpa Shamrao Raykar, Prashant Raosaheb Shinde, and Pradeep Soman Gawade) participated in the auction held on 16.09.2014 and became the highest bidders for the respective flats. The Respondents deposited the earnest money deposit (EMD) and 25% of the bid amount. M/s Dinesh Construction, a third-party claimant, filed an intervention application (Exh-8) in S.A. No. 170 of 2014 before the Debts Recovery Tribunal (DRT), Pune, challenging the auction sale. The DRT granted a stay on confirming the sale pending the disposal of the intervention application. The Appellant Bank agreed not to confirm the sale until

the intervention application was disposed of. After the DRT permitted the sale's confirmation, the Appellant Bank requested the Respondents to deposit the balance 75% of the bid amount. The Respondents failed to deposit the balance amount, leading to the forfeiture of the 25% amount deposited by them. The Respondents filed Misc. Applications (M.A. Nos. 11, 12, 13, and 14 of 2016) before the DRT under Section 19(25) of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDDB & FI Act), seeking a refund of the amounts paid by them. The DRT allowed the Misc. Applications and directed the refund of the amounts to the Respondents. The Appellant Bank filed separate Misc. Appeals (No. 96/2017, 111/2017, 54/2019, and 55/2019) before the Debts Recovery Appellate Tribunal (DRAT), Mumbai, challenging the DRT's orders.

Arguments by Parties:

Appellant (Central Bank of India):

The DRT erred in directing a refund of the amount deposited by the auction purchasers (Respondents).

The confirmation of the sale was delayed due to the stay ordered by the DRT pending the disposal of the intervention application (Exh-8) filed by M/s Dinesh Construction.

The auction purchasers were aware of the intervention application and the caution notice published by M/s Dinesh Construction in the same newspapers as the auction notice.

In the subsequent re-auction, all the properties were sold at much lower prices than the bid amounts of the Respondents.

The DRT wrongly held that an application under Section 19(25) of the RDDDB & FI Act was maintainable, relying on the decision in Umang Sugars Pvt. Ltd. vs. State of Maharashtra & Anr. (2014), which was overruled by the Supreme Court in Agarwal Tracom Pvt. Ltd. Vs. Punjab National Bank and Ors. (2018).

Under Rule 9(5) of the Security Interest (Enforcement) Rules, 2002,

the Bank was justified in forfeiting the deposit upon the Respondents' default in paying the balance amount.

Respondents (Auction Purchasers):

The Appellant Bank did not inform the auction purchasers about the pendency of the intervention application challenging the sale and the stay granted by the DRT regarding the confirmation of the sale. The Appellant Bank had a duty to disclose the pendency of any litigation or encumbrances over the properties being auctioned under Rule 8(7)(f) of the Security Interest (Enforcement) Rules, 2002. Reliance was placed on various decisions, including Smt. Rekha Sahu vs. UCO Bank & Ors. (2013), Mr Madhava Krishna Chaitanya vs. UCO Bank (2018), K. Senthil Kumar vs. The General Manager & Ors (2016), Shri. Sharath K.S. vs. Union Bank of India (2019), Mathew Varghese vs. M. Amritha Kumar & Ors. (2014), and Mohd. Shariq vs. Punjab National Bank & Ors (2023).

Court's Elaborate Opinions:

The impugned orders passed by the DRT, directing the refund of the amounts deposited by the Respondents, are not sustainable for the following reasons: The auction purchasers (Respondents) were aware of the intervention application (Exh-8) filed by M/s Dinesh Construction and the caution notice published in the same newspapers as the auction notice. The Respondents requested the Appellant Bank to invest the deposited money in fixed deposits, indicating their knowledge of the stay granted by the DRT. The Respondents also requested the Appellant Bank to demand the deposit of the balance sale consideration, implying their willingness to proceed with the sale. The decisions relied upon by the Respondents can be distinguished on facts, as most of them involved suppression of facts and non-disclosure of encumbrances. Rule 8(7)(f) of the Security Interest (Enforcement) Rules, 2002, requires disclosure of terms and conditions necessary for the purchaser to know the nature and value of the property. In the present case, the auction purchasers were aware of the intervention application and the stay. The facts in Mohd. Shariq vs. Punjab National Bank & Ors (2023) are different, as the auction purchaser in that case was willing to proceed with the sale and had deposited the balance amount. In the

present case, the Respondents failed to deposit the balance 75% of the bid amount after being informed about the dismissal of the intervention application and the permission to confirm the sale. The Appellant Bank had to sustain losses by selling the properties at much lower prices than the bid amounts of the Respondents in the subsequent re-auction. The DRT was not justified in directing the refund of the purchase money deposited by the Respondents.

Cases Cited:

Umang Sugars Pvt. Ltd. vs. State of Maharashtra & Anr. (2014)

Agarwal Tracom Pvt. Ltd. Vs. Punjab National Bank and Ors. (2018)

Smt. Rekha Sahu vs. UCO Bank & Ors. (2013)

Mr Madhava Krishna Chaitanya vs. UCO Bank (2018)

K. Senthil Kumar vs. The General Manager & Ors (2016)

Shri. Sharath K.S. vs. Union Bank of India (2019)

Mathew Varghese vs. M. Amritha Kumar & Ors. (2014)

Mohd. Shariq vs. Punjab National Bank & Ors (2023)

Sections and Laws Referred:

Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (RDDB & FI Act)

- Section 17(1) (Challenge to SARFAESI measures)
- Section 19(25) (Misc. Applications filed by Respondents)

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Security Interest (Enforcement) Rules, 2002

- Rule 8(7)(f) (Disclosure of terms and conditions in the sale notice)
- Rule 9(5) (Forfeiture of deposit and resale upon default)

in payment)