

Hema Dharmendra Sukhwani & Anr. vs The Debts Recovery Tribunal-II, Ahmedabad & Ors.

Hema Dharmendra Sukhwani & Anr.

...Appellant

The Debts Recovery Tribunal-II, Ahmedabad & Ors.

...Respondent

Case No: Appeal No. 45/2022

Date of Judgement: 15/02/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Rajesh Nagory along with Mr Vinay Deshpande, Advocates.

For Respondent: Mr Charles D'Souza along with Mr Darshan Mehta and Ms Drishti Gudhaka, Ms Nalini Lodha, Advocates.

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Facts:

The case arises from an appeal (Appeal No. 45/2022) filed by the auction purchasers (Appellants) of secured assets that were sold in an auction conducted in Recovery Proceedings No. 14/2017.

The Appellants were aggrieved by an order dated 03/10/2018 passed by the Recovery Officer and had preferred an appeal (Appeal No. 12/2018) under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) before the Debts Recovery Tribunal-II, Ahmedabad (DRT).

The DRT, vide judgment dated 04/06/2022, dismissed the appeal filed by the Appellants (Appeal No. 12/2018).

Aggrieved by the DRT's order, the Appellants filed the present appeal (Appeal No. 45/2022) before the Debts Recovery Appellate Tribunal (DRAT).

In the Recovery Proceedings No. 14/2017, properties were put up for auction on 16/05/2018, and the Appellants emerged as the highest bidders, depositing the bid amount of ₹7,02,00,000/- in full within the prescribed time.

One of the intending bidders approached the DRT by way of Appeal No. 6/2018 and got the Recovery Proceedings stayed. After considering Appeal No. 6/2018 on merits, it was dismissed.

Thereafter, the intending bidder approached the Recovery Officer by way of an objection and requested for quashing and setting aside the auction sale held on 16/05/2018.

The Recovery Officer, vide order dated 03/10/2018, set aside the sale that took place on 16/05/2018 and directed the bank to refund the entire sale consideration paid by the Appellants, along with interest.

The Appellants filed I.A. No. 364/2022 seeking to implead the subsequent auction purchaser of the property (M/s Sahejdaya Fashions Pvt. Ltd.) as an additional Respondent No. 3. The application was allowed, and Respondent No. 3 was impleaded.

Respondent No. 3 (the impleaded party) filed I.A. No. 23/2023, seeking to vacate the status quo order passed by the DRAT on 28/06/2022 and, in the alternative, direct a Court Commissioner to complete the registration formalities pertaining to the Sale Certificate issued in favor of the Applicant (Respondent No. 3) and permit the licensee of the Applicant company to commence commercial operations from the premises, subject to the final outcome of the appeal.

Arguments by the Appellants (Auction Purchasers):

The Appellants opposed the application filed by Respondent No. 3 (I.A.

No. 23/2023) and contended that it was misconceived and an abuse of the process of law, deserving dismissal.

It was pointed out that the order dated 20/06/2022 (directing the maintenance of status quo) was made in the presence of the director of Respondent No. 3 (the company).

Despite being aware of the status quo order, Respondent No. 3 proceeded to make alterations to the subject property without sanction from the DRAT.

The Appellants filed I.A. No. 27/2023 for contempt against Respondent No. 3 for carrying out repairs, renovation, and alterations to the subject property.

The Appellants also filed an application for the appointment of a Court Commissioner to assess the extent of damage caused to the building and prayed for the dismissal of the application seeking vacation of the status quo order.

Arguments by Respondent No. 3 (M/s Sahejdaya Fashions Pvt. Ltd.):

The counsel for Respondent No. 3, Mr. Charles D'Souza, submitted that despite getting the Sale Certificates issued in favor of the company, it has not been able to enjoy the property or get the deed registered.

It was argued that the stamp papers purchased for the registration of the sale deed would expire if the deed is not registered within the stipulated time.

It was submitted that the Appellants have no right over the property as the auction sale in their favor has been set aside, and the amount towards consideration deposited by them has been directed to be returned with interest.

Respondent No. 3 further submitted that the subject property has been re-auctioned and purchased by them, and since no interest whatsoever has been created in favor of the Appellants, they cannot seek any relief concerning the property.

It was pointed out that the Hon'ble Gujarat High Court, in Special Civil Application No. 10166/2022 filed by the Appellants, had directed the DRAT to dispose of the appeal expeditiously.

Respondent No. 3 argued that when the appeal came up for hearing before the DRAT, even prior to their impleadment as a party, the DRAT directed the parties to maintain status quo vide order dated 20/06/2022, and the Appellants filed an application (I.A. No. 364/2022) to implead Respondent No. 3 only on 08/07/2022, which was allowed on 08/08/2022.

Cases Cited:

Dr. H. Phunindre Singh & Ors. vs. K. K. Scthi and Ano. (1998) 8 SCC 640: The Appellants' counsel relied on this case to argue that when there is a pending application for contempt, the application to vacate the status quo order or the appeal should be considered only after the contempt petition is disposed of.

Municipal Corporation of Delhi vs. Gurunak Kaur (1989) 1 SCC 101: Respondent No. 3's counsel relied on this case in support of their arguments.

Kanwar Singh Saini vs. High Court of Delhi (2012) 4 SCC 307: Respondent No. 3's counsel relied on this case in support of their arguments.

State of Assam vs. Barak Upatyaka D. U. Karmachari Sanstha (2009) 5 SCC 694: Respondent No. 3's counsel relied on this case in support of their arguments.

Court's Elaborate Opinions:

The DRAT noted that the order of status quo was made on 20/06/2022, prior to the appearance of Respondent No. 3 (the subsequent auction purchaser).

It was observed that consequent to the setting aside of the sale in favor of the Appellants, the subject property was re-auctioned, and Respondent No. 3 became the successful bidder, depositing the entire

bid amount. A Sale Certificate was issued to Respondent No. 3, and possession was handed over, with only the registration of the Sale Certificate remaining.

The DRAT found that these facts were not revealed when the initial order of status quo was made, and the merits of the case were not considered at that time.

The DRAT noted that the sale in favor of the Appellants was set aside by the Recovery Officer, and the same was upheld by the DRT, with a direction to return the sale consideration deposited by the Appellants with interest.

The DRAT observed that the initial status quo order was made without ascertaining the actual status quo ante on the date of the order, and only thereafter did the Appellants file an application to implead the subsequent auction purchaser (Respondent No. 3).

The DRAT found that the subsequent extension of the status quo order was made mechanically without going into the merits of the case, and even during that time, the actual status of the subject property was never revealed.

Based on these observations, the DRAT opined that the initial status quo order was not binding on Respondent No. 3, and the subsequent extension of the order was made without considering the facts in detail.

The DRAT concluded that the status quo order needed modification and allowed the application (I.A. No. 23/2023) filed by Respondent No. 3, vacating and modifying the status quo order as follows:

Respondent No. 3 is at liberty to get the Sale Certificate registered, subject to the ultimate decision of the DRAT in the appeal.

Respondent No. 3 is granted liberty to occupy the subject premises and carry out necessary repairs and modifications to the building without diminishing its value or bringing about any structural changes.

Respondent No. 3 shall not be entitled to claim any value of

improvement made to the subject property or equity in case the appeal ultimately goes against them.

Respondent No. 3 shall not henceforth create any third-party interest in the property.