

Namdeo Bhagat v. Bank of Baroda & Ors.

Namdeo Bhagat

...Appellant

Bank of Baroda & Ors.

...Respondent

Case No: Appeal No. 216/2016

Date of Judgement: 30/10/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Anant B. Shinde, Advocate.

For Respondent: Mr. N.B. Khaire, Advocate.

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Facts:

Appeal No. 216/2016 was filed by Namdeo Bhagat (Appellant) against the order of the Debts Recovery Tribunal-III, Mumbai, dismissing Securitisation Application (S.A.) No. 192 of 2013. Bank of Baroda (BoB) was the creditor and mortgagee of certain immovable properties belonging to M/s Arham Exims Pvt. Ltd. (principal borrower) and Respondents Nos. 2 to 7 (guarantors and mortgagors). BoB initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) due to default in repayment of debt by Respondents Nos. 1 to 7. BoB published a sale notice on 07/02/2012, inviting tenders for the secured assets, which included three shop rooms (Nos. 20 to 22) and three office rooms (Nos. 317 to 319). The reserve price for shop rooms was ₹17,800,000/-, and for office rooms was ₹58,00,000/-. The Appellant expressed interest in purchasing the secured assets and

deposited ₹2,360,000/- as Earnest Money Deposit (EMD). In the auction held on 16/03/2012, the Appellant emerged as the sole bidder for the reserve price. He deposited 15% of the sale price and agreed to pay the balance 75% in two installments – 25% by 31/03/2012 and 50% by 11/04/2012. On 31/03/2012, the Appellant raised queries about the share certificate for one shop room and clearance from BoB regarding outstanding liabilities on the secured assets. He stated he would not pay the 25% installment until these queries were clarified. On 02/04/2012, BoB clarified that title documents and share certificates were available for all properties except Gala No. 22. On 15/09/2012, the Appellant found a notice affixed on shop No. 22 by Cosmos Bank (8th Respondent) stating that it had taken constructive/physical possession under Section 13(4) of the SARFAESI Act. BoB issued letters on 25/06/2012 and 06/08/2012, asking the Appellant to deposit the balance 75% amount, failing which the 25% deposited would be forfeited. The Appellant filed the S.A. under Section 17 of the SARFAESI Act, seeking a declaration that he was the successful bidder and a direction to BoB to refund the 25% deposited with interest. The Debts Recovery Tribunal dismissed the S.A., upholding the forfeiture of the amount deposited by the Appellant.

Arguments by the Appellant:

The Appellant was always willing and ready to deposit the balance 75% sale consideration. BoB suppressed facts regarding the clear title of one shop room (Gala No. 22). BoB did not reveal the S.A. filed by the borrowers challenging the SARFAESI measures initiated by BoB. The secured assets were subsequently sold to various persons, and the amounts realized by BoB. The forfeiture of 25% of the sale consideration deposited by the Appellant would amount to unjust enrichment of BoB. The Appellant relied on the decisions of the High Courts of Gujarat (Nileshbhai D. Sapariya vs. Authorised Officer, South Indian Bank & Ors.) and Karnataka (P Balaji Babu vs. State Bank of India & Ors.), which directed refunds of the sale consideration deposited by auction purchasers with interest.

Arguments by BoB (1st Respondent):

The Appellant was never ready with the entire 75% payable, and he sent letters and communications to the bank requesting unnecessary clarifications. Under Rule 9(5) of the Security Interest (Enforcement) Rules, 2002, BoB had the authority to forfeit the amount if the balance sale consideration was not paid by the auction purchaser. BoB relied on the Supreme Court decision in *Authorised Officer State Bank of India vs. C. Natarajan & Ano.*, which set aside the Madras High Court's order directing the creditor bank to refund the amount deposited by the auction purchaser with interest.

Arguments by Cosmos Bank (8th Respondent):

The arguments of Cosmos Bank are not explicitly mentioned in the summary.

Court's Elaborate Opinions:

The legal question for consideration was whether BoB was justified in forfeiting the amount deposited by the auction purchaser (Appellant) on the grounds that the authorized officer acted arbitrarily and that the documents pertaining to shop room No. 22 were not provided for examination despite being requested, and it turned out that this property was mortgaged by the borrowers to Cosmos Bank (8th Respondent). The court referred to the Supreme Court decision in *C. Natarajan (supra)*, which observed that the notice for auction constitutes the 'invitation to offer,' the bid submitted by the bidders constitutes the 'offer,' and upon confirmation of sale in favor of the highest bidder under Rule 9(2), the contract comes into existence. Once the contract exists, the bidder is bound by the terms of the statute under which the auction is conducted and must suffer consequences for breach, if any, as stipulated. Rule 9(5) of the Security Interest (Enforcement) Rules, 2002, legislatively lays down the penal consequence of forfeiture. The forfeiture referred to in Rule 9(5) has to be construed as a penalty that the defaulting bidder must suffer if they fail to make payment of the entire sale price within the allowed period. The court observed that the power conferred by Rule 9(5) should not be exercised indiscriminately without due regard to all relevant facts and circumstances, but it should also not

be read in a manner that renders its existence only on paper. The court stated that whenever a challenge is laid to an order of forfeiture made by an authorized officer under Rule 9(5) by a bidder who has failed to deposit the entire sale price within 90 days, the Tribunals/Courts ought to be extremely reluctant to interfere unless a very exceptional case for interference is set up. The court further observed that if the authorized officer adhered to the statutory rules, and any amount is required to be forfeited as a consequence, the same cannot be scrutinized wearing the glasses of misplaced sympathy. The statute must be given effect, whether the court likes the result or not. Regarding the decisions relied upon by the Appellant (Nileshbhai and P Balaji Babu), the court distinguished them on facts, stating that in those cases, either the auction purchaser had deposited the entire sale consideration, or there was a deliberate suppression of material facts by the creditor bank, which was not the case here. In the present case, the Appellant raised a challenge only regarding one item of the property sold (Gala No. 22), and there was no case of defective title with regard to the rest of the properties. The court found that seeking an extension of time by the Appellant was a ruse to protract payment of the balance sale consideration.

Cases Cited:

Nileshbhai D. Sapariya vs. Authorised Officer, South Indian Bank & Ors. (2015 SCC OnLine Guj 2648)

P Balaji Babu vs. State Bank of India & Ors. (Writ Petition No. 46450 of 2014)

Authorised Officer State Bank of India vs. C. Natarajan & Ano. (2023 SCC OnLine SC 510)

Sections and Laws Referred:

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

Section 13(4) of the SARFAESI Act

Section 17 of the SARFAESI Act

Security Interest (Enforcement) Rules, 2002

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

Rule 9(2) of the Security Interest (Enforcement) Rules, 2002

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