

Sunita Sunil Sohel v. Asset Reconstruction Company (India) Ltd.

Sunita Sunil Sohel

...Appellant

Asset Reconstruction Company (India) Ltd.

...Respondent

Case No: Misc. Appeal No. 02/2014

Date of Judgement: 01/05/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Vaibhav Pandey, Advocate.

For Respondent: None.

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Facts:

The case relates to an appeal filed by Sunita Sunil Sohel (the Appellant) against an order passed by the Debts Recovery Tribunal, Nagpur (D.R.T.) on 23/10/2013 in Appeal No. 9 of 2011. The original application (O.A.) No. 07/2001 was allowed, and Asset Reconstruction Company (India) Ltd. (the Respondent) was declared as the certified creditor. A Recovery Certificate was issued on 13/01/2004, authorizing the Respondent to recover the amount by selling the mortgaged properties. One property (Item A in Schedule II) was already sold by the Official Liquidator. Another property (Item B in Schedule II) was put up for sale by the Recovery Officer in R.P. No. 72/2004. According to a valuation report dated 08/12/2008, the market value of the property (Item B) was assessed at ₹25,17,000/-, and the auction value

was arrived at by reducing the market value by 30%, making it ₹17,62,000/-. However, there was a clerical mistake in the valuation report, where the area of the property was mentioned as 106.25 sq.m. instead of 1062.50 sq.m. Based on this incorrect area, the market value was calculated as ₹12,75,000/-, and the reserve price was fixed at ₹17,80,000/-. The Appellant was the highest bidder, and her bid of ₹17,81,000/- was accepted, and the sale was confirmed on 30/03/2009. Later, the Respondent realized the mistake in the valuation report and requested the valuer to issue a fresh valuation report, which was issued on 12/11/2010. The new report mentioned the correct market value as ₹62,68,000/-, the realizable value as ₹52,27,800/-, and the auction value as ₹43,88,000/-. The Respondent filed an application (Exhibit 56) before the Recovery Officer on 18/11/2010, seeking to set aside the sale due to the mistake in the valuation report. However, the Recovery Officer rejected the application on 09/11/2011.

Arguments by Parties:

Respondent's Arguments:

The Respondent argued that the secured creditor had to recover dues over ₹13 crores from the borrowers, and only a small portion of the secured asset (106.25 sq.m.) had been sold to the Appellant in the auction. The balance extent of the land was still available for sale.

Appellant's Arguments:

The Appellant contended that the value of the property was fixed at the behest of the decree-holder (Respondent) by his chartered accountant. The Recovery Officer rightly rejected the application for setting aside the sale. The appeal before the Presiding Officer was challenged on grounds of maintainability and limitation. The Appellant claimed to be a bona fide purchaser. The Appellant argued that the valuation report was not part of the tender document, and she did not have an opportunity to go through it before participating in the auction. The Appellant admitted that the plot had an extent of 11,433 sq.ft. (1062.55 sq.m.), as evident from the property card, but the valuation report did not enclose the property card. The Appellant

objected to the valuation made based on the ready reckoner and challenged the valuation in toto. The Appellant argued that the explanation regarding the typographical error in the valuation should have come from the valuer and not from the Respondent. The Appellant also challenged the correctness of the extent of the property calculated by the valuer, based on earlier title deeds. The Appellant submitted that the bid amount of ₹17,81,000/- tendered by her was more than the actual value of the land. The Appellant contended that the extent of the land mentioned in the mortgage deed itself was erroneous and included the property of others.

Court's Elaborate Opinions:

The Debts Recovery Appellate Tribunal (DRAT) noted that the contentions raised by the Appellant regarding the correctness of the extent of the mortgaged property were not pleaded either before the Recovery Officer or before the Presiding Officer. The plea, which was not taken in the initial stage, cannot be countenanced at this stage by the Tribunal. The DRAT accepted the findings of the Presiding Officer that there was a mistake in calculating the total value of the property. The Tribunal observed that the valuation report dated 08/12/2008 calculated the market value at ₹12,000/- per sq.m. for an area of 106.25 sq.m., and the total market value was calculated as ₹25,17,000/-. The auction value was then calculated as 70% of the market value, which was ₹17,62,000/-. Apparently, the reserve price was fixed at ₹17,80,000/- without noticing the error in the valuation report. The DRAT held that the Presiding Officer rightly intervened in setting aside the orders of the Recovery Officer and limiting the sale to the extent of only 106.25 sq.m., along with the building. The Tribunal found no reason to interfere with the findings of the D.R.T. in the impugned order and dismissed the appeal.

Cases Cited:

None

Sections and Laws Referred:

The Recovery of Debts Due to Banks and Financial Institutions Act,

1993 (RDDB&FI Act)

Section 30 (Appeal to the Appellate Tribunal)