

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 23/2023

In

Appeal No. 45/2022

Between

M/s Sahejdaya Fashions Pvt. Ltd.

...Applicant/
Respondent No. 3

In the matter of

Hema Dharmendra Sukhwani & Anr.

... Appellant/s

V/s.

Recovery Officer,

The Debts Recovery Tribunal-II, Ahmedabad &
Ors.

...Respondent/s

Mr Charles D'Souza along with Mr Darshan Mehta and Ms Drishti Gudhaka, Advocate for Applicant/ Respondent No. 3

Mr Rajesh Nagory along with Mr Vinay Deshpande, i/b M/s. V. Deshpande & Co., Advocate for Appellant.

Ms Nalini Lodha, Advocate for Respondent No.2.

:- Order dated: 15/02/2023:-

This is an appeal preferred by the auction purchasers of the secured assets which were sold in an auction conducted in Recovery Proceedings No. 14/2017. They were aggrieved by an order dated 03/10/2018 of the Recovery Officer and hence preferred an appeal as No. 12 of 2018 under section 30 of the Recovery of Debts and Bankruptcy Act, 1993 ('RDB Act', for short) before the Presiding Officer, Debts Recovery Tribunal-II, Ahmedabad (DRT). Vide judgment dated 04/06/2022, the Ld. Presiding Officer dismissed

the appeal. Aggrieved by that order and judgment, the Appellants are before this Tribunal in Appeal.

2. In the proceedings in the above-mentioned Recovery Proceedings, properties were put for auction on 16/05/2018 and the Appellants turn out to be the highest bidders and had also deposited the bid amount of ₹7,02,00,000/-in full within the time prescribed.

3. One of the intending bidders approached the Presiding Officer DRT by way of an Appeal No. 6/2018 and got the Recovery Proceedings stayed. After considering the Appeal No. 6 of 2018 on merits, it was dismissed. Thereafter, the intending bidder approached the Recovery Officer by way of an objection and requested for quashing in setting aside the auction sale held on 16/05/2018. The Appellants were not made parties to the proceedings before the Recovery Officer. The Ld. Recovery Officer vide order dated 03/10/2018 set aside the sale that took place on 16/05/2018 and directed the 2nd Respondent Bank to refund the entire sale consideration paid by the Appellants together with interest. It was this order of the Ld. Recovery Officer that was challenged in Appeal No. 12 of 2018 which was dismissed and hence, this appeal.

4. When the appeal came up for hearing before this Tribunal on 20/06/2022, it was ordered that the status quo as on date be maintained. Thereafter, the status quo order was extended from time to time. The Appellants filed I.A. No. 364/2022 seeking to implead the subsequent auction purchase of the property as an additional 3rd Respondent. Notice was served on all the

Respondents including the proposed Respondent. After hearing both sides, the said application was allowed and the additional 3rd Respondent impleaded. The proposed Respondent was also represented by counsel and after hearing both sides, the status quo order passed earlier was directed to be continued till orders are passed in the appeal.

5. The additional 3rd Respondent is a company and the successful bidder of the property which was re-auctioned on 22/11/2021. The 3rd Respondent filed IA No. 23 of 2023 seeking to vacate the status quo order made by this Tribunal on 28/06/2022 and continued from time to time and in the alternative the direct a Court Commissioner to complete the registration formalities pertaining to the Sale Certificate issued in favour of the Applicant and permit the licensee of the Applicant company to commence their commercial operations from the premises subject to the final outcome of the appeal. It is further prayed that the appeal may be heard and disposed of expeditiously.

6. The Appellants opposed the application and the 2nd Appellant filed an affidavit in reply contending thus:

It is contended that the interim application is misconceived and is an abuse of the process of law and deserves to be dismissed. It is pointed out that the order dated 20/06/2022 was made in the presence of the director of the 3rd Respondent company. And despite being aware of the order of status quo, the 3rd Respondent proceeded to make alterations to the subject property without sanction from this Tribunal. The Appellants have also filed I.A. No. 27 of 2023 for contempt against the third Respondent for carrying

out the repairs/ renovation and alteration to the subject property. The Appellants have also filed an application for the appointment of a Court Commissioner to assess the extent of damage caused to the building and pray that the application for vacating the order of status quo may be dismissed.

7. Heard the Ld. Counsel for the parties. Records perused.

8. Ld. Counsel Mr Charles D'Souza appearing for the third Respondent Applicant submits that in spite of getting the Sale Certificates issued in favour of the third Respondent company, it has not been able to enjoy the property or get the deed registered. The Ld. Counsel submits that the stamp papers which have been purchased would expire if the deed is not registered within the stipulated time. It is also submitted that the Appellants have absolutely no right over the property as the auction sale in their favour has been set aside and the amount towards consideration deposited by them is directed to be returned together with interest. Thereafter, the subject property has been re-auctioned and purchased by the third Respondent. In view of the fact that no interest whatsoever has been created in favour of the Appellants, they cannot seek any relief with regard to the property. The Special Civil Application No. 10166 of 2022 filed by the Appellants before the Hon'ble Gujarat High Court was disposed of with a direction to approach the DRAT with an appeal and also directed the DRAT to dispose of the appeal expeditiously. It is submitted that when the appeal came up for hearing before this Tribunal even prior to the impleadment of the third Respondent as a party, this Tribunal directed the parties to maintain status quo vide order dated

20.06.2022. Application is filed by the Appellants only on 08.07.2022 to implead the third Respondent. That application filed as I.A. No. 364/2022 was allowed by this Tribunal only on 08.08.2022. It is submitted that the stamp papers purchased for carrying out the registration of the sale deed would expire on the 17th of this month.

9. The Ld. Counsel appearing for the Appellants Mr Rajesh Nagory vehemently opposes the application for vacating the order of status quo and submits that when there is an application for contempt pending consideration before this Tribunal, the application to vacate the order of status quo or the appeal should be considered only after the contempt petition pending for hearing is disposed of. The Ld. Counsel relies on a decision of the Hon'ble Supreme Court reported in *Dr. H. Phunindre Singh & Ors vs. K. K. Scthi and Ano. (1998) 8 SCC 640* in support of these arguments. The Ld. Counsel also submits that in view of the prohibitory order passed by this Tribunal, the period within which the sale certificate has to be registered or the stamp duty may not expire as apprehended by the third Respondent.

10. Per contra, the Ld. Counsel appearing for the third Respondent relied on the decisions reported in *Municipal Corporation of Delhi vs. Gurunak Kaur (1989) 1 SCC 101*, *Kanwar Singh Saini vs. High Court of Delhi (2012) 4 SCC 307* and *State of Assam vs. Barak Upatyaka D. U. Karmachari Sanstha (2009) 5 SCC 694* in support of his arguments.

11. After having considered the rival submissions of the parties, I notice that the order of status quo was made by this Tribunal on

20.06.2022 prior to the appearance of the third Respondent. Consequent to the setting aside of sale in favour of the Appellants, the subject property was re-auctioned and the third Respondent became the successful bidder and deposited the entire bid amount. Sale Certificate was issued to the third Respondent and possession was handed over. All that remains was the registration of the Sale Certificate. These facts were not revealed when the order of status quo was made by this Tribunal. In fact, the merits of the case were not considered at all. The sale in favour of the Appellants was set aside by the Recovery Officer and the same was upheld by the Presiding Officer. There was also a direction to return the sale consideration deposited by the Appellants with interest. On the submission made across the bar, an order of status quo was made without ascertaining what exactly was the status quo ante on the date of the order. Only thereafter did the Appellants file an application to implead the subsequent auction purchaser. That application was allowed and the additional third Respondent impleaded. On the date, the application was allowed, the Id. Counsel representing the third Respondent was present and after hearing him, the status quo order was extended. Thereafter, the order of the status quo was extended from time to time. Even during that time, what exactly was the status of the subject property was never revealed. Under the circumstances, I find that the initial status quo order made by this Tribunal was not binding on the third Respondent and the subsequent extension of the order was made mechanically without going into the merit of the case. After the facts are revealed in detail, I am of the opinion that the status quo

order needs modification.

As a result, the application is allowed and the order of status quo is vacated and modified thus:

The third Respondent Applicant is at liberty to get the sale certificate register and the same shall be subject to the ultimate decision of this Tribunal in the appeal.

The third Respondent is also granted liberty to occupy the subject premises and to carry out necessary repairs and modifications to the building without diminishing its value or bringing about any structural changes to the building.

The third Respondent shall not be entitled to claim any value of improvement made to the subject property or equity in case the appeal ultimately goes against him.

Further, the third Respondent shall not henceforth create any third-party interest in the property.

I.A. No. 23 of 2023 is disposed of as above.

Sd/-
Chairperson

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