

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Misc. Appeal No. 02/2014

Between

Sunita Sunil Sohel

... Appellant/s

V/s.

Asset Reconstruction Company (India) Ltd.

... Respondent/s

Mr Vaibhav Pandey, Advocate for Appellant.

:- Order dated: 01 /05/2023:-

The Appellant has filed this appeal impugning the order of the Debts Recovery Tribunal, Nagpur (D.R.T.) dated 23/10/2013 in Appeal No. 9 of 2011.

2. Original Application (O.A.) No. 07/2001 was allowed and The Respondent Asset Reconstruction Company is the certified creditor, and a Recovery Certificate was issued on 13/01/2004. The certificate holder was certified to realise and recover the amount as per the Recovery Certificate by the sale of the mortgaged properties. The property described as an item A in Schedule II was already sold by the Official Liquidator. Item B described in the Schedule was available and put up for sale by the Ld. Recovery Officer in R.P. No. 72/2004 filed by the certificate holder. As per the valuation report dated 08/12/2008, the market value of the property was assessed at ₹25,17,000/-and the auction value was arrived at by reducing the market value by 30% at ₹17,62,000/-. However, on converting the extent from square feet to square metres, there was

a clerical mistake in mentioning the area as 106.25 m² instead of 1062.50 m². Valuing the property at the rate of ₹12,000/-per square metre the market value was calculated as ₹12,75,000/-in respect of 106.25 m² of land. Based on that, the Ld. Recovery Officer fixed the reserve price of the property at ₹17,80,000/-. The area of land put forth for sale was not mentioned in the sale notice. The Appellant herein being the highest bidder, her bid for ₹17,81,000/- was accepted and the sale was confirmed on 30/03/2009. The certificate holder realised that some of the certified debtors had purchased the property of the Appellant herein. On 18/10/2010, while the certified creditor was going through the papers, the anomaly in the valuation report was noticed. Due to the clerical/typographical error and the consequent calculation mistake, the valuation of the property was reduced drastically. On 19/10/2010, the certified creditor requested the valuer to issue a fresh valuation report by correcting the clerical and calculation mistake. Accordingly, a fresh valuation report was issued on 12/10/2000 mentioning the correct market value of the auction the property at ₹62,68,000/-the realisable value was calculated at ₹52,27,800/-and the auction value was calculated at ₹43,88,000/-. The property was consequently sold for a meagre sum of ₹17,81,000/-only. The mistake in the valuation report was by inadvertence. In the interest of the public, the sale of the property which took place in consequence of the clerical mistake for a meagre amount needs to be set aside.

3. The Respondent herein filed an application as Exhibit 56

before the Ld. Recovery Officer on 18/11/2010 with the prayer to set aside the sale. After giving notice to the auction purchaser, the Ld. Recovery Officer rejected the application vide order dated 09/11/2011.

4. Challenging the order of the Recovery Officer, the Respondent approached the Presiding Officer, D.R.T. with an appeal under Sec. 30 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 ('RDDB & FI Act', for short). It is submitted that the secured creditor has to recover dues over ₹13 crores from the borrowers, and land measuring 106.25 m² alone from out of the secured asset has been sold in the auction to the Appellant herein. The balance extent of the land is still available for sale, states the secured creditor.

5. The Appellant herein objected to the contentions raised in the appeal. It is contended that the value of the property was fixed at the behest of the decree-holder by his chartered accountant. The Ld. Recovery Officer has rightly rejected the application for setting aside the sale. The maintainability of the appeal before the Ld. Presiding Officer was also challenged. It was further contended that the appeal was barred by limitation. The Appellant claims to be a bona fide purchaser.

6. After considering the merits of the appeal, the Ld. Presiding Officer found that 106.25 m² of property alone was valued and sold and therefore, the Appellant certified creditor is entitled to get the balance extent of property sold in execution in R.P. No. 72/2004. The possession and right of the auction purchase over the property having an extent of 106.25 m² was confirmed and the appeal was

allowed in part.

7. Aggrieved by the order of the Ld. Presiding Officer in allowing appeal No. 9 of 2011 vide order dated 23/10/2013, the Appellant auction purchase has come in appeal before this Tribunal. On 24/09/2019, the appeal was dismissed for default. The Appellant filed Misc. Application No. 87/2020 for restoration of the appeal. The Respondent did not appear and vide order dated 20/09/2022, this Tribunal allowed restoration on payment of cost. The cost was paid in the appeal restored.

8. The Respondent was set ex parte and the Ld. Counsel appearing for the Appellant submitted argument notes in support of the appeal contentions.

9. The Ld. Counsel for the Appellant has filed a written note of argument. The contention of the Appellant is that the valuation report is not a part of the tender document and therefore, the Appellant did not have the opportunity to go through that document before participating in the auction. The valuation report dated 08/12/2008 was made available to the Appellant when the Respondent filed the application to set aside the sale. The subsequent valuation report dated 12/11/2010 and the site inspection report were delivered to the Appellant on the same date. The Appellant admits that the plot has an extent of 11,433 sq. ft which would be equal to 1062.55 sq. mtrs. as is explicit from the property card. But the valuation report does not enclose the property card. The Appellant has objected to the valuation made on the basis of the ready reckoner and has challenged the valuation in toto. The explanation regarding the typographical error in the

valuation should have come from the valuer and not come from the Respondent. Relying on the earlier title deeds the Appellant also challenges the correctness of the extent of the property calculated by the valuer. Under the circumstances, it is submitted that the bid amount of ₹17,81,000/- tendered by the Appellant is more than the actual value of the land. It is also submitted that the extent of the land mentioned in the mortgage deed itself is erroneous and includes the property of others too.

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 this Tribunal. The findings of the Ld. Presiding Officer that there was a mistake in calculating the total value of the property, has therefore, to be accepted. It is seen that on page 3 of the valuation report dated 08/12/2008, the market value is calculated at ₹12,000/- per sq. mtr. for an area of 106.25 sq. mtrs. and the total market value of the property inclusive of the building is calculated at ₹25,17,000/- and thereafter the auction value is calculated at 70% of the market value being ₹17,62,000/-. Apparently, the reserved price was fixed for the property at ₹17,80,000/- without noticing the error in the valuation report. The Ld. Presiding Officer, therefore, rightly intervened in setting aside the orders of the Ld. Recovery Officer and limiting the sale to the extent of only 106.25 sq. mtrs. together with the building.

There is no reason to interfere with the findings of the D.R.T. in

the impugned order. Resultantly, the appeal is dismissed.

Sd/-
Chairperson

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