

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 166/2022 (Stay)

In

Appeal No. 40/2022

Between

Central Bank of India ... Appellant/s
V/s.
Purnima Sharad Halkarni & Ors. ... Respondent/s

AND

I.A. No. 281/2023 (Stay)

In

Appeal No. 29/2023

Between

Central Bank of India ... Appellant/s
V/s.
Purnima Sharad Halkarni & Ors. ... Respondent/s

Senior Counsel Mr Umesh Shetty, i/b Mr V.K. Nair, Advocate for Appellant.

Mr Puneet Gogad, Advocate for Respondent No. 4.

:- Common Order dated: 16/06/2023:-

These are applications filed in the appeals are for a stay of the impugned orders of the Debts Recovery Tribunal, Aurangabad (D.R.T.) in Appeal No. 10 of 2015. Appeal No. 40 of 2022 is filed challenging the order of the D.R.T. allowing the appeal vide order

dated 17/01/2022 and Appeal No. 29 of 2023 is filed challenging a subsequent order in the very same appeal directing the Appellant Bank to recover possession of the property from the auction purchaser after refunding the sale consideration paid in full.

2. Since the stay applications pertain to the implementation of the original order setting aside the auction sale and refund of the purchase price to the auction purchaser, both these applications are disposed of by a common order.

3. The facts as required for the purpose of disposing of these applications, in brief, are thus:

The 1st Respondent and others had obtained a loan from the Appellant bank under two facilities. The 1st facility was that of a cash credit for ₹32.50 lakhs and the 2nd was a term loan for ₹7.50 lakhs on 14/10/2002. The properties belonging to late Sharad Ramachandra Halkarni, the husband of the 1st Respondent and the father of Respondents Nos. 2 and 3 were mortgaged as security for the loan on 10/12/2002. The repayment was defaulted which resulted in the filing of O.A. No. 120 of 2004 on 23/04/2004 which was allowed by the D.R.T. vide judgment and order dated 07/06/2006. A Recovery Certificate was issued and the certified creditor Bank filed Recovery Proceeding No. 54 of 2006 before the Recovery Officer, D.R.T., Aurangabad. The notice could not be served on the certified debtors at the given address. The notice had to be published in newspapers by way of substituted service. The CH Bank thereafter moved an application for attachment of the mortgaged properties as also the movables. The attachment was

affected and the property got valued. The mortgaged property was put up for sale in 2010 but this attempt failed for want of bidders. The 3rd party had raised the claim before the Ld. Recovery Officer which was rejected. The said 3rd party filed an appeal before the Presiding Officer D.R.T. in vain. The writ petition filed by the third party claiming the right over the property was also disposed of. During the pendency of the writ petition, the CH Bank got information about the demise of Sharad Ramachandra Halkarni. Application at Exhibit 82 was filed for bringing the legal representatives on record in the proceedings pending before the Recovery Officer. Notices were issued to the proposed legal representatives. None of the legal representatives appeared. A paper publication was made to serve notice on the legal representatives. Terms were settled and a sale proclamation was made. Notices were reissued to the legal representatives of the deceased mortgagor namely Respondent Nos. 1 to 3. Newspaper publications were made in both English and vernacular newspapers. The 1st Respondent had appeared to Counsel. The rest of the legal representatives however did not appear. The auction sale was conducted and confirmed in favour of the highest bidder, the 4th Respondent herein. Respondent Nos. 1 to 3 challenged the sale after the sale certificate was issued and possession handed over to the 4th Respondent in the appeal before the Presiding Officer D.R.T., referred to above in the impugned order dated 17/01/2022, the Ld. Presiding Officer was inclined to set aside the sale mainly on the ground that the legal representatives were not served and that the auction was carried out in the name of the deceased and

that even the sale certificate is depicting the property in the name of the deceased person. Consequently, the appeal was allowed and the CH bank was directed to refund the purchase amount to the auction purchaser together with interest. Liberty was also given to the Bank for settling the dispute with the Appellants therein. Aggrieved by this order of the D.R.T., the Bank came up in appeal by filing Appeal No. 40 of 2022. The said application was not taken up. In the meanwhile the 4th Respondent file an application before this Tribunal for a refund of the purchase price paid by him. This Tribunal disposed of the application by directing the 4th Respondent to approach the D.R.T. for refund of the amount of for contempt if any. Accordingly, the 4th Respondent filed an application before the D.R.T. as Misc. Application No. 19/2023. In view of the fact that no stay was granted by this Tribunal in I.A. No. 166 of 2022 in Appeal No. 40 of 2022, the Ld. Presiding Officer fixed the date for handing over possession of the property by the auction purchaser to the Bank. There is also a direction to refund the sale consideration to the auction purchaser together with interest vide order dated 13/04/2023. Aggrieved by that order, the CH Bank has come up in appeal by filing Appeal No. 20 of 2023.

4. Stay applications referred to above are filed in both appeals. It is submitted that in case the possession of the property is restored to the bank and the purchase price repaid to the auction purchaser, the appeals would become infructuous and irreparable injury would be cost to the certificate holder Bank.

5. Respondent No. 4, the auction purchaser appeared to

vehemently contest the applications and the appeal. The rest of the Respondents also appeared and filed a reply.

6. Heard the Ld. Senior Counsel Mr Umesh Shetty appearing for the Appellants and Mr Puneet Gogad appearing for Respondent No. 4. Records perused.

7. Mr Umesh Shetty, the Ld. Senior Counsel has pointed out that the sale proclamation was not made in the name of the deceased person as pointed out by the Ld. Presiding Officer in the impugned order. The description of the property in the sale proclamation and the subsequent papers are shown as that belonging to the deceased. The Ld. Senior Counsel points out that the property still stands in the name of the deceased and unless mutation was affected and necessary alterations brought about in the property card, it could not have been described otherwise. It cannot, therefore, be said that the proclamation was made in the name of a deceased person. The evidence regarding the service of notice on the legal representatives has been produced. The Ld. Senior Counsel relies on the decision of the Hon'ble Madras High Court in *Kadir Mohideen Marakkayar vs. N.V. Muthukrishna Ayyar & Ano.* ILR 26 Mad. 230, which has been relied upon in a subsequent decision of the Hon'ble Supreme Court in *Daya Ram & Ors. Vs. Shyam Sundari & Ors.* (1965) 1 SCR 231: AIR 1965 SC 1049 to substantiate the proposition that if one of the legal representatives of deceased the defendant is on party array, the impleaded legal representatives would sufficiently represent the state of the deceased and the decision obtained would bind not merely those who are impleaded but the entire estate including

those who are not brought on record. It is pointed out by the Ld. Senior Counsel that the 1st Respondent is one of the co-borrowers who was already on record and was sufficiently representing the estate of the deceased. She is the mother of Respondent Nos. 2 and 3. There is, therefore, no possibility of Respondents 2 and 3 not knowing about the proceedings. Interestingly, the 1st Respondent who had already appeared in the proceedings before the Recovery Officer has also preferred this appeal along with her son and daughter in challenging the sale.

8. That apart, the Ld. Senior Counsel also points out that the sale can be set aside only under the provisions of Rules 60 and 61 of the 2nd Schedule to the Income Tax Act, 1961. Admittedly, no such application has been filed before the Recovery Officer to set aside the sale within the stipulated period of 30 days from the date of sale. The Ld. Senior Counsel has relied upon a decision of the division bench of the Hon'ble High Court of Bombay in Writ Petition No. 3080 of 2014 dated 18/02/2016.

9. Mr Puneet Gogad has vehemently opposed the stay applications by stating that there is no infirmity in the impugned orders of the D.R.T. It is also pointed out that no irreparable injury would be caused to the Appellant Bank because the property would now fetch a higher price by which, they would be benefited. The Ld. Counsel also relies upon a decision of the Hon'ble High Court of Gujarat in *Ritesh Oil Mills Private Limited vs. Dena Bank & Ors.* AIR 2016 Guj 158 to point out that even without raising a challenge to the sale under Rule 60, the appeal could be filed under section 30

of the RDB Act before the Presiding Officer, D.R.T.

10. After having considered the rival submissions of the Ld. Counsel appearing for the parties and on perusal of the records, I find that the 1st Respondent was contesting the matter before the Recovery Officer. Prima facie, it will have to be found that there was a substantial representation of the legal representatives of the deceased borrower. The decision in *Kadir Mohideen* (supra) and *Daya Ram* (supra) would squarely apply and it is obvious that the Ld. Presiding Officer has not considered those aspects. Paper publications are also seen made at each stage of the process. The impugned order does not specifically set aside the sale. No applications are seen made under Rules 60 & 61 of the Second Schedule to the Income Tax Act. A borrower or a person claiming under the borrower can get the sale set aside only on limited grounds of fraud. There is no such allegation pleaded by the Respondents. The only ground is that notice was not served on the legal representatives and that the sale proclamation was in the name of the deceased person. It is pertinent to note that while describing the property in the proclamation and the sale notice, it is described that it belongs to the deceased. That does not mean that the proclamation is in the name of the deceased. The name of the deceased in the property card would continue till mutation is effected by the legal representatives.

For the foregoing reasons, it is in the interest of justice that the impugned orders of the D.R.T., Aurangabad be stayed till disposal of these appeals.

Resultantly, I.A. Nos. 166 of 2022 in Appeal No. 40 of 2022 and I.A. No. 281 of 2023 in Appeal No. 29 of 2023 are allowed and the impugned orders of the D.R.T., Aurangabad dated 17.01.2022 in Appeal No. 10 of 2015 and the order dated 13.04.2023 in M.A. No. 19 of 2023 and all subsequent orders are stayed till the disposal of this appeal.

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Sd/-
Chairperson

DRAFT MUMBAI