

M/S. ASG Business (India) Private Limited Vs Central Bank Of India, through its Regional Manager

Court: Jharkhand High Court

Date of Decision: Jan. 17, 2025

Acts Referred: Constitution of India, 1950 " Article 14

Hon'ble Judges: M. S. Ramachandra Rao, CJ; Deepak Roshan, J

Bench: Division Bench

Advocate: Dwaipayan Banerjee, Danish Shahbaz, Haroon Rasheed, Shadab Eqbal, P.A.S. Pati

Final Decision: Allowed

Judgement

M.S. Ramachandra Rao, CJ

1) The petitioner is a Company which had got amalgamated with M/s. Kiosk Vincorm Private Limited.

2) M/s. Kiosk Vincorm Private Limited purchased certain property under the Sale Certificate dt. 07.02.2014 issued by Respondent No.3 in a sale

conducted by respondent no.1 Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

for Rs.27,50,000/-. The Sale Certificate mentions that the property sold to it free from all encumbrances and physical possession of the property was

also handed over to the petitioner.

3) Despite the issuance of the Sale Certificate, the Respondents refused to register the same as per the law and so it filed W.P. (C) No.812 of 2018

before this Court impleading the vendor 1st Respondent Bank.

4) The said Writ application was referred to a Lok Adalat and in the Lok Adalat, the Legal Officer of the 1st Respondent agreed to execute sale deed

in favour of the petitioner and this is recorded in the order dt. 14.08.2018 passed by the Lok Adalat.

5) Respondent No.4 had, however, challenged the sale in favour of the petitioner before the Debts Recovery Tribunal, Ranchi, Jharkhand, in S.A. No.

72 of 2018.

6) On 13.12.2023, the said Tribunal directed the 3rd Respondent to withdraw all notices and not to proceed with the sale of the property.

7) Petitioner contends that in spite of the Respondents 1, 2 and 3 being aware that the 4th Respondent was claiming ownership of the property, they

deliberately sold the property and handed over physical possession of the same to the petitioner on 08.07.2015.

8) As a consequence of the order passed by the Debts Recovery Tribunal, Ranchi, on 13.12.2023, the petitioner claimed refund of the sale price of

Rs.27,50,000/- through Annexure-7 letter dt. 01.04.2024, but the same was not paid.

9) So the petitioner sought refund of the same amount with interest @ 18% p.a. till the date of payment in this writ petition.

10) When the matter was listed on 19.09.2024 before this Court, counsel for Respondents 1 to 3 submitted that there was no difficulty in returning

back the principal amount, but sought instructions from the Regional Head Office.

11) Thereafter on 05.11.2024, the sum of Rs.27,50,000/- was refunded to the petitioner by Respondents 1 to 3.

12) In the counter affidavit filed by the Respondents 1 to 3-Bank, it is contended that on 30th September, 2016, M/s. Kiosk Vincorm Private Limited

had been informed about the claim made by Respondent 4, but it insisted on registration of the property and did not seek refund of the money and,

therefore, it is contended that interest is not payable to petitioner on the amount refunded.

13) Admittedly, the Sale Certificate had been issued to the petitioner on 07.02.2014 misrepresenting that the property is free from all encumbrances.

Therefore, merely because Respondents 1 to 3 issued a letter on 30th September, 2016, that too, two and a half years later after receiving the sale

consideration from the petitioner of Rs.27,50,000/-, the Respondents 1 to 3 cannot avoid the payment of interest on the said pretext.

14) Respondent No. 1 is an instrumentality of State and is duty-bound to act fairly under Article 14 of the Constitution of India and it cannot, even in

the domain of contract, claim an exemption from the public law duty to act fairly. The State and its instrumentalities do not shed either their character

or their obligation to act fairly in their dealings with private parties in the realm of contract. [Unitech Ltd. v. Telangana State Industrial

Infrastructure Corpn(2021) 16 SCC 35, para 45; Indsil Hydro Power & Manganese Ltd. v. State of Kerala (2020) 16 SCC 276, para 33;

ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd(2004) 3 SCC 553, para 23; Central Bank of India v. Devi Ispat Ltd

(2010) 11 SCC 186, para 28]

15) Once the sale of the property got jeopardized because of the order passed by the Debts Recovery Tribunal, Ranchi, the Respondents 1 to 3 cannot

avoid payment of interest.

16) In State of Karnataka v. Karnataka Pawn Broker Association (2018) 6 SCC 363, para 29, 33, the Supreme Court explained that interest is

the return of compensation for the use or retention by one person of a sum of money belonging to or owed to another; and a person would be entitled

to interest for the period he is deprived of the use of money and the same is used by a person with whom the money is lying.

17) This was again reiterated in DLF Homes Panchkula (P) Ltd. v. D.S. Dhanda (2020) 16 SCC 318, at page 327 in the following terms:

“17. This Court in a judgment reported as Irrigation Department, State of Orissa v. G.C. Roy examined the question as to whether an arbitrator has the power

to award interest pendente lite. It was held that a person deprived of use of money to which he is legitimately entitled has a right to be compensated for the

deprivation which may be called interest, compensation or damages. Thus, keeping in view the said principle laid down in the aforesaid judgment, the amount of

the interest is the compensation to the beneficiary deprived of the use of the investment made by the complainant. Therefore, such interest will take into its ambit,

the consequences of delay in not handing over his possession.” (emphasis supplied)

18) While it is true that the Debts Recovery Tribunal, Ranchi on 13.12.2023 did not pass a specific order to refund the auction sale money to the

auction purchaser, still, in S.A. No.72 of 2018 the applicant/Respondent 4 herein specifically contended that he was a bona fide purchaser of the

property for valuable consideration and was in possession thereof and the Respondents 1 to 3 had admitted in the said Tribunal that the sale deed,

which was in its possession, was subject to encumbrance.

19) It was the duty of the Bank to investigate about the antecedents of the property which it was going to keep as a collateral/guarantee and

admittedly it did not obtain any non-encumbrance certificate prior to the mortgage. Thus, the right of the Bank to sell the property, which already had

an encumbrance of a third party, was not absolute because the petitioner would not have got any right, title or interest in the property absolutely and

would have to contest the claims of the rival claimant to the property, defeating the very purpose of the sale in its favour which is supposed to be free

from all encumbrances.

20) Therefore, the Respondents 1 to 3 are certainly liable to pay interest on the principal amount.

21) Accordingly the Writ Petition is allowed and the Respondents 1-3 are directed to pay simple interest @ 9% p.a. on the amount of Rs.27,50,000/-

paid by the petitioner on 07.02.2014 till 04.11.2024, the date of payment as above. The said interest shall be paid within four weeks from the date of

receipt of a copy of this order. The respondents Bank shall also pay costs of Rs.10,000/- to petitioner within 4 weeks.

22) All miscellaneous applications also stand disposed of.