
Allahabad Bank Vs The State of Jharkhand

Cr. M.P. Nos. 748 and 822 of 2013

Court: Jharkhand High Court

Date of Decision: July 17, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 40 Rule 1#Penal Code, 1860 (IPC) â€” Section 120B, 406, 420#Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) â€” Section 13(4)

Citation: (2014) 4 AJR 554

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Ray Rajat Nath and Anil Kumar, Advocate for the Appellant; Rohit, Advocate for the Respondent

Judgement

Harish Chandra Mishra, J.

Both these applications arise out of the same case and as such, they are taken up together and being disposed

of by this common order.

2. Heard learned counsel for the petitioners, learned A.P.P. for the State as also learned counsel for the complainant opposite party No. 2.

3. The petitioners are aggrieved by the order dated 4.2.2013, passed by Sri Partho Sarathi Ghosh, learned Judicial Magistrate, 1st Class,

Dhanbad, in Complaint Case No. 2734 of 2012, whereby upon an inquiry in the complaint case, the prima facie offences under Sections 406, 420

and 120-B of the Indian Penal Code have been found against the petitioners. In Cr.M.P. No. 748 of 2013, the petitioner is the Allahabad Bank

(herein after referred to as the "Bank"), whereas the petitioner in Cr.M.P. No. 822 of 2013 is the Chief Manager of the Bank, who is also the

Authorized Officer of the Bank.

4. Complaint Case No. 2734 of 2012 was filed by the complainant O.P. No. 2 in the Court of the Chief Judicial Magistrate, Dhanbad, wherein it

is alleged that a "Notice of Sale" was dishonestly, fraudulently and with intention to cheat, was published by the Bank in the Prabhat Khobar daily

news paper, for the sale of the property in dispute, which comprised 3 acres of land situated in Mouza Maheshpur, in the District of Dhanbad. The

complainant relying upon the said notice, purchased the said property and full and final payment of Rs. 6,55,000/- was made by the complainant to

the accused persons. The accused No. 1, the petitioner in Cr.M.P. No. 822 of 2013, issued the sale certificate in favour of the complainant and

thereafter he executed a registered sale deed in favour of the complainant vide Sale Deed No. 6419 dated 6.5.2011. After obtaining the sale deed,

when the complainant went to take physical possession over the purchased property, he could get the possession only over 2.37 acres of land, as

the rest 63 acres of land had already been sold to other persons, who were in possession upon it. Stating that it was incumbent upon the Bank and

its official to sell the property only after taking the physical possession over the property and also stating that only with the fraudulent intention the

"Notice of Sale" was published without taking physical possession over the property in dispute, the complainant O.P. No. 2 filed the complaint

petition, further stating that in spite of making several requests to the accused persons to refund the amount, the amount was not refunded to him.

The complainant supported his case in his statement recorded on solemn affirmation and it also appears that some witnesses were also examined in

the inquiry stage, on the basis of which, the Court below has found sufficient materials against the accused persons for putting them to trial, as

prima facie offences under Sections 406, 420 and 120-B of the Indian Penal Code were made out against them.

5. Learned counsel for the petitioners has submitted that the impugned order passed by the Court below is absolutely illegal, inasmuch as, the

petitioners are the Nationalised Bank and its officials and whatever has been done in this case, has been done in their official capacity. It is also

submitted that the property in dispute was the mortgaged property with the Bank and since mortgage was not discharged, only the symbolic

possession over the land was taken by the Bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 (hereinafter referred to as the "Act"). Learned counsel has also submitted that the petitioners were never having any

fraudulent intention to cheat the complainant and they were ready to compensate the complainant with respect to the part of the property, which

could not be taken possession by him, but due to certain procedures, which are to be followed, the complainant could not be compensated.

Submitting that the dispute between the parties is purely of civil nature, learned counsel has submitted that no offence can be said to be made out

against the petitioners.

6. Learned counsel, in support of his contention, placed reliance upon the decision of this Court in an unreported case in Bhagwati Prasad

Agarwala vs. Allahabad Bank, through its authorized officer, in W.P.(C.) No. 1547 of 2012, which was dismissed by order dated 26.6.2012,

wherein where the petitioner had prayed for quashing the order issued by the respondent Bank deciding that the property purchased by the

petitioner in auction sale, be again put to resale and the amount deposited by the petitioner be forfeited. Taking into consideration that the sale was

on the ""AS IS WHERE IS BASIS"", as also taking into consideration that there were disputed questions of facts, the said writ application was

dismissed. Learned counsel submitted that in the present case also the sale was made on ""AS IS WHERE IS BASIS"", and accordingly, no offence

can be said to be made out against the petitioners. Learned counsel has also placed reliance upon the decision of the Supreme Court of India in

Transcore Vs. Union of India (UOI) and Another, , wherein, question of taking possession of the secured assets under Section 13(4) of the same

Act, referring the same to be as "NPA Act", was under consideration of the Apex Court, and one of the questions framed to be decided by the

Apex Court was as follows:-

37. -----

(ii) Whether recourse to take possession of the secured assets of the borrower in terms of Section 13(4) of the NPA Act comprehends the power

to take actual possession of the immovable property.

The said question was decided by the Apex Court in Paragraph-74 of the decision, in which it was held that ""Till the time of issuance of sale

certificate, the authorised officer is like a Court Receiver under Order 40 Rule 1 of CPC. The Court Receiver can take symbolic possession and in

appropriate cases where the Court Receiver finds that a third-party interest is likely to be created overnight, he can take actual possession even

prior to the decree"". Placing reliance on this decision, learned counsel for the petitioners has submitted that the petitioners had taken only the

symbolic possession over the property, without any knowledge of the fact that the part of the property had already been sold by the vendor of the

mortgager. Learned counsel has accordingly, submitted that no offence can be said to be made out against these petitioners.

7. Learned counsel for the State as also learned counsel for the complainant-O.P. No. 2 have opposed the prayer. Learned counsel for the

complainant-O.P. No. 2 has drawn attention of the Court towards the "Notice of Sale", published by the Bank, which has been brought on record

as Annexure-6. The notice of sale clearly shows that the Authorized Officer of the Bank had issued notice under the Act and thereafter had taken

possession of the mortgaged properties detailed in the notice, and had decided to invite sealed tenders for the sale of the properties, including the

property in question in the present case. Learned counsel has pointed out that one of the conditions in the sale deed executed by the Bank, as

mentioned in the sale deed itself, is that if in future it transpired that the vendor was not the true and lawful owner of the land or had other sharer or

co-sharer or that the vendor had no right and authority to transfer the land and if by any other reasons thereof the purchaser was put to any loss,

the vendor undertook to compensate the purchaser in every respect thereof. Learned counsel has accordingly, submitted that by the "Notice of

Sale" the Bank had assured the complainant that it had taken the possession over the property in question, and the sale deed had also assured the

complainant that if for any reason, he was found to put to any loss, he shall be duly compensated in respect thereof. Submitting that these

assurances were expressly given by the Bank, but the complainant was not compensated in the matter, in spite of the fact that the matter was

brought to the notice of the Bank, learned counsel has submitted that on the basis of the allegations made in the complaint petition and the

statements of the complainant on solemn affirmation, as also of the statements of the witnesses, recorded during inquiry, the offences are clearly

made out against the Bank and the Chief Manager of the Bank, who has executed the sale deed in favour of the complainant on behalf of the

Bank. Learned counsel has accordingly, submitted that there is no illegality in the impugned order passed by the Court below.

8. After having heard learned counsels for both the sides and upon going through the record, I find that in the "Notice of Sale" published in the

newspaper, it was clearly mentioned that the Bank had taken the possession over the property in dispute. Giving this understanding to the intending

purchasers, the land in question was sold to complainant, and sale deed was executed after receiving the consideration amount, but when he went

to take possession over the purchased land, he was given possession over only the part of the property and the rest of the property was found to

be sold to other persons.

9. The sale deed was executed on 6.5.2011. The complainant moved before the Bank for compensating him, but he was not compensated by the

Bank, and faced with this situation, he filed the complaint in the Court below on 12.12.2012. We are now in 2014. The stand of the petitioners

that they were ready to compensate the complainant, has not yet taken shape in spite of passage of more than three years" time from execution of

the sale deed. During the pendency of these applications also, it appears from order dated 23.4.2014, that a proposal was given on behalf of the

complainant for settling the dispute on certain conditions, and the cases were adjourned at the prayer of the learned counsel for the petitioners for

seeking instructions, whether the petitioners agreed to that or not. The matter was not settled and again on 26.6.2014, these cases were adjourned

at the request of the learned counsel for the petitioners for seeking instructions whether the complainant may be compensated by the petitioners, by

refunding back the proportionate amount to him, and the cases were fixed for today. Today also, it is informed that the complainant could not be

compensated by the petitioners because of the procedures involved therefor.

10. In my considered view, the procedures, if any, are the indoor management of the Bank and the complainant has nothing to do with it. Even

after the lapse of more than three years, if the petitioners claim that they are still following the procedures without giving any fruitful result, this itself

casts serious doubt on the intention of the petitioners, whether they seriously want to compensate the complainant for the wrong done to him, or

they are taking only lame excuses in the Court. If the mortgaged property was sold to the complainant by the Bank informing that it had taken the

possession over the property, and with the assurance that the complainant shall be duly compensated for any loss, the complainant is certainly

entitled to be compensated by the Bank for the rest of the property. The complainant is not at all concerned with the indoor management of the

Bank.

11. W.P.(C.) No. 1547 of 2012 of Bhaghwati Prasad Agarwala, relied upon by learned counsel for the petitioners, was dismissed by order dated

26.6.2012, as there were disputed questions of facts involved therein. In my considered view, this is not applicable to the facts of this case

because the situation is totally different in the present case and almost all the facts are admitted in this case. The other decision relied upon by the

learned counsel in Transcore's case (supra), is also of no help to the petitioners, inasmuch as, the Apex Court has clearly held that even the

physical possession can be taken by the authorised officer.

12. In this backdrop, if the "Notice of Sale" is viewed, it clearly shows that before putting the property to sale, it was clearly stated that the Bank

had taken the possession over the property. It is not mentioned in the notice of sale that the possession was only symbolic. Similarly, the Bank had

assured the complainant in the sale deed that the complainant shall be duly compensated of any loss put to him, but the said assurance also has not

been fulfilled till date, in spite of the fact that the sale deed was executed on 6.5.2011, the wrong was brought to the notice of the Bank, and even

during the pendency of these applications, two adjournments were taken by the counsel for the petitioners for seeking instructions in the matter of

compensation to the complainant. In that view of the matter, if it was informed by the Bank that it had taken the possession over the property,

without specifying that the possession was only symbolic possession, in my considered view, the proposed purchasers were given the impression

that the Bank had taken the physical possession of the property. The Bank cannot be allowed to take a U-Turn from its stand and to say that it

had taken only the symbolic possession over the property. The petitioner Bank being a Nationalized Bank, it shall be deemed that the actions of

the Bank and its Official shall always be fair, and the facts stated in the Notice of Sale, and the sale deed are true and reliable. This is also the

legitimate expectation of the public at large.

13. There is direct allegation in the complaint petition that the "Notice of Sale" was published by the Bank in the Prabhat Khabar, dishonestly,

fraudulently and with intention to cheat the complainant. Looking into the facts of this case in the backdrop of this allegation, the fact that for

satisfying their debt, the petitioners intentionally misrepresented in their "Notice of Sale" that they had taken the possession over the property in

dispute knowing full well that they had not taken any such physical possession, cannot be ruled out at this stage. Similarly, the fact that for satisfying

their debt, the petitioners adopted the deceitful means of misrepresenting the facts, and thereby fraudulently and dishonestly induced the

complainant to purchase the property, putting him to wrongful loss, also cannot be ruled out at this stage. As such, whether the petitioners, who are

the Bank and its Authorised Officer, were having the dishonest and fraudulent intention to cheat the complainant or not, can be decided only in the

trial and no interference in the criminal proceeding against them can be made at this stage.

14. In the facts of this case, I do not find any illegality in the impugned order dated 4.2.2013, passed by Sri Partho Sarathi Ghosh, learned Judicial

Magistrate, 1st Class, Dhanbad, in Complaint Case No. 2734 of 2012, finding the prima facie offences under Sections 406, 420 and 120-B of the

Indian Penal Code against the petitioners and summoning them to face the trial. There is no merit in these applications and both these applications,

are accordingly, dismissed.