

Before M.S. Ramachandra Rao & Jasjit Singh Bedi, JJ.

**M/S HOSHIARPUR ROLLER FLOUR MILLS PRIVATE
LIMITED AND ANOTHER—Petitioner**

versus

**PUNJAB NATIONAL BANK, CIRCLE OFFICE, HOSHIARPUR
AND OTHER—Respondents**

CWP No.14440 of 2021

December 10, 2021

Constitution of India, 1950—Art.226—Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—S.13—Security Interest (Enforcement) Rules, 2002—RI.9(1)—Petitioners/mortgagors/borrowers challenged orders of Debt Recovery Appellate Tribunal—Petitioners’ loan accounts declared Non Performing Assets—Symbolic possession of properties taken—Sale notice prepared and posted 3 days prior to sale—In violation of Rule 9—Auction conducted but not confirmed—Petitioners/mortgagors’ right to redemption—Not extinguished—Only on execution of conveyance and registration of transfer by registered instrument—Would mortgagor’s right be extinguished—No prejudice to auction purchaser—Bank to refund consideration with interest—Petition allowed.

Held that, it is only on execution of the conveyance and registration of transfer of the mortgagor’s interest by registered instrument that the mortgagor’s right of redemption will be extinguished but the conferment of power to sell the mortgaged property without intervention of the Court, in a mortgage deed, in itself, will not deprive the mortgagor of his right of redemption.

(Para 48)

Further held that, therefore, there is no merit in the plea of the respondents that the petitioner’s right of redemption stood barred on account of amendment made to Section 13(8) of the Act, the moment notice under Rule 9 of the Rules is published.

(Para 49)

Further held that, no prejudice can be claimed by respondent No.2 because there is admittedly a violation of Rule 9 of the Rules by respondent No.1 (Bank) in selling the assets to it in the public auction

held on 15.12.2020, and the entire sale consideration paid by him would have to be refunded by respondent No.1 to it with appropriate interest. The claim of counsel for respondent No.2 (auction purchaser) that his client had made certain improvements to the property acquired by it in the sale held on 15.12.2020 cannot be accepted since he has not chosen to place on record any such material in spite of being given an opportunity to do so for more than two months.

(Para 54)

Aalok Jagga, Advocate, with
Harkirat S. Jagdev, Advocate
for the petitioners.

D.S. Bainola, Advocate
for respondent No.1 (Bank).

Sunil Garg, Advocate
for respondent No.2.

M.S. RAMACHANDRA RAO, J.

(1) In this writ petition the petitioners have challenged orders dt. 10.5.2021 and dt. 17.07.2021 passed by the Debt Recovery Appellate Tribunal-I, Chandigarh-respondent No.3 [for short ‘the Appellate Tribunal’].

Background Facts

(2) Petitioner No.1 is a Company registered under the Companies Act, 1956. Petitioner No.2 is a partnership firm.

(3) Petitioner No.1 had availed three cash credit limits, an overdraft and a term loan totalling Rs.13.40 crore from the Punjab National Bank (respondent No.1) [for short ‘the Bank’].

(4) Likewise petitioner No.2 had also availed credit facilities of Rs.1.10 crore.

(5) These loan accounts were declared as Non Performing Assets on 28.02.2018 by respondent No.1 (Bank).

(6) Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short ‘the Act’] was issued on 22.03.2018 demanding a sum of Rs.12,17,78,873.20 in the loan account of petitioner No.1 and Rs.1,10,66,996.67 in the loan account of petitioner No.2.

(7) There was settlement between the Bank and petitioner No.1 on 06.06.2018 to keep the proceedings under the Act on hold subject to the petitioner No.1 paying without default Rs.13,58,00,000/- with interest at 9.15%.

(8) But the settlement did not fructify.

(9) Respondent No.1 (Bank) took symbolic possession of the mortgaged properties on 21.11.2018 invoking Section 13(4) of the Act.

(10) Respondent No.1 (Bank) prepared a sale notice dt. 27.11.2020 proposing to sell the mortgaged properties of the petitioners on 15.12.2020, but the same was put in registered post for service on the petitioners by respondent No.1 on 12.12.2020 *three days* prior to the sale. It reached the petitioners on 15.12.2020 the date of sale.

CWP-1452-2021

(11) Petitioners questioned the action of respondent No.1 by filing CWP-1452-2021 contending that the sale is null and void.

(12) On 21.01.2021, notice was issued and interim stay was granted of all further proceedings pursuant to the said sale notice.

(13) The writ petition came to be disposed of on 16.2.2021. The Court recorded the contention of the petitioners that the sale of the property was fixed for 15.12.2020, but notice to the petitioners was put by registered post on 12.12.2020 and the Bank had flagrantly violated the provisions of Rule 9(1) of the Security Interest (Enforcement) Rules 2002 [for short 'the Rules'].

(14) Respondent No.1 (Bank) raised a plea that since the auction was conducted (though not confirmed), the petitioners have the remedy before the Debt Recovery Tribunal [for short 'the Tribunal'].

(15) The Division Bench recorded a finding that the registered notice was put in the post only on 12.12.2020, and in the written statement filed in the writ petition, this fact had not been denied by respondent No.1 and had been tried to be explained by claiming it to be a technical error.

(16) While observing that the petitioners have an effective and efficacious remedy, the Division Bench recorded a finding that there is no doubt that the registered notice to the petitioners was put in the post only on 12.12.2020 while the auction was fixed for 15.12.2020.

(17) It, however, relegated the petitioners to the remedy before the DRT and directed them to file an application before the Tribunal within seven days along with an application for stay, and directed that there shall be stay of further proceedings in the auction till such time as the said application is decided by the Tribunal as per law.

SA No.40 of 2021

(18) The petitioners then filed SA No.40 of 2021 before the DRT- I, Chandigarh (respondent No.3).

(19) The interim stay granted by this Court in CWP-1452-2020 was continued by the Tribunal and so the Bank did not confirm the sale though it had received the single bid of respondent No.2.

(20) A written statement was filed by respondent No.1 (Bank) before the Tribunal without disputing that the notice was put in post only on 12.12.2020 when the date of the sale was 15.12.2020.

(21) However, the SA was dismissed on 10.5.2021 by respondent No.3 (Tribunal) observing that from a perusal of the photocopies of the envelopes addressed to the parties, it is not clear when those envelopes were dispatched and delivered because the single track report issued by the Postal Department did not match with any consignment report.

(22) The respondent No.3 (Tribunal) rejected the plea of the petitioners that the sale notice was dispatched on 12.12.2020 and was delivered on 15.12.2020 which was the date of auction.

(23) After dismissal of SA No.40 of 2021 on 10.05.2021, on 11.5.2021, the very next date respondent No.1 issued the sale certificate to respondent No.2 (auction purchaser).

Review Application No.2 of 2021

(24) Petitioners filed IAs No.317 & 318 of 2021 to keep order dt. 10.5.2021 passed in SA No.40 of 2021 by respondent No.3 (Tribunal) in abeyance and for a direction to respondent No.1 to place on record the date when it posted the sale notice and acknowledgement due was received which is required to be maintained by the Bank as per Rule 3 of the above referred Rules.

(25) On the same day, the petitioners also filed Review Application No.2 of 2021 seeking review of the order dt. 10.5.2021 contending that respondent No.1 had admitted in its written statement in CWP-1452-2021 filed by the petitioners before this Court that the

sale notice was put in registered post only on 12.12.2020 when the date of sale was 15.12.2020, that this was also recorded in the order dt. 16.2.2021 passed by this Court in CWP-1452-2021, and though this aspect had been drawn to the attention of respondent No.3 (Tribunal), it had not dealt with the said issue at all; and there was thus an apparent error on the face of record. It was also contended that the order passed by respondent No.3 (Tribunal) was in direct contravention of the observations/findings recorded by this Court in its order dt.16.2.2021 in CWP-1452-2021, and that the tracking report was not at all significant when admittedly even respondent No.1 (Bank) had not disputed that the requisite time gap of 15 days was not there between the date of service of the sale notice through registered post and the date of auction; and Rule 9(1) of the Rules had not been complied with.

(26) On 17.07.2021, the Review Application filed by the petitioners was dismissed on the ground that the petitioners, by placing on record original envelopes along with the review application, were trying to improve their case. It was also observed that the documents which were filed along with the SA with regard to the track report were different from the track report tagged along with the review application; and the track report of the registered post filed along with the review application cannot be accepted since they had not been filed along with the original SA.

The Present Writ Petition

(27) Assailing the same, present Writ Petition is filed.

(28) It is the contention of the counsel for the petitioners that respondent No.3 (Tribunal) ought not to have rejected the plea of the petitioners regarding non-compliance with Rule 9(1) of the Rules both in the initial order passed by it on 10.5.2021 in SA No.40 of 2021 and also in the order dt. 17.07.2021 in the Review Application No.2 of 2021. It is contended that it was the duty of respondent No.3 (Tribunal) to consider the orders of this Court, in particular the order dt. 16.02.2021 in CWP-1452-2021 and the observations made therein; and since respondent No.1 had never disputed the failure to comply with Rule 9(1) of the Rules in the written statement filed in this Court (as noted in the order dt. 16.2.2021), and the said order dt. 16.2.2021 in CWP-1452-2021 was placed before respondent No.3 (Tribunal), it should not have acted contrary to the said observations/findings in the order dt.16.02.2021 in CWP-1452-2021.

(29) It was contended that IAs No.317 & 318 of 2021 had been

filed before respondent No.3 (Tribunal) seeking a direction to respondent No.1 (Bank) to place on record as to on which date the Bank had put the sale notice in registered post, but no orders had been passed therein by the Tribunal and the applications remain undecided.

(30) It was contended that there is no improvement in the case of the petitioners as was observed by respondent No.3 in its order dt. 17.07.2021 because the envelopes were already on record in the main SA and respondent No.3 had failed to examine the said documents which were already on record, and had also been referred to during arguments, and so the orders passed by the Tribunal are liable to be set aside on the ground of non-application of mind and non-consideration of material evidence apart from violation of principles of natural justice.

The events after filing this Writ Petition

a) Order dt.03.08.2021

(31) On 3.08.2021, notice of motion was issued by this Court and it was observed that *prima facie* the Court is of the opinion that the Tribunal had decided the matter without even examining the clear admissions of the Bank with regard to the date of dispatch being 12.12.2020 and the date of service being 15.12.2020 in the order dt. 16.02.2021 passed in CWP-1452-2021 as also in the written statement filed before the Tribunal. It observed that if the dates were still to be verified, respondent No.3 (Tribunal) could have called for the record of Bank to verify the same for which applications were also filed, but which had not been decided. It therefore, held that *prima facie* the sale held was in clear violation of Rule 9(1) of the Rules.

(32) The parties were directed to maintain status quo existing as on that day with regard to plant and machinery and the subject property.

(33) While directing respondent No.1 (Bank) to file affidavit disclosing the date on which the sale notice was put in registered post and the date according to which the sale notice was served upon the petitioners along with supporting documents, comments of the Presiding Officer, DRT-I, Chandigarh, who had passed orders on 10.5.2021 and 17.07.2021, were called for asking him to explain reasons for not dealing with the submissions (including written submissions) of the petitioners, while deciding the *lis* in question.

(34) The matter was next listed on 08.09.2021 and by that date the comments of the Presiding Officer of respondent No.3 (Tribunal)

were received by way of an affidavit (the first affidavit).

b) Order dt. 08.09.2021

(35) The Division Bench then passed the following order on 08.09.2021: -

“The comments received at Flag 'A' from the officer concerned pursuant to the directions contained in the order dated 03.08.2021, we find, are not satisfactory. In the backdrop of the admitted facts as noted in the order dated 03.08.2021, the officer concerned has offered no explanation nor any remorse on account of the grave mistake committed by him, while proceeding to justify the orders passed by him in disregard of pleadings on record. We also fail to understand the stand of having a relook in the matter in the purported decision to be rendered in IA No.317 of 2021, which in our view stood disposed of in the light of the final order passed in OA/review application. Thus, we are constrained to summon the officer for appearance before this Court through video conferencing on the next date of hearing.

Adjourned to 27.10.2021.

The officer concerned is also given liberty to file an additional affidavit.”

(36) On that day, counsel on behalf of respondent No.2 (auction purchaser) also appeared and sought time to file reply. The matter was then adjourned to 27.10.2021.

c) The additional affidavit dt. 27.10.2021 filed by Presiding Officer, DRT-I, Chandigarh

(37) On 27.10.2021, an additional affidavit was filed by the Presiding Officer of DRT-I, Chandigarh stating that the words “*but there is also no doubt that the registered notice to the petitioners was put in the post only on 12.12.2020 while the auction was fixed for 15.12.2020*” in the order dt. 16.2.2021 passed in CWP-1452-2021, had escaped his attention, and he unequivocally expressed his regret for the same. He also expressed regret for non-consideration of IA No.317 of 2021 on the ground that the said application had been kept in part III of the records, and so he had not noticed it. He prayed that this Court may take a lenient view in the matter and accept his apology.

The Stand of Respondent No.1 (Bank)

(38) Respondent No.1 filed an elaborate reply contending that there is no contravention of the order dt.16.2.2021 passed by this Court since in that order this Court had only directed the petitioners to approach the Tribunal in view of the alternative remedy available under Section 17 of the Act, and that the petitioners had filed SA No.40 of 2021 before respondent No.3 (Tribunal) and the same had been rightly dismissed on 10.5.2021. It also justified the dismissal of the review application on 17.7.2021 in RA No.2 of 2021 by respondent No.3 (Tribunal).

The Consideration by the Court

(39) We do not agree with the above stand taken by respondent No.1 (Bank) for the reason that while directing the petitioners to avail alternative remedy under Section 17 of the Act before respondent No.3 (Tribunal), observations/findings had been recorded in the order dt. 16.02.2021 in CWP-1452-2021 to the following effect:-

“As regards the fact that the registered notice was put in the post only on 12th December, 2020, in the written statement this fact is not denied and sought to be explained by way of claiming it to be a technical error. As regards the plea of alternative remedy, he has relied upon the decision of Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C, 2018(3) SCC 85. There is no doubt that the petitioners have an effective and efficacious remedy but there is also no doubt that the registered notice to the petitioners was put in the post only on 12th December, 2020 while the auction was fixed for 15th December, 2020.”

(40) Since respondent No.1 (Bank) was a party to the said order, the observations/findings recorded therein were binding on respondent No.1, and it is not open to respondent No.1 to now contend that respondent No.3 (Tribunal) had acted rightly in ignoring the observations/findings recorded by the Division Bench of this Court on 16.2.2021 in CWP-1452- 2021; and so it is also not tenable for respondent No.1 to support the order passed on 10.5.2021 in SA No.40 of 2021 and order dt. 17.07.2021 passed in Review Application No.2 of 2021 by respondent No.3.

(41) The stand of respondent No.1 that there was a first sale through an auction to be held on 11.01.2019, notice of the said sale auction was duly published in the newspaper on 10.12.2018 and notice

to the petitioners was issued on 07.12.2018 and so statutory requirement of 30 days referred to in proviso of Sub Rule 6 of Rule 8 and Rule 9 (1) of the Rules is complied with cannot be countenanced because as per the proviso to Rule 9(1) of the Rules in the case of a subsequent sale (such as the one held on 15.12.2020) minimum 15 days gap is required to be maintained between the date of the notice and the date of the sale and even the said requirement is not fulfilled in the instant case.

(42) The plea of respondent No.1 (Bank) that the petitioners have a remedy before the Appellate Tribunal against the order dt. 17.07.2021 of respondent No.3 (Tribunal) also cannot be accepted since the existence of an alternative remedy is not always a bar for entertaining the writ petition particularly when respondent No.3 (Tribunal) deliberately ignores the orders passed by this Court and decides the SA in a manner violative of Article 14 of the Constitution of India.

(43) It may be that there were about six such previous attempts to sell the properties of the petitioners and they had not fructified into a completed sale. But that is no reason for respondent No.1 (Bank) to violate the provisions of the Act and Rules framed under it which are mandatory, and also act contrary to the law laid down in the decision of the Supreme Court in *Mathew Verghese* versus *M. Amritha*¹.

(44) It also may be that respondent No.1 (Bank) had received the sale consideration and had also delivered possession on 11.5.2021 after issuing sale certificate to respondent No.2 (auction purchaser), but once the sale is set aside on the ground of violation of the mandatory provision contained in Rule 9(1) of the Rules, the consequence of such violation would have to be faced by both the respondent No.1 (Bank) and respondents No.2 (auction purchaser).

(45) The other plea raised by the respondents that the petitioners' right of redemption is barred in view of the amendment made to Section 13(8) of the Act once the notice under Rule 9 of the Rules is published cannot be also countenanced.

(46) In *Mathew Verghese* (supra), the Supreme Court held that even in respect of a sale of secured assets under the provisions of the SARFAESI Act, 2002 until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption.

¹ 2014(5) SCC 610

(47) In *Concern Readymix and Others* versus *The authorized officer, Corporation Bank and others*² decided by the High Court of Judicature At Hyderabad for the State of Telangana and the State of Andhra Pradesh, a Division Bench presided over by Justice V. Ramasubramanian, (as His Lordship then was), interpreted provisions of Rule 8(6) as well as Rule 9(1) of the Rules and also Section 13(8) of the Act (pre and post amendment). It observed that the amended as well as the un-amended provisions of Section 13(8) of the Act and Rule 9(1) of the Rules do not speak about the equity of redemption available to the mortgagor; that the amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of secured assets by way of lease, assignment or sale; a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor; the payment of amounts mentioned in Section 13(8) of the Act ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the Act; and that redemption comes later. The Bench held that Section 13(8) does not relate to the right of redemption of a mortgagor and such right does not get distinguished if payment was not made as per the said provision. It held that as per Section 60 of the Transfer of Property Act, 1882, Section 54 of the Transfer of Property Act and Section 17 of the Registration Act, 1908, together ensure that the extinction of the right to redemption comes much later than the sale notice. Therefore, right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction conducted be accepted. It also held that the provisions relating to redemption contained in Section 60 of the Transfer of Property Act do not stand expressly excluded in the Act. The Court relied upon the decision of the Supreme Court in *Mathew Verghese* (1 Supra) and in particular paragraphs 34 to 36 thereof to come to the said conclusion.

(48) In *L.K. Trust* versus *EDC Ltd and others*³ and in *Allokam Peddabbayya and another* versus *Allahabad Bank and others*⁴ also the Supreme Court reiterated the principle that in India, it is only on execution of the conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished but the conferment of power to sell the mortgaged property without intervention of the Court, in a

² 2019(3) ALD 384

³ (2011) 6 SCC 780

⁴ (2017) 8 SCC 272

mortgage deed, in itself, will not deprive the mortgagor of his right of redemption.

(49) Therefore, there is no merit in the plea of the respondents that the petitioner's right of redemption stood barred on account of amendment made to Section 13(8) of the Act, the moment notice under Rule 9 of the Rules is published.

(50) As regards respondent No.2 (auction purchaser), we may point out that on 08.09.2021, respondent No.2 through counsel, Mr. S.S. Chatrath, Advocate had entered appearance and sought time for filing reply, but such reply had not been filed even on 24.11.2021 when the matter had been next listed i.e. for a period of two months.

(51) On 24.11.2021 again a new counsel, Mr.Sunil Garg put in appearance on behalf of respondent No.2 and filed his power of attorney and again sought time.

(52) We cannot countenance this tactics of respondent No.2 in trying to delay the disposal of the Writ Petition in spite of being aware of it even on 08.09.2021, by not filing any response to it for more than two months.

(53) Also when the Presiding Officer of respondent No.3 (Tribunal) had accepted the mistake committed by him in not noticing the observations/findings recorded by this Court in the order dt. 16.2.2021 passed in CWP-1452-2021 in the additional affidavit filed by him and he had tendered apology for the same; and when the defence of the action of respondent No.3 (Tribunal) by respondent no.1 (Bank) has been rejected after due consideration by us, we are of the opinion that no useful purpose would be served by giving any further time to respondent No.2 (auction purchaser) to file any reply since he cannot improve the case.

(54) No prejudice can be claimed by respondent No.2 because there is admittedly a violation of Rule 9 of the Rules by respondent No.1 (Bank) in selling the assets to it in the public auction held on 15.12.2020, and the entire sale consideration paid by him would have to be refunded by respondent No.1 to it with appropriate interest. The claim of counsel for respondent No.2 (auction purchaser) that his client had made certain improvements to the property acquired by it in the sale held on 15.12.2020 cannot be accepted since he has not chosen to place on record any such material in spite of being given an opportunity to do so for more than two months.

(55) In any event, immediately after the sale certificate was issued to respondent No.2 on 11.12.2021, Review Application No. 2 of 2021 had been filed by the petitioners, and after its dismissal on 17.07.2021, on 29.07.2021, the present writ petition had been filed. So respondent No.2 was fully aware that the litigation is continuing, and if in spite of knowledge of the same, it has made improvements to the property sold to it, such improvements were at its risk and expense, and no equities can be claimed by it on that account.

(56) We strongly deprecate the action of respondent No.1 (Bank) in attempting to sell the properties mortgaged to it by the petitioners by violating Rule 9(1) of the Rules and also the conduct of the Presiding Officer of respondent No.3 (Tribunal) in blatantly ignoring the observations/findings recorded by this Court in its order dt. 16.2.2021 in CWP-1452-2021. The latter, being an Officer who is exercising quasijudicial and statutory powers under the Act, is bound to pay attention to orders passed by this Court, and cannot be permitted to give any findings contrary to the findings/observations recorded by this Court.

(57) Accordingly, the Writ Petition is allowed; order dt. 10.05.2021 in SA No.40 of 2021 and order dt. 17.7.2021 in Review Application No.2 of 2021 passed by respondent No.3 (Tribunal) are set aside; consequently the sale held on 15.12.2020 by respondent No.1 of the subject assets to respondent No.2, and the sale certificate dt. 11.5.2021 issued by respondent No.1 to respondent No.2, are both set aside; the respondent no.1 shall refund the amount paid by respondent no.2 to it with interest at 6% p.a from the date of payment by respondent no.2 to respondent no.1 till date of refund by respondent no.1 to respondent no.2 and such refund shall be made within 2 weeks from the date of receipt of a copy of this order; and on receipt of the said amount, respondent No.2 is directed to restore possession of the subject properties to respondent No.1.

(58) Liberty is granted to respondent No.1 to conduct a fresh sale of the subject properties in strict compliance of the provisions of the Act.

(59) Respondent No.1 shall also pay cost of Rs.20,000/- to the petitioners.

Shubreet Kaur