

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 20<sup>th</sup> DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE P. KRISHNA BHAT

**WRIT PETITION NO.46450 OF 2014 (GM-RES)****BETWEEN:**

P BALAJI BABU

... PETITIONER

(BY SRI. KRISHNAMURTHY G. HASYAGAR, ADVOCATE)

**AND:**

1. STATE BANK OF INDIA  
REPRESENTED BY ITS BRANCH MANAGER,  
SPECIALIZED ASSET RECOVERY BRANCH,  
NO.7-12-4, 4<sup>TH</sup> CROSS, R.P.C LAYOUT,  
VIJAYANAGAR, 2<sup>ND</sup> STAGE,  
BANGALORE-560104.
2. THE BANKING OMBUDSMAN  
CARE OF RESERVE BANK OF INDIA,  
10/3/8, NRUPATUNGA ROAD,  
BANGALORE-560001.
3. THE DEPUTY GOVERNOR  
APPELLATE AUTHORITY UNDER  
THE BANKING OMBUDSMAN SCHEME,  
CARE OF RESERVE BANK OF INDIA,  
CUSTOMER SERVICE DEPARTMENT,  
CENTRAL OFFICE, 1<sup>ST</sup> FLOOR,

AMAR BELG, SIR P.M.ROAD,  
FORT, MUMBAI-400001.

... RESPONDENTS

(BY SRI. CHITHAPPA, ADVOCATE FOR R1;  
R2 & R3 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-1 BANK TO REFUND THE ENTIRE AMOUNT OF RS.24.10 LAKHS DEPOSITED BY THE PETITIONER WITH INTEREST THEREON AT 18% PER ANNUM OR THE APPLICABLE BANK RATE OF INTEREST.

THIS WRIT PETITION HAVING BEEN HEARD THROUGH VIDEO CONFERENCING/PHYSICAL HEARING AND RESERVED ON 29.03.2022, COMING ON THROUGH VIDEO CONFERENCING/PHYSICAL HEARING FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

### **ORDER**

Calling in question the action of respondent No.1 in forfeiting a sum of Rs.24.10 lakhs deposited by him, petitioner is seeking direction to refund the same with interest thereon at 18% p.a., in this writ petition.

2. It is the case of the petitioner that one Sri.Jignesh N. Patel was the owner of immovable property bearing No.9/1, Old No.5, Khatha No.30/A of Nayandahalli, Mysore Road, Bengaluru. He obtained loan from respondent No.1-State Bank of Mysore (which has now

been merged with State Bank of India) for his business purposes and by way of security he created mortgage on the aforementioned property at Nayandahalli, Mysore Road, Bengaluru. The loan having remained outstanding, respondent No.1 initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') and took over possession of the mortgaged property. The property was brought to sale for the recovery of outstanding loan and respondent No.1 issued a newspaper publication dated 15.10.2010 (as per Annexure-A). The petitioner having noticed the same, deposited the EMD of Rs.5,63,500/- in terms of Annexure-A and submitted his sealed tender. Same was accepted as per the communication of respondent No.1 dated 15.11.2010 for a sum of Rs.56,40,000/-. Accordingly, petitioner was directed to deposit 25% of the amount on the same date, which was inclusive of EMD amount already deposited by him. Thus, in all petitioner deposited a sum of Rs.24,10,000/- before respondent No.1.

3. Further as per the communication of respondent No.1 dated 15.11.2010 (Annexure-B) petitioner was required to deposit the balance amount of Rs.42,30,000/- by 30.11.2010. When he made enquiries in the Office of jurisdictional Sub-Registrar, he came to know that borrower had even before the sale notification dated 15.10.2010 alienated the property concerned in favour of his wife Smt.Naina J. Patel by executing a registered gift deed. Therefore, petitioner made a representation to respondent No.1 to get the gift deed executed by the borrower Sri.Jignesh N. Patel in favour of his wife annulled so as to avoid any dispute regarding the title of property which was going to be transferred to the petitioner as a successful bidder in the sale held by respondent No.1. However, respondent No.1 refused to do so and insisted on the petitioner to make full payment and subsequently forfeited the amount of Rs.24,10,000/- deposited by the petitioner. Aggrieved by the same petitioner has filed this writ petition seeking reliefs as aforesaid.

4. In support of his prayer petitioner advances the following contentions:

- Respondent No.1 has suppressed the fact in the sale notification (Annexure-A) that borrower was not having title over the property as mentioned therein and in fact it was Smt.Naina J. Patel, who was the owner of property as on the date sale notification was issued.
- Respondent No.1 was aware of the same in view of Smt.Naina J. Patel filing a writ petition in W.P.No.122/2008 against respondent No.1 in this writ petition and others.
- The liability of borrower to respondent No.1 was settled between them by means of One Time Settlement (OTS) and borrower has paid the same and the account was closed.
- Respondent No.1 has admitted the same in the affidavit dated 26.03.2022.
- Respondent No.1 has not suffered any loss or damage on account of non deposit of balance amount by the petitioner and therefore, respondent No.1 was not entitled to forfeit the sum of Rs.24,10,000/- deposited by the petitioner.

5. In support of above grounds the petitioner places reliance on the following decisions:

- (1) W.P.No.15546/2011 - DD 01.06.2015 [*E.Ali vs. Syndicate Bank and others*]
- (2) AIR 2010 SC 338 [*Haryana Financial Corporation & Another vs. Rajesh Gupta*]
- (3) W.P.No.6354/2010 - DD 07.10.2010 - Madras High Court [*Chemstar Chemicals & Intermediates (P) Ltd vs. The Commercial Tax Officer*]
- (4) W.P.No.27079/2009 - DD 12.07.2010 - Madras High Court [*Jai Logistics vs. The Authorized Officer*]

6. Respondent No.1 has filed its detailed statement of objections praying for dismissal of the writ petition on the following grounds:

- Term Nos.4, 5, 9, 11 and 15 of the sale notification inviting tenders dated 15.10.2010 (Annexure-A) makes it very clear that the successful bidder like the petitioner cannot retreat from the auction after the

bid is completed and it was open to the petitioner to make his own inspection/enquiries about the property and there was no suppression of any material facts about the property that was sold under the provisions of the SARFAESI Act.

- Subsequent event of the settlement of loan account by OTS cannot be considered by this Court and on the said basis the refund of Rs.24.10 lakhs deposited by the petitioner cannot be ordered.
- Petitioner did not pay the full sale price and therefore in terms of condition No.9 of the sale notification dated 15.10.2010 (Annexure-A), respondent No.1 was entitled to forfeit the amount.
- Under Section 13 of the SARFAESI Act, the purchaser like the petitioner would have got full title on the property purchased and therefore petitioner ought to have deposited the entire sale price and since he has not deposited the amount, this Court cannot direct refund of the amount as prayed for.

Respondent No.1 has placed reliance on the following decisions in support of his contentions:

- (1) ILR 1997 KAR 1 [Narendrakumar Nakhat vs. M/s. Nandi Hasbi Textil Mills Ltd. And Ors.]
- (2) AIR 2011 CALCUTTA 20 [Dr.Subrata Majumder vs. United Commercial Bank and Or]

7. Perusal of writ petition and statement of objections filed shows that one Jignesh Patel had borrowed loan from respondent No.1 and as security for the said loan he had created mortgage in respect of the property bearing No.9/1, Old No.5, Khatha No.30/A, 7<sup>th</sup> KM, Nayanadahalli, Mysore Road, Bengaluru-94. There is no dispute about the fact that loans borrowed by the said Sri.Jignesh N. Patel remained outstanding. Respondent No.1 initiated proceedings under SARFAESI Act and took over possession of the property. Subsequently, respondent No.1 issued sale notice in New Indian Express dated 15.10.2010 (Annexure-A). In the said sale notification, the property was shown as belonging to Sri.Jignesh Patel – Proprietor of M/s. Bangalore Timbers. There is absolutely no other particulars given in the said sale notification that anybody other than Jignesh Patel had interest over the said property.



8. Rule 8 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "Enforcement Rules 2002" for short) provides for the manner of holding sale of immovable secured assets. Relevant provisions thereunder are sub-rule (6) and sub-rule (7) of Rule 8 of Enforcement Rules, 2002. Rule 8 insofar as same is relevant for the current purpose reads as under:

"(6) The authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.]

[(7) Every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the web-site of the secured creditor, which shall include;

- (a) The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;
- (b) xxxxx
- (c) xxxxx
- (d) xxxxx
- (e) xxxxx
- (f) xxxxx"

(Emphasis Supplied)

9. A perusal of above Rules make it clear that the notice of sale shall contain the description of immovable

property to be sold including the details of encumbrances known to the secured creditor. It is idle to contend that requirement of furnishing details of encumbrances known to the secured creditor applies only to website publication of sale and not to newspaper publication like under Annexure-A. The precise grievance of the petitioner is that respondent No.1 was clearly aware of the borrower Sri.Jignesh Patel having already alienated the property mortgaged by him in favour of Smt. Naina J Patel by a gift deed in the year 2002. In the writ petition, petitioner has clearly asserted that Smt.Naina J Patel had filed W.P.No.122/2008 and respondent No.1 herein was a party to the same and respondent No.1 was aware of the said registered gift deed in the year 2008 itself. Said assertion made by the petitioner about the knowledge of respondent No.1 that subject property of sale was already transferred by a gift deed to Smt.Naina J Patel has not been denied in the statement of objections filed by respondent No.1. The statement of objections is evasive on the said aspect and respondent No.1 has asserted in para 6 of the statement of objections as follows:

"6. .... This Respondent had brought to the Notice of the Petitioner the actual facts and there is no suppression of facts whatsoever in auctioning the property by this Respondent. This Respondent has rightly forfeited the amount deposited by the Petitioner which is strictly in accordance with the terms of public auction notice and as per the terms of SARFAESI Act. ...."

10. The fact that said assertion is false is evident from the fact that respondent No.1 has not produced any material to substantiate the same. Besides, respondent No.1 has not stated as to when necessary facts were brought to the notice of the petitioner. This clearly shows that on account of Smt.Naina J Patel filing W.P.No.122/2008, respondent No.1 was clearly aware that Sri.Jignesh N. Patel had transferred title in her favour. In spite of the same, respondent No.1 did not mention this very material aspect regarding title to the property brought for sale in the sale notice issued as per Annexure-A. Petitioner, therefore, was fully entitled to protect his interest and in view of deliberate suppression of the material facts made by respondent No.1, he did not deposit the full sale price and in such circumstances, respondent No.1 was not justified in forfeiting the amount deposited by the petitioner. *"Courts must do justice by the promotion of*

*honesty and good faith, as far as it lies in their power.....  
a different conclusion would be 'opposed to what is  
reasonable, to what is probable, and to what is fair'."*

11. The next substantial contention urged by the learned counsel for the petitioner is that respondent No.1 has settled the loan account of borrower Sri.Jignesh Patel by accepting the proposal of OTS and receiving the amount under the same. Respondent No.1 has filed an affidavit on 26.03.2022, wherein para 2 and 3 of the said affidavit read as follows:

"2. I state that there was a loan account of M/s Bangalore Timbers, represented by its Proprietor (Mr. Jignesh N. Patel). On verification, I came to know that the said loan account was settled under One Time Settlement Scheme and under the said scheme the Bank has waived interest and other charges.

3. I state that when the outstanding loan amount was due from the borrower M/s Bangalore Timbers, the then Asset Recovery Branch initiated proceedings under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and I came to know during the course of proceedings under SARFAESI Act, the property was auctioned and one Sri.P. Balaji Babu was one of the bidders and the same was accepted by the Asset Recovery Branch and it is not within my knowledge the further development of the public auction. However, from the records available in the Branch, I state that the loan account was closed through compromise under One Time Settlement Scheme by third party Dr. Ramanuja and the Bank under the said scheme has waived interest and other charges."

12. The above shows that loan account for realization of which the sale was held was ultimately settled to the full satisfaction of respondent No.1 by receiving the payment favouring the account of the borrower Sri.Jignesh N. Patel by third party Dr. Ramanuja and closed the account. Since payment has been accepted and loan account has been closed, respondent No.1 cannot now say that it has suffered any loss or damages. If that is so, there is no justification on the part of respondent No.1 in retaining the amount deposited by the petitioner in whose favour respondent No.1 in any case was not in a position to pass full title on account of the borrower/mortgagor transferring the property in favour of Smt.Naina J. Patel. Respondent No.1 has taken a position in the writ petition that since the assets were taken over by it under the provisions of SARFAESI Act, the gift deed executed by Sri.Jignesh N. Patel in favour of Smt.Naina J. Patel would not have any legal effect on the efficacy of sale and transfer of title in favour of highest bidder pursuant to sale notification dated 15.10.2010 (Annexure-A). The validity of such contention need not be gone into for two reasons

namely, firstly, respondent No.1 has settled the loan account with its borrower by making OTS proposal and accepting payment towards the account of the borrower Sri.Jignesh N. Patel on the premise of full and final settlement and once that is done the security given for the due payment of the loan gets released rendering it no more available for sale. Secondly, even if the contention of respondent No.1 on the legal effect of sale under the SARFAESI Act is correct, the petitioner was justified in entertaining a doubt regarding the outcome of such a sale on passing title to him and on the said basis insisting upon respondent No.2 to clear the title and withholding the balance sale price and in such a situation respondent No.1 having settled the loan account with the borrower cannot mulct the further part consideration amount deposited by the petitioner. Since respondent No.1 has not suffered any loss or damage, it is not entitled to retain the amount of Rs.24,10,000/- deposited by the petitioner **UNION OF INDIA v. RAMPUR DISTILLERY AND CHEMICAL CO. LTD.**<sup>1</sup>

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<sup>1</sup> AIR 1973 SC 1098

13. In that view of the matter, this petition is entitled to succeed. Accordingly, the writ petition is **allowed**. Since respondent No.1 has retained the amount from 15.10.2010, it is liable to pay interest @ 8% p.a. to the petitioner. Hence, respondent No.1 is directed to refund the amount of Rs.24,10,000/- to the petitioner with interest @ 8% p.a. from 15.11.2010 till the date of payment.

**Sd/-  
JUDGE**

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