

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1114 of 2024
In
Civil Writ Jurisdiction Case No.1556 of 2023

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Gopal Kumar Singh S/o Sri Ram Ratan Singh Resident of Village -
Madhurapur Bichla Tola, Ward No. -25, P.O. - Teghra, Police Station -
Teghra, District - Begusarai.

... .. Appellant/s

Versus

1. The Canara Bank a body Corporate and Constituted under the Banking Companies Act Through its Head Office at 112, J.C. Road, Bengaluru.
2. The General Manager, Circle Office, Canara Bank, Patna, Luvkush Tower, Exhibition Road, Patna.
3. The Dy. General Manager, Circle Office, Canara Bank, Patna Luvkush Tower, Exhibition Road, Patna.
4. The Branch Manager, Canara Bank, Motijeel, Muzaffarpur.
5. The Authorized Officer, Canara Bank, carrying out its statutory function from Muzaffarpur Main Branch, Motijheel, Muzaffarpur - 8420001.
6. Union of India through Registrar, DART, Allahabad.
7. M/s Dev Shiva Agro Pvt. Ltd. Wife of Vijay Kumar Singh, Represented through Smt. Ram Dulari Devi, Managing Director, Resident of Village Chandrahati, Police Station - Kurhani, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Surendra Kishore Thakur, Advocate
For the Respondent/s : Mr. Ratnesh Nandan Sinha, , Advocate
Mr. Purusotam Prasad, Advocate
For the UOI : Mr.Dr. K.N. Singh (ASG)
Mr. Arun Kumar Satyamurthi, CGC

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 20-12-2024

The appellant was the 6th respondent in the writ petition. The writ petition was filed by a borrower who defaulted a loan availed from the respondent-bank and invited proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act' for short).

2. The borrower-defaulter filed securitisation application numbered as S.A. No. 208 of 2018 before the Debt Recovery Tribunal, Patna, Bihar. The matter was heard and the application stood rejected on 20.03.2019. The borrower filed a review from the said application which stood allowed by judgment dated 01.09.2021. The bank filed an appeal before the Debt Recovery Appellate Tribunal (hereinafter referred to as the 'DRAT' for short), from the order in review, which stood allowed by order dated 11.11.2022; which was challenged by the borrower in the writ petition from which this appeal arises, producing the appellate



order at Annexure-P/1. The learned Single Judge allowed the writ petition, which, the appellant-purchaser under the SARFAESI Act, has challenged in the above appeal.

3. We have heard Mr. P.K. Shahi, learned Senior Counsel appearing for the appellant, Mr. Gopal Kumar Singh appearing for the Canara Bank and learned Senior Counsel Mr. D.K. Sinha, for the borrower-writ petitioner who is impleaded as the 7th respondent in the appeal.

4. We refer to the parties as the defaulter, the purchaser and the Bank; in their status under the SARFAESI Act.

5. The learned Single Judge relied on a Division Bench judgment of this Court in LPA No. 1029 of 2018 (Dilip Kumar Vs. Union of India and Ors) dated 27.09.2018 and having extracted from the above decision, followed it and allowed the writ petition. The impugned order passed by the DRAT was set aside and the matter was remitted back to the DRT which was directed to consider the application made by the petitioner afresh, on its own merits, strictly in accordance with law; clearly opining that a review indeed is maintainable.

6. Mr. P.K. Shahi, argued on the basis of the facts and emphasized that the review as permissible under the



SARFAESI Act read with the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the 'RDB Act' for short) is confined and restricted. The facts leading to the default, the proceedings under the SARFAESI Act, the application made by the defaulter and the subsequent proceedings were pointed out to stress upon the position that, in fact the defaulter ought to have filed an appeal, if aggrieved by the order of the DRT. While the review petition was pending, the bank continued proceedings under the SARFAESI Act and sold the property to the purchaser. The purchaser has made substantial investment in the property and cannot be ousted by reason of a review application which did not point out any error apparent from the face of the record or a mistake committed by the Tribunal; which also should be apparent from the face or record, as is provided under Rule 5-A of the Debts Recovery Tribunal (Procedure Rules), 1993 (hereinafter referred to as the 'Procedure Rules' for short).

7. Learned Counsel for the Bank read out the order of DRAT and asserted that it never found a review to be not maintainable. The DRAT specifically opined that the review as filed by the defaulter would not come within the ambit of Rule-5-A of the Procedure Rules.



8. The learned Senior Counsel appearing for the party respondent while seeking to sustain the order of the learned Single Judge specifically referred to Rule-22(2) of the SARFAESI Act which specifically confers the Tribunal with the powers as are vested in a Civil Court under the Civil Procedure Code, 1908 ('CPC' for brevity).

9. The learned Single Judge has relied entirely on the decision in LPA No. 1029 of 2018 which opined that the impugned judgment, in that appeal, was not erroneous in holding that the DRT would have jurisdiction to review its order passed under the SARFAESI Act, 2002. Reference was specifically made to Section-17(7) of the SARFAESI Act, Section-20(2) of the RDB Act and Rule-5-A of the Procedure Rules.

10. Section 17(7) of the SARFAESI Act provides that the DRT shall as far as possible dispose of an application in accordance with the provisions of the RDB Act. Section 22 of the RDB Act; delineating the procedure and power available with the Tribunal and the Appellate Tribunal, conferred the powers as are vested in the Civil Court under CPC, while trying a suit in respect of matters enumerated under clause (a) to (h) of Section 22 (2) of the RDB Act, wherein clause (e)



refers to '*reviewing its decisions*'. Rule-5-A of the Procedure Rules also provided a review by the Tribunal, if there is any mistake or error apparent on the face of the record. The Procedure Rules clearly confines the review to a correction of mistakes or error apparent on the face of the record. However, as held by a co-ordinate bench of this Court, Section-22 of the RDB Act has been adopted even in the proceedings under the SARFAESI Act by section 17(7) of that latter Act. The CPC provides for a review under Order XLVII Rule 1.

11. To understand the power of review under CPC specifically under Order XLVII Rule 1 we looked at the decision of the Hon'ble Supreme Court in the case of ***State of West Bengal and Ors Vs. Kamal Sen Gupta & Anr (2008) 8 SCC 612***, wherein the power of review was considered in the context of the Administrative Tribunals Act, 1985. Section 22 (1) & (3) of the Administrative Tribunals Act (for short 'A.T Act') is in *pari materia* with sub-sections (1) and (2) of Section 22 of the RDB Act. Sub-section (1) of the RDB Act provides that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the CPC but shall be guided by the principles of natural justice and subject to the other provisions of this Act and Rules, the Tribunal and the



Appellate Tribunal shall have the powers to regulate its own procedure including the places where they shall have their sittings. Sub-section (2) of Section-22 of the RDB Act confers on the Tribunal and the Appellate Tribunal the same powers as are vested in the Civil Court by the CPC, for the purpose of discharging their functions under the Act including review of its decisions while clause (e) of section 22(2) provides for a review, as per the CPC, under the RDB Act. Sub-Section (1) and (3) of the A.T. Act are in *pari materia* and Clause-(f) of sub section (3) of Section 22 of the A.T Act provides for a review; as per the CPC.

12. We specifically extract para 35 of the said decision, which culls out the principles on review; under the CPC, from a number of precedents of the Hon'ble Supreme Court:-

“35. The principles which can be culled out from the above noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be



treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.”

13. We are of the opinion that the power as delineated under Order XLVII Rule 1 placed in juxtaposition with Rule 5-A of the Procedure Rules only provides; in addition to correction of mistakes or error apparent on the face of record, for a review, on the discovery of new or important matter or evidence which the party seeking review has to establish unequivocally that it was not only within his/her knowledge, but also, after exercise of due diligence, could not be produced before the Court or Tribunal; which is definitely not the ground raised herein.

14. With the above proposition of law in mind, we



look at the facts arising in the instant writ petition. The borrower availed three facilities; a loan, an overdraft and a cash credit, in the year 2014 and the accounts were declared as Non-Performing Assets (NPA) in the year 2017. A title suit bearing No. 595 of 2017 was filed against the declaration of NPA and the bank issued a demand notice under Section 13(2) of the SARFAESI Act, which was replied to. The bank took symbolic possession of the property on 06.10.2018 and on 14.11.2018 the borrower filed SA No. 208 of 2018 before the Debt Recovery Tribunal, Patna on 14.02.2019. The respondent bank filed OA No. 1821 of 2019 before the same Debt Recovery Tribunal. SA No. 208 of 2018 was dismissed by the Tribunal by order dated 20.03.2019 produced alongwith Annexure-P/6 photocopy of memo of appeal produced in the writ petition.

15. A cursory glance of the order indicates that both the parties were heard at the time of disposal i.e the defaulter and the respondent-bank. Having considered the rival contentions of the parties and after perusing the case records the Tribunal found that the respondent-bank had followed the mandatory procedures as laid down under the SARFAESI Act and Rules. The application filed by the borrower stood



dismissed.

16. Admittedly the borrower did not file an appeal against the order to the DRAT but filed a review on 20.04.2019, which was numbered as Review Application No. 06 of 2019. The respondent bank moved the District Magistrate under Section 13 which was challenged in CWJC No. 18204 of 2019. Since no interim orders were obtained, respondent-bank issued an auction sale notice which was published in the newspapers on 17.12.2020. The purchaser participated in the auction sale on 19.01.2021 and was declared the highest bidder. Later, on 01.09.2021 the review was allowed by the Debt Recovery Tribunal, Patna and the respondent-bank filed an appeal before the appellate authority numbered as Appeal No. 11 of 2022; which was allowed by the DRAT on 11.11.2022. The sale certificate was issued to the appellant on 25.11.2022 after which the present writ petition was filed by the borrower on 10.01.2023. The sale deed also stood executed and registered as on 17.01.2023. The appellant has obtained the various licences and established a commercial establishment in the premises.

17. As we noticed, the order in SA No. 208 of 2018 was passed after hearing both the parties. The averments of



the defaulter in the review application, as is discernible from the order in review, were that the averments made in the SARFAESI application were completely ignored and the documents placed as annexures were not taken into consideration.

18. The DRT referred to Order XLVII Rule 1 of CPC and also the judgment of LPA No. 1029 of 2018 to find that an order passed by the DRT can be rectified by way of a review in the event a mistake or error on the face of the record, has occurred. It was the finding of the DRT that incriminating evidence was not taken into consideration which was vital for proper adjudication of the SA of the applicant; which is in fact a rehearing of the matter. The DRT then proceeded to consider the claim raised by the borrower that the representation under Section 13(3) of the SARFAESI Act was not properly considered by the respondent bank. It was found that the Tribunal at the earlier instance committed an error in finding that the representation, in pursuance of the demand notice, was not delivered to the authorized officer of the respondent bank; though the service of the copy of the representation as claimed by the applicant on the respondent bank, could not be conclusively established. Hence, while allowing the review



application, the DRT also declared all actions initiated under Section 13 of the SARFAESI Act; for reason of suppression of the representation filed under Section 13(3-A) of the SARFAESI Act, to be invalid.

19. We are of the opinion that the Tribunal has conducted a rehearing of the matter, which is not permitted under Rule 5-A of the procedure Rules or even under Order XLVII Rule 1 of the CPC. The Hon'ble Supreme Court in the above cited decision; from which we extracted, has categorically declared that error which is not self-evident and which can be discovered only by a long process of reasoning cannot be treated as an error apparent on the face of the record, justifying exercise of power under Section 22(3)(f) of the A.T Act; which is in *pari materia* to section 22(2)(e) of the RDB Act. At best or at worst, the order in SA No. 208 of 2018 is an erroneous order or decision which cannot be corrected in the guise of exercise of power of review as has been held in ***Kamal Sen Gupta*** (supra).

20. We have looked at the order passed by the DRAT produced as Annexure-P/1 to the writ petition. The DRAT has specifically noticed that the respondent (the defaulter) agreed with the legal proposition of law that the review is



maintainable, only to correct the clerical mistake or typographical error apparent on the face of the record, as has been held by the constitutional courts. The DRAT has clearly opined that the review can only be in cases where there is error apparent on the face of record or a mistake or typographical error and under the guise of review the whole case cannot be re-opened and adjudicated afresh; which is the binding declaration of the Hon'ble Supreme Court also; with respect to in *pari materia* provisions in the Administrative Tribunals Act, adopting Order XLVII Rule 1 of the CPC. The DRAT further held that the contention of the respondents regarding documents and submissions having not been considered by the Tribunal is not amenable to a review and the borrower ought to have resorted to the remedy of appeal under Section 18 of the SARFAESI Act; specifically since the scope of review is very limited; which we fully agree with.

21. We also notice that the OA filed by the bank under the RDB Act has also been allowed by the order dated 05.01.2024, which has been produced as Annexure-P/8. There is hence, no scope for a reconsideration; which, in the first place, was not permissible in a review filed under Rule-5A of the Procedure Rules read with Order XLVII Rule 1 of the



CPC; extracted by virtue of Section 22 (2) of the RDB Act.
We, hence, uphold the order of the DRAT and set aside the
judgment of the learned Single Judge.

22. The appeal stands allowed restoring the order of
the DRAT which set aside the order of the DRT, in review.

(K. Vinod Chandran, CJ)

Nani Tagia, J: I agree.

(Nani Tagia, J)

ranjan/-

AFR/NAFR	AFR
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