NC: 2026:KHC:36036
RSA No. 1431 of 2014

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1431 OF 2014 (MON)

BETWEEN:

CORPORATION BANK,
A BODY CORPORATE CONSTITUTED UNDER
THE BANKING COMPANIES ACT 1980,
HAVING ITS CORPORATE OFFICE AT
MANGALADEVI TEMPLE ROAD,
MANGALORE - 575 001.

AND BRANCHES ITERALIA ONE AT
POONJA ARCADE BUILDING,
KS RAO ROAD, P.B. 224,
MANGALORE - 575 001.

REPRESENTED BY
S. JAGANATHAN,
SENIOR MANAGER (LAW),
ZONAL OFFICE, NORTH BANGALORE,
MALLESHWARAM,
BANGALORE - 03.

...APPELLANT

(BY SRI. SEETHARAMA RAO B.C., ADVOCATE)

AND:

1. SMT. SHYAMALA R KAMATH,
   W/O P. RADHAKRISHNA KAMATH,

AGED ABOUT 57 YEARS,
LAXMINIKETHAN,
2ND A CROSS, SHIVABAGH ROAD,
KADRI, MANGALORE - 575 002.

2. CORPORATION BANK,
HAVING ITS HEAD OFFICE AT
MANGALADEVI TEMPLE ROAD,
PANDESHWAR,
MANGALORE - 575 001.

...RESPONDENTS

(BY SRI. M. SUDHAKAR PAI, ADVOCATE FOR R1;
R2 SERVED)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGMENT & DECREE DATED 16.4.2014 PASSED IN R.A.NO.10/2012 ON THE FILE OF III ADDITIONAL SENIOR CIVIL JUDGE, MANGALORE, DISMISSING THE APPEAL AND CONFIRMING JUDGMENT AND DECREE DATED 10.1.2012 PASSED IN OS.NO.236/2011 ON THE FILE OF PRINCIPAL CIVIL JUDGE MANGALORE, D.K.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 16.04.2014 passed in R.A.No.10/2012 by the learned III Additional

Senior Civil Judge and JMFC, Mangalore, D.K, confirming the judgment and decree dated 10.01.2012 passed in O.S. No. 236 of 2011 by the learned Principal Civil Judge and JMFC, Mangalore, D.K.

2. For convenience, the parties are referred to based on their rankings before the trial Court. The appellant was defendant No.2; respondent No.1 was the plaintiff, and respondent No.2 was defendant No. 1.

3. Brief facts, leading rise to the filing of this appeal are as follows:

4. The plaintiff filed a suit for recovery of money. It is the case of the plaintiff that, the plaintiff being an employee of the said bank for the past 33 years. An advertisement published in 'Udayavani' Kannada daily newspaper dated 03.02.2006 under the caption 'public auction', and defendant No.1 had caused publication to the effect that the residential apartment as described in the publication and reproduced in the 'A' schedule

property was being sold by public auction on 15.03.2006. This was initiated under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short 'SARFAESI Act'), due to the non-payment of loan amount by the borrowers, namely Vitobha Mada and H. Sreesha (Guarantor). Pursuant to the said notification, public auction was held on 15.03.2006 and the plaintiff was the highest bidder. The plaintiff has bid in a sum of ₹8,55,000/- and the plaintiff was declared as successful bidder and was directed to deposit 25% of the bid amount, thereby he has deposited ₹2,15,000/- along with initial deposit of ₹10,000/-, which constituted 25% of the bid amount and the balance of ₹6,40,000/- was to be paid within 15 days from the date of the bid.

5. The plaintiff submitted a representation requesting for extension of time. The defendant bank has refused to extend the time. The defendant has forfeited the earnest money deposited by the plaintiff. The plaintiff

requested to refund the said amount. The defendant declined to return the said amount. Hence, a cause of action arose for the plaintiff to file suit for recovery of money.

6. The defendants filed a written statement contending that the suit filed by the plaintiff is not maintainable and the plaintiff without exhausting an efficacious remedy filed this suit. It is contended that the defendant bank has auctioned the property and the plaintiff was the highest bidder and he has bid for a sum of ₹8,55,000/-, and accordingly the plaintiff was directed to deposit 25% of the bid amount. The plaintiff deposited 25% of the bid amount and agreed to deposit the balance bid amount within time. The plaintiff submitted a representation for extension of time for paying the balance bid amount. The defendant bank rejected the representation submitted by the plaintiff and forfeited the bid amount deposited by the plaintiff.

7. The defendants have already sold the property on 27.09.2008 in favour of a third party for a bid amount of ₹9,25,000/-. It is also contended that the plaintiff has got an efficacious remedy under Section 17 of the SARFAESI Act. Hence, the suit filed by the plaintiff is not maintainable, and prays to dismiss the suit.

8. The trial Court, based on the rival pleadings of the parties, framed the following issues:

> 1) *Whether the plaintiff proves that the defendant illegally forfeited the advance bid amount of ₹2,15,000/- as alleged?*
>
> 2) *Whether the defendants prove that the suit of the plaintiff in the present form is hit by the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act?*
>
> 3) *Whether the suit is barred by law of limitation?*
>
> 4) *Whether the plaintiff is entitled for the suit relief?*
>
> 5) *What order or decree?*

9. The plaintiff to substantiate her case examined herself as PW.1 and marked 9 documents as Exhibit P1 to Exhibit P9. In rebuttal, the defendants have not orally examined any witnesses on their behalf, but got produced 14 documents and marked as Exhibit D1 to Exhibit D14.

10. The trial Court, after recording the evidence, hearing both sides, assessing the verbal and documentary evidence, answered issues Nos. 1, 2 and 4 in the affirmative; issue No.3 in the negative and issue No.5 as per the final order. The suit of the plaintiff was decreed with costs and directed the defendant to pay the suit claim amount of ₹ 2,15,000/- with interest at the rate of 10% per annum from 15.03.2008 till the date of realization vide judgment dated 10.01.2012.

11. Defendant No.2, aggrieved by the judgment and decree passed in O.S.No.236 of 2011 dated 10.01.2012 preferred an appeal in R.A.No. 10 of 2012 on the file of

learned III Additional Senior Civil Judge and JMFC, Mangalore, D.K.

12. The first appellate court, after hearing the learned counsel for the parties, framed the following points for consideration:

> 1) *Whether the plaintiff proves that the suit filed by her against the defendants for recovery of ₹ 2,15,000/- is maintainable?*
>
> 2) *Whether the plaintiff proves that the act of the defendant in forfeiting ₹2,15,000/- is violation of natural justice?*
>
> 3) *What order?*

13. The first appellate court, after re-appreciating the entire evidence on record, answered points No.1 and 2 in the affirmative, and point No.3 as per the final order. The appeal was dismissed vide judgment dated 16.04.2014.

14. Defendant No.2, aggrieved by the impugned judgments, filed this Regular Second Appeal.

15. Heard the arguments of the learned counsel for defendant No. 2 and learned counsel for the plaintiff.

16. Learned counsel for defendant No.2 submits that the suit filed by the plaintiff is not maintainable. He submits that the bank has issued a notification notifying to auction the suit property pursuant to the public notification. The plaintiff participated in the auction and she was the highest bidder. She bid for a sum of ₹ 8,55,000/- and accordingly the plaintiff has deposited a sum of ₹2,15,000/- i.e., 25% of the bid amount and balance to be deposited within 15 days. He submits that the plaintiff did not deposit the amount within 15 days as per Rule 9 of the Security Interest (Enforcement) Rules, 2002.

17. Further, he submits that the plaintiff being an auction purchaser, if she is aggrieved by the forfeited amount, she has to approach the Debts Recovery Tribunal (for short 'the DRT') under Section 17 of the SARFAESI Act. To buttress his arguments, he has placed reliance on

the judgment of the Hon'ble Apex Court in the case of ***Agarwal Tracom Private Limited vs. Punjab National Bank***[1]. He submits that the auction purchaser also includes any aggrieved person as defined under Section 17 of the SARFAESI Act. Hence, the judgments and decrees passed by the courts below are arbitrary and erroneous and is in contrary to the proposition laid down by the Hon'ble Apex Court in case of ***Agarwal Tracom Private Limited*** (referred supra). Hence, on these grounds, he prays to allow the appeal.

18. *Per contra*, learned counsel for the plaintiff supported the impugned judgments and submits that in view of the proposition laid down by the Hon'ble Apex Court referred supra, liberty be reserved to the plaintiff to approach the DRT under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and accordingly appeal may be disposed of.

[1] *AIR 2017 SC 5562*

19. Perused the records, and considered the submissions of the learned counsel for the parties.

20. This court vide order dated 15.06.2023, admitted the appeal to consider the following substantial question of law:

> *"Whether the trial Court and first appellate court are justified in holding that the suit of the plaintiff in the present form is not hit by the provision of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002?"*

Regarding substantial question of law:

21. It is an undisputed fact that the respondent bank has issued a notification notifying to auction the property. Pursuant to the notification, the plaintiff participated in the auction and she was the successful bidder and the bid was fixed at ₹8,55,000/- and she has deposited 25% of the bid amount on the date of auction.

22. Rule 8 of Security Interest (Enforcement) Rules, 2002, reads as follows:

> ***"8. Sale of immovable secured assets.-*** *(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property."*

23. Rule 8 provides sale of immovable secured assets. From the perusal of Rule 8, where a secured asset is an immovable property, the authorized officer shall take or cause to be taken possession of by delivering a possession notice prepared as nearly as possible in appendix IV to the rules. Further, Rule 9 of Security Interest (Enforcement) Rules, 2002, reads as follows:

> ***9. Time of sale, Issue of sale certificate and delivery of possession, etc.-*** *(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale*

is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower.

Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

24. And further proviso to Rule 9(4) of Security Interest (Enforcement) Rules, 2002, reads as follows:

Rule 9 (4): *<u>The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period</u> (as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months).*

(emphasis supplied)

25. Rule 9(4) provides that the balance amount of the purchase price payable shall be paid by the purchaser to the authorized officer on or before 15 days of

confirmation of sale of a property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding 3 months. And further proviso to Rule 9(5) Security Interest (Enforcement) Rules, 2002, reads as follows:

> ***Rule 9(5)****: In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.*
>
> *(emphasis supplied)*

26. Admittedly, in the instant case, the plaintiff did not deposit the balance sale price within 15 days as required under Rule 9(4) of Security Interest (Enforcement) Rules, 2002, from the date of confirmation. The authorized officer has forfeited the amount as per sub-Rule 5 of Rule 9 of the Security Interest (Enforcement) Rules, 2002. The plaintiff instead of preferring an appeal under Section 17 of the

Securitization Act, filed a suit. The secured creditor also includes within the definition of any person, as mentioned in Section 17(1) of the Securitization Act, 2002.

27. The said view is being supported by the judgment of the Hon'ble Apex Court in the case of ***Agarwal Tracom Private Limited vs. Punjab National Bank*** reported in ***AIR 2017 SC 5562*** held in para 31 which reads as follows:

> *31. The auction purchaser (appellant herein) is one such person, who is aggrieved by the action of the secured creditor in forfeiting their money. The appellant, therefore, falls within the expression "any person" as specified under Section 17(1) and hence is entitled to challenge the action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the SARFAESI Act.*
>
> *(emphasis supplied)*

28. The judgment is aptly applicable to the present case on hand. The plaintiff being an auction purchaser will fall within the expression that is 'any person'. The

plaintiff has got efficacious remedy under Section 17(1) of the SARFAESI Act, 2002. The said aspect was not considered by the courts below and committed an error in passing the impugned judgments. Thus, the suit filed by the plaintiff is not maintainable. Thus, the impugned judgments and decrees passed by both courts below are arbitrary and erroneous. Hence, the provision of SARFAESI Act of 2002, is applicable to the case on hand. In view of the above discussion, I answer substantial question in the ***negative***.

29. Accordingly, I proceed to pass the following order:

ORDER

i. The Regular Second Appeal is ***allowed***.

ii. The impugned judgments passed by the courts below are set aside. Consequently, the suit of the plaintiff is dismissed.

iii. Liberty is reserved to the plaintiff to approach the DRT under Section 17 of the

Securitization Act, 2002 within 45 days from the date of receipt of certified copy of this judgment, if so desired.

iv. If the plaintiff approaches the DRT, the plaintiff is entitled for benefit under Section 14 of the Limitation Act.

v. Pending interlocutory application/s, if any, stands disposed of accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SKS