

**Neutral Citation No. - 2024:AHC:42473**

**RESERVED**

**Court No. - 70**

**Case :-** WRIT - C No. - 68334 of 2005

**Petitioner :-** Ram Avtar

**Respondent :-** M/s Durga Rice & Dall Mills & 5 Others.

**Counsel for Petitioner :-** Shreya Gupta, Ravi Anand Agarwal

**Counsel for Respondent :-** S.C., Pradeep Kumar Sharma, Ashok Kumar Pal

**HON'BLE PIYUSH AGRAWAL,J.**

1. Heard Ms. Shreya Gupta, learned counsel for the petitioner, Shri Anil Tiwari, learned Senior Advocate, assisted by Shri Pradeep Kumar Sharma, learned counsel for respondent nos. 1, 2, 4 & 5 and Shri Ashok Kumar Pal, learned counsel for respondent no. 6.

2. The instant writ petition has been filed for the following relief:-

(i) *Summon the record of Appeal No. R-525 of 2005 Shri Ram Avtar Versus Durga Rice & Dall Mills & others, of Appeal No. 01 of 2004 Durga Rice Mills & others Versus Recovery Officer D.R.T. Lucknow and others and of D.R.C. No. 155 of 2002/Lucknow, and issue a writ of certiorari quashing the judgment & order dated 19.10.2005 delivered by Chairperson of Debt Recovery Appellate Tribunal, Allahabad in Appeal No. R – 525 of 2005 Shri Ram Avtar Versus M/s Durga Rice & Dall Mills & others and also the order dated 29.04.2005 passed by the Presiding Officer of D.R.T., Lucknow in Appeal No. 01 of 2004 M/s Durga Rice & Dall Mills & others;*

(ii) .....

(iii) .....

(iv) .....

3. The factual matrix of the case are that M/s Durga Rice & Dall Mills, i.e., the respondent no. 1, through its Director, had taken loan from the respondent no. 6 – Banaras State Bank Limited (which as subsequently merged with the Bank of Barod), the limit was enhanced from time to time upto Rs. 12 lacs. In lieu of the loan and the cash credit enhancement facilities, certain

documents were executed in favour of the respondent – Bank as well as some properties, i.e., building and land, were mortgaged in its favour. The respondent no. 1 had also executed demand promissory note, a letter of weaver, a letter of continuing security, letter of general lien, a hypothecation (goods) agreement, a letter of lien and set off. Further, an agreement of guarantee in favour of the respondent - Bank was also executed by the respondent no. 3 and the respondent nos. 2, 4 & 5 also deposited with the Bank the title documents of their immovable properties with an intent to create security thereon.

4. In default in repaying the loan, the respondent – Bank instituted Original Application No. 111 of 1999 before the Debt Recovery Tribunal, Jabalpur under section 19 of the Act for recovery of the dues amounting to Rs. 38,36,871/- together with cost, further and *pendentelite* interest. The aforesaid original application was decreed vide order dated 21.12.1999 in favour of the respondent – Bank entitling it to recover a sum of Rs. 38,36,871/- together with cost from the defendants jointly and severally. The respondent – Bank was also entitled to recover interest @ 18.5% per annum with quarterly rest from 22.03.1999 till the date of realization of the decretal amount. Further, the respondents were restrained from transferring, alienating or otherwise dealing with or disposing of the property in question without permission of the Debt Recovery Tribunal (hereinafter referred to as, '**the DRT**') in respect of movable and immovable properties.
5. On the basis of the recovery certificate and change of jurisdiction, the case came up before the DRT, Lucknow and it was registered as DRC No. 155/2002/LKO. Against the judgement passed in OA NO. 111 of 1999, the borrower filed an application for setting aside the judgement dated 21.12.1999 and for restoration of the original case under section 22(2)(g) of the Act, which was transferred to the DRT, Lucknow and renumbered as

MA(T)/121/03. During the pendency of the said application, an order was passed for making a compromise on payment of Rs. 26 lacs to the Bank by the borrower, but such compromise was failed as the borrower failed to comply with the direction in its proper perspective. The said restoration case, i.e., MA(T)121/03 was dismissed on 20.10.2003, against which, the borrowers preferred an appeal under section 20 of the Recovery of Debts Due to Banks & Financial Institution Act, 1993 (hereinafter referred to as, '**the Act**') before the Debt Recovery Appellate Tribunal, Allahabad (hereinafter referred to as, '**the DRAT**'), which was numbered as R-366/03, in which an interim order was passed on 23.12.2003 staying the further proceedings in the DRC case.

6. The aforesaid interim order dated 23.12.2003 was not communicated to the Recovery Officer. Therefore, the auction sale made on 25.08.2003 had been confirmed vide order dated 09.01.2004. In DRC No. 155/02/LKO, which was challenged by the borrowers before the DRT, Lucknow under section 30 of the Act on the ground that the properties sold were not the mortgaged properties and the entire process of attachment, proclamation and auction sale was not only irregularities, but also illegal as the properties had been sold without ascertaining the right title and interest/ownership. A ground was also taken that a will was executed by the grandfather of the borrowers and therefore, the properties could not have been auctioned without settling the ownership of the properties by the competent civil court. The main grounds of auction and confirmation were challenged as the interim order granted by the DART on 23.12.2003 was not adhered to. The aforesaid grounds were seriously disputed by the respondent – Bank as well as the auction purchaser, i.e., the petitioner, in the instant writ petition. The petitioner (auction purchaser) challenged the same as the appeal was not maintainable as the borrowers never raised objection when the attachment and thereafter, proclamation was made from time to

time, which was within their knowledge and as such, at the later stage, when the judgement – debtor did not object the same, subsequently, it cannot be challenged at a later stage. Considering the rival submissions, the DRT, Lucknow passed an order dated 29.04.2005 in Appeal No. 1/2004 setting aside the entire auction proceedings.

7. Against the order dated 29.04.2005 passed by the DRT, the auction purchaser (the petitioner herein) preferred Appeal No. 525/2005 before the DRAT, Allahabad, which has been dismissed vide judgement & order dated 19.10.2005. Hence, the present writ petition.
8. Ms. Shreya Gupta, learned counsel for the petitioner submits that the appeal preferred before the DRT was not maintainable as the judgement – debtor failed to challenge the order of attachment, proclamation of sale, auction proceedings and sale of immovable properties. She further submits that the appeal was confined to challenge the confirmation of sale of immovable properties vide order dated 09.01.2004 as well as the certificate of sale of immovable properties, Form – 20 passed by the Recovery Officer, DRT in DRC No. 155/2002/LKO. She further submits that the judgement – debtor never claimed relief for setting aside of the auction proceedings and the sale of properties and failed to make good the mandatory pre-deposit as required under Rules 60 & 61 of Schedule – II to the Income Tax Act. Unless and until the aforesaid rules were complied with, the appeal should not have been entertained. She further submits that the judgement – debtor, admittedly, had not brought any material to show that any pre-deposit was made at the time of filing of the appeal and court below has erred in overlooking the mandatory provisions and passed the order in their favour. In support of her submission, learned counsel for the petitioner has placed reliance on the judgements of the Apex Court in *Bishan Paul Vs. Mothu Ram*

[AIR 1965 SC 1994] and *Valji Khimji & Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited* [(2008) 9 SCC 299] as well as the judgements of Madras High Court in *D. Duraisrinivassan Vs. Registrar, DRAT* [2009 0 Supreme (Mad) 5262] and *Nazims Continental Vs. The Indian Overseas Bank* [2009 (3) LW 792].

9. She next submits that the DRT has granted the relief which was not prayed for by the judgement debtor. There is no provision under the Act empowering the DRT to grant relief beyond the pleadings and prayer. In the case in hand, the respondents had not prayed for cancellation of sale as evident from the grounds of appeal and the prayer, but the same had been granted, which is illegal. In support of her contention, she has placed reliance on the judgements of the Apex Court in *Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi* [AIR 2010 SC 235], *Trojan & Company Ltd. Vs. Rm. N.N. Nagappa Chettiar* [1953 AIR 235] and *Janki Vallabh Vs. Mool Chand* [AIR 1974 Raj. 168].
10. She further submits that a stranger, who purchases at an auction sale, has to be considered as a bona fide purchaser for the value and he should not be allowed to suffer on account of the mistake or irregularities, if any, committed in a court of law. In support of her contention, she has relied upon the judgement of the Apex Court in *Mani Lal Vs. Ganga Prasad* [AIR 1951 All 932] and *Janak Raj's case* [AIR 1967 SC 608] as well as the judgement of this Court in *Munni Lal Vs. Smt. Sona* [AIR 1982 All. 29].
11. Learned counsel for the petitioner next submits that the petitioner, being a bona fide purchaser, is being harassed despite depositing all the money and thus, not in a position to enjoy the fruits. She further submits that the judgement – debtor availed the credit facility and its enhancement from time to time and on different occasions, different guarantees and securities were mortgaged to

avail such facilities and therefore, if there was any discrepancy, the petitioner cannot be permitted to suffer.

**12.** She further submits that it is not in dispute that the property had been mortgaged, which is admitted between the parties, if some part of the non-mortgaged properties are sold, the same will not make any difference. The Bank is at liberty to recover the amount due to it from the mortgaged and non-mortgaged properties. If this technical objection is accepted by the Tribunal, then the purpose of the Act will frustrate. She further submits that in Appeal No. 366/2003, some compromise was entered by which the judgement – debtor was required to pay a sum of Rs. 26 lacs, but the judgement – debtor even could not adhere to the same and ultimately, the compromise could not be materialized and Appeal No. 366/2003 was dismissed as withdrawn. Once the appeal was dismissed as withdrawn, the DRAT ought not to have set aside the auction sale. In support of her submission, she has placed reliance on the judgements in AIR 1932 PC 165 and AIR 1932 All. 490.

**13.** She further submits that upon withdrawal of Appeal No. 366/2003 by the judgement – debtor, the stay order dated 23.12.2003 granted by the DRAT got wiped out from its existence for the reason of doctrine of merger and therefore, the auction sale and confirmation thereof should not have been set aside by the Tribunal. She further submits that to the best knowledge, the interim order was never communicated to the Recovery Officer and no material has been brought on record by which the interim order dated 23.12.2003 was communicated to the Recovery Officer and therefore, the respondents are put to strict proof of the same. She further submits that Appeal No. 366/2003 had ultimately been dismissed as withdrawn and once the appeal had been dismissed as withdrawn, the interim order, if any granted, wiped out automatically from existence. In support of her contention, she has placed reliance on the judgement of the Apex

Court in *State of U.P. Vs. Prem Chopra* [2022 Live Law (SC) 378] as well as the judgement of this Court in *Rajendra Kumar Vs. State of U.P.* [NC No. 2019:AHC 106299].

14. She further submits that the compromise entered between the judgement debtor and the respondent – Bank after the auction sale and confirmation is a nullity. After sale and purchase by the auction purchaser after deposit of due money, the Bank cannot unilaterally decide to enter into a compromise, which is not in their capacity. She further submits that the judgement debtor has not challenged the proceedings at appropriate time, nor complied with the statutory provisions of pre-deposit, nor during the pendency of the appeal as referred to above had adhered to the compromise, which shows the conduct of the borrower. Thereafter, now, the Bank had entered into a compromise unilaterally, at a belated stage, which is not permissible. The conduct of the borrower is liable to be taken into consideration, to which he wanted to deceive the bank by somehow or the other. In support of her contention, she has placed reliance on the judgement of the Apex Court in *Deendayal Nagari Sahakari Bank Ltd. & Another Vs. Munjaji & Others* [2022 LiveLaw (SC) 183]. She prays for allowing the writ petition.

15. Rebutting the said submissions, Shri Anil Tiwari, learned Senior Advocate, appearing on behalf of respondent nos. 1, 2, 4 & 5, submits that the entire auction proceedings and the confirmation of sale was bad in law and therefore, the same has rightly been set aside by the DRT in its order and confirmed by the DRAT. He further submits that admittedly, the loan was taken and thereafter, its credit limit was enhanced upto Rs. 12 lacs. The auction sale and confirmation of the property was beyond the mortgaged properties, which is not permissible in law. He further submits that various other irregularities had been committed by the respondent – Bank in hurriedly auctioning the properties. He

further submits that neither the valuation report, nor the publication was made in accordance with law. In the auctioning proceedings, only single bidder was there, i.e., the petitioner. He further submits that these irregularities were pointed out before the authorities below in detail and after considering the above facts, the authorities below have passed the orders in accordance with law. Shri Tiwari further submits that in spite of the interim order dated 23.12.2003 passed in Appeal No. R-366/2003, not only auction was taken place, but also the same was confirmed. The said action of the Recovery Officer was in gross violation of the settled principles of law. He further submits that the auction notice was published in Dainik Jagaran Hindi newspaper, which was in English, which was against the provisions of the Act. In support of his submissions, he has placed reliance on the judgement of the Madras High Court in *Thomas Kuruvilla Vs. Canara Bank* [Review Application (MD) No. 122/2010, decided on 31.07.2015]. He prays for dismissal of the writ petition.

**16.** Shri Ashok Kumar Pal, learned counsel for respondent no. 6 – Bank submits that the Bank has acted throughout in accordance with law. The Bank had entered into settlement with the contesting respondents only after the DRT set aside the auction and confirmation of sale. He further submits that the property in question has not been handed over to the petitioner. He further submits that the Bank, in its interest, had settled the dues with the contesting respondents on 11.06.2005 and after receiving the payment, 'no due certificate' was issued on 13.06.2005. In support of his submissions, he has placed reliance on the judgement of the Apex Court in *Surinder Pal Singh Vs. Vijaya Bank & Others* [Civil Appeal No. 6843/2023, decided on 17.10.2023]. He also prays for dismissal of the writ petition.

**17.** After hearing the learned counsel for the parties, the Court has perused the record.



**18.** It is admitted that loan was taken, which was enhanced from time to time with a limit of Rs. 12 lacs as on 22.01.1992. It is also not in dispute that in lieu of loan and its enhancement facility, various documents were executed in favour of the respondent – Bank as referred to above. The guarantees were also executed by the respondents – defendants. It is also not in dispute that the property was also mortgaged in favour of the Bank. Due to default in repayment of loan, the Bank proceeded to recover its amount. In the said process, an appeal was preferred before the DRT, Jabalpur, which was decided in favour of the Bank and thereafter, consequent proceedings were initiated for attachment, proclamation, sale and confirmation. In the said process, the judgement – debtor did not object the said proceedings and kept mum. At a later stage, the legal heirs, on the strength of some will executed in their favour, came forward to challenge the sale of immovable property as well as certificate of sale.

**19.** The record reveals that no relief was sought for setting aside the auction proceedings and sale of properties. Appeal No. 1 of 2004 was preferred before the DRT, Lucknow with the following relief:-

*“(a) That the confirmation of sale of immovable property order dated 9<sup>th</sup> January, 2004 as well as the certificate of sale of immovable property, form No. 20 passed by the Recovery Officer, Debts Recovery Tribunal Lucknow in DRC No. 155/2002/LKO be set aside.*

*(b) ....*

*(c) ....”*

**20.** The record further reveals that neither compliance of the mandatory pre-deposit as required under Rules 60 & 61 of Schedule – II to the Income Tax Act has been made, nor any material has been brought on record to show that the mandatory requirement of pre-deposit was made good. Once the mandatory condition was not fulfilled, the DRT ought not to have entertained

the appeal and passed the impugned order. In *Bishan Paul* (supra), the Apex Court has held that the sale certificate, though issued later, mentioned the date of confirmation of sale and the title, does not remain in abeyance till the certificate is issued and title, therefore, was not in abeyance till the certificate was issued but passed on the confirmation of sale. The intention behind the rules appears to be that title shall pass when the full price is realised. In the case of *D. Duraisrinivassan* (supra), the Madras High Court has held as under:-

*“... No person can take advantage of the confirmation of the sale under Rule 63, as in terms of the decision of the Supreme Court reported in AIR 1965 SC 1994 (supra) Bishan Paul Vs. Mothu Ram, the title passes when the full price is realized and the sale certificate merely mentions the date of confirmation of sale in favour of the purchaser.*

19. .... appeal against the order of confirmation of sale is maintainable, but that will be only in cases when the sale is challenged under Rules 60/61 of Schedule – II to the Income Tax Act and if it is rendered by the Recovery Officer against the applicant, such party, while challenging the sale, may also challenge the confirmation of sale, if any made in the meantime.”

21. Further, once the relief for setting aside the auction proceedings was not made, the Tribunal had neither any jurisdiction, nor authorized under the Act to go beyond the same. In the case of *Bharat Amratlal Kothari* (supra), the Apex Court has held as under:-

*“Whenever the petitioner is entitled or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for*

*any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner. In Krishna Priya vs. University of Lucknow [(1984) 1 SCC 307], overlooking the rule relating to grant of admission to Postgraduate course in medical college, the High Court in the exercise of powers under Article 226 of the Constitution directed the Medical Council to grant provisional admission to the petitioner. This Court set aside the order passed by the High Court observing that "in his own petition in the High Court, the respondent has merely prayed for a writ directing the State or the College to consider his case for admission yet the High Court went a step further and straightway issued a writ of mandamus directing the College to admit him to M.S. course and thus granted relief to the respondent which he himself never prayed for and could not have been prayed for". Again, in Om Prakash vs. Ram Kumar [(1991) 1 SCC 441], this Court observed, "A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute".*



22. Further, in the case of **Rm. N.N. Nagappa** (supra), the Apex Court has held as under:-

*“....It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case. The allegations on which the plaintiff claimed relief in respect of these shares are clear and emphatic. There was no suggestion made in the plaint or even when its amendment was sought at one stage that the plaintiff in the alternative was entitled to this amount on the ground of failure of consideration. That being so, we see no valid grounds for entertaining the plaintiff's claim as based on failure of consideration on the case pleaded by him ”*

23. On perusal of the impugned orders, it reveals that much emphasis has been made that the interim order was passed on 23.12.2003 in Appeal No. R – 366/2003 staying the proceedings before the DRT. It is not in dispute, by either of the parties, that the said appeal was subsequently dismissed as withdrawn. Once an appeal was dismissed as withdrawn, the interim order, if any, passed thereon automatically merges with the final order. Recently, the Apex Court in **Prem Chopra** (supra) has held as under:-

*“Once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order. In other words, the interim order comes to an end with the dismissal of the proceedings. In such a situation, it is the duty of the Court to put the parties in the same position they would have been but for the interim order of the court, unless the order granting interim stay or final order dismissing the proceedings specifies otherwise. On the dismissal of the proceedings or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order.”*

24. Further, this Court in the case of **Rajendra Kumar** (supra) has held that an interim order passed in a case which is ultimately dismissed is to be treated as not having been passed at all.

25. Once the effect and operation of the interim order wipes out on final order being passed thereon, all consequential proceeding goes. This vital aspect of the matter was brought to the notice of the Tribunal, but in stead of taking note of the said fact, the appeal of the petitioner was dismissed on that ground, which cannot be permissible in law.
26. In view of the peculiar facts and circumstances of the case, as referred to herein-above, the judgements cited by the learned counsel for the contesting respondents are of no aid to them.
27. Further, it has been specifically argued by the respondent – Bank that a compromise has been entered after the auction and confirmation of sale was set aside by the Tribunal. Once the action of the DRT was not in accordance with law, the subsequent action of the respondent – Bank entering into the compromise and consequential action also goes.
28. In view of the above, the impugned judgment & order dated 19.10.2005 passed by the Debt Recovery Appellate Tribunal, Allahabad in Appeal No. R – 525 of 2005 as well as the impugned order dated 29.04.2005 passed by the Presiding Officer of D.R.T., Lucknow in Appeal No. 01 of 2004 cannot be sustained. The same are hereby quashed.
29. The writ petition succeeds and is allowed with all consequential benefits.

**Order Date:-11/03/2024**

*Amit Mishra*