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SLP(C)No. 19569-19570 OF 1999

ITEM No.1 (Part-heard)

Court No. 9

SECTION XVI

A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.19569-19570/1999

(From the judgement and order dated 22/09/1999 in APOT 73/99 and APOT No.193/99 of The HIGH COURT OF CALCUTTA)

JATAN SURANA

Petitioner (s)

VERSUS

INDIAN BANK & ORS.

Respondent (s)

(With prayer for interim relief and office report)
(For Final Disposal)

With

SLP(C)No.131-132/2000

(With prayer for interim relief and office report)
(For Final Disposal)

SLP(C)No.4817-4818/2000

(With prayer for interim relief and office report)
(For Final Disposal)

Date : 24/04/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA

HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Mr. Sudhir Chandra, Sr. Adv.
in SLP 19569-19570/99 Mr. Ranjan Mukherjee, Adv.

in SLP 131-132/2000

Mr. Parijat Sinha, Adv.

in SLP 4817-4818/2000

Mr. Sumant Batra, Adv.

Ms. Manjula Gupta, Adv.

For Respondent (s) Mr. S.K. Bhattacharya, Adv.
Mrs Sarla Chandra, Adv.

Dr. Rajiv Dhavan, Sr. Adv.

Mr. Sanjay Kapur, Adv.

Mr. Rajiv Kapur, Adv.

Mrs. Shubhra Kapur, Adv.

Mr. Parijat Sinha, Adv.

Mr. Sumant Batra, Adv.

Ms. Manjula Gupta, Adv.

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UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
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Mr. Sudhir Chandra, learned senior counsel for the petitioner resumed his arguments at 10.30 A.M. and concluded at 11.40 A.M. Thereafter, Mr. Sumant Batra, learned counsel started his arguments and concluded at 12.05 P.M. Thereafter, Mr. Sumant Batra, learned counsel commenced his arguments and concluded at 12.10 P.M. Thereafter, Dr. Rajeev Dhavan, learned senior counsel commenced his arguments and concluded at 12.20 P.M.

Leave granted.

The appeals stand dismissed in terms of the signed order.

.SP1

(K.K. Chawla)
Court Master

(Jasbir Singh)
Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2003
(Arising out of SLP (Civil) No.19569-19570 of 1999)

Jatan Surana

.. Appellant

Versus

Indian Bank and others

.. Respondents

WITH

CIVIL APPEAL NOS. OF 2003
(Arising out of SLP (Civil) No. 131-132 of 2000)

AND

CIVIL APPEAL NOS. OF 2003
(Arising out of SLP (Civil) No. 4817-4818 of 2000)

O R D E R

Leave granted.

Heard parties.

These appeals are against an order dated 22nd September, 1999 passed by the Division Bench of the Calcutta High Court in Appeal No.73 of 1999 and Appeal No.193 of 1999.

Briefly stated the facts are as follows:

One Dwarka Industrial Development Pvt. Ltd. (hereinafter

referred to as "Dwarka") were lessees in respect of Premise No.14A, Canal Street, Calcutta and a factory at Sonarpur. The said Dwarka owed amounts to Industrial Reconstruction Bank of India (hereinafter referred to as "IRBI") as well as the Indian Bank. The land, building and machineries were mortgaged to IRBI whereas a charge was created in favour of the Indian Bank in respect of the current assets. The Directors of the Company had also given personal guarantees to Indian Bank.

On 4th February, 1997, IRBI filed an application under Section 40 of the Industrial Reconstruction Bank Act, 1984, for sale of the assets mortgaged to it. In that application Indian Bank was impleaded as a party. Thereafter, Indian Bank filed proceedings for recovery of its amounts before the Debt Recovery Tribunal.

In the application filed by IRBI, under Section 40, on 20th February, 1997, an interim injunction was granted and a Receiver was appointed of the properties.

On 8th July, 1998, workmen of Dwarka filed Application GA No. 2609/1998 to intervene (in the application filed by IRBI under Section 40). The workmen also sought a direction that the assets of Dwarka be sold to Mr. Jatan Surana or his nominee for a sum of Rs. 65 lacs and that out of that a sum of Rs. 26 lacs be paid to them towards their dues. It must be mentioned that this figure of Rs. 65 lacs was arrived at because the valuer appointed by IRBI had valued the property at Rs. 65 lacs. No interim orders were passed on this application of the workmen. That application was adjourned from time to time.

The Calcutta High Court closed for Durga Puja vacations in October, 1998. On 7th October, 1998, the workmen filed another Application praying that their earlier application be taken up for expeditious hearing and that the property be sold to Jatan Surana for a sum of Rs. 82 lacs out of which a sum of Rs. 26 lacs be paid to them and the rest be paid to IRBI. This application was given temporary registration No. 1352/98. This application was placed on Board before the Vacation Judge on 8th October, 1998. The Vacation Judge takes up this application for final hearing. He also takes up for hearing the earlier application filed by the workers and the application filed by IRBI even though those applications were not on board on that day. Without even issuing a notice to any party the Judge proceeds to pass an order of sale of the property to Jatan Surana in a sum of Rs. 82 lacs, out of which Rs. 26 lacs were to be paid to the workers and the balance Rs. 56 lacs to IRBI.

Jatan Surana promptly pays Rs. 56 lacs to IRBI. He also pays a sum of Rs.15 lacs to the workers. On 8th December, 1998 the Receiver executes a conveyance in favour of Jatan Surana even though a sum of Rs. 11 lacs still remained to be paid by Jatan Surana. This sum is deposited in Court after the conveyance was executed. Thereafter Jatan Surana takes possession of the property. One Prerna Rex, who claimed to be a tenant in the property, opposes the taking of possession by Jatan Surana. An application is made on 5th February, 1999, before the same Judge who passed the order in the vacation, and a direction is obtained that police render help to Jatan Surana in obtaining possession. As a result thereof Prerna Rex, who was not a party to any of the proceedings, was dispossessed from the premises.

Thereafter, Prerna filed Appeal No. 193 of 1999 and Indian Bank Appeal No. 73/99. These two Appeals have been disposed of by the impugned judgment. The Division Bench has set aside the sale in favour of Jatan Surana. The Court has held that the provisions of law, regarding sale of property, have not been followed. It has also been held that a fraud has been played in connivance with the workers, Surana and IRBI. It has been held that the valuation obtained by IRBI was not on correct basis. After setting aside the sale, directions have been given (a) that IRBI must return the sum of Rs. 56 lacs to Jatan Surana; (b) that workers must return the sum of Rs. 15 lacs to Jatan Surana; (c) that Rs. 11 lacs (which had been deposited by Jatan Surana) be returned to Jatan Surana; and (d) that the application under Section 40 be proceeded in accordance with law.

These Appeals have been filed by Jatan Surana, workmen of

Dwarka and IRBI respectively. In fairness to counsel, it must be stated that it was not argued that the sale was in confirmation with law. It was, however, submitted that the value of the property, as per the valuation report, was only Rs. 65 lacs, and that accepting Rs. 82 lacs was reasonable. On behalf of IRBI it was submitted that IRBI took a commercial decision to accept Rs. 56 lacs in full and final settlement of its claim of Rs. 1.05 crores. It was submitted that Jatan Surana was an independent third party who had parted with large sums of monies. It was submitted that Jatan Surana had spent another sum of Rs. 60 lacs to improve the property. It was submitted that the sale should thus be allowed to stand even though it was not in accordance with law.

It was submitted that Indian Bank was present at the time the Order dated 8th October, 1998 was passed. It was submitted that Indian Bank had attended the meeting held by the Court Receiver. It was submitted that they had acquiesced in the order of sale and thus had no right to file an Appeal. It was conceded that Prerna Rex had a right to file an Appeal. It was however submitted that Jatan Surana was not opposing the direction passed by the Division Bench to return possession to Prerna Rex. It was submitted that Prerna Rex was thus not affected by the sale and should not be allowed to complain.

It was submitted on behalf of Jatan Surana that, if the Court was not inclined to uphold the sale, then IRBI should be directed to return the sum of Rs. 56 lacs along with interest thereon at a reasonable rate. It was submitted that the direction regarding return of Rs. 15 lacs by the workers was impractical and that the direction should be modified to provide that the sum of Rs. 15 lacs, with interest thereon, be returned to Jatan Surana from the proceeds of the property obtained from any future sale.

We find no infirmity in the impugned judgment. Facts are glaring. They show that there was an understanding between the workers, Jatan Surana and IRBI. The whole attempt was to grab (transfer to Jatan Surana) valuable property at a throwaway price. The conduct of the Receiver and the Court i.e the vacation Judge, in this episode, leaves much to be desired. No interim orders were passed on the workers application. One fails to understand how another application could have been filed in the vacation. It is all the more shocking that it is promptly taken up by the Vacation Court, along with applications which were not on Board and an order of sale passed without giving any opportunity to any party to file a reply and without even making any attempt to ascertain whether a higher price could be obtained. It is also regrettable that the same Judge, thereafter, on 5th February, 1999, passes an order directing police to assist Jatan Surana and the Receiver in taking forcible possession from a party who had not been heard and who had not even been impleaded in any earlier proceeding. The receiver had also acted with undue haste in executing a conveyance in favour of Jatan Surana before the entire price was paid and in assisting in getting possession from third parties. The further fraud was that even though what had been mortgaged to IRBI in 14A, Canal Street, was land admeasuring 13 Cottahs. Yet the conveyance purports to convey 21 Cottahs. We agree with the submission on behalf of Prerna that the conduct of the Receiver in these matters requires looking into by the High Court.

We find it difficult to believe that a public body like IRBI had so promptly taken a decision to accept a sum of Rs. 56 lacs in full and final settlement of its claim of more than Rupees one crore. It could not be shown to us who, in IRBI, took that decision, under what authority and at what stage such a decision was taken. We direct that IRBI hold an inquiry into this matter and ascertain whether the Board had taken such a decision. If not then action must be taken, departmentally, against the officer who permitted such valuable property to be sold in this manner and also caused a loss of Rs. 26 lacs by agreeing that that amount be paid to the workers when under the Act all the amounts are to come to IRBI.

We thus see no reason to interfere. The sale has been correctly set aside. The other directions which have been given must follow the setting aside of the sale. It is clarified that the conveyance executed by the Receiver stands cancelled.

In our view, Jatan Surana is not as innocent as he makes

himself out to be. He is responsible for what has happened. Considering the fact that he has been in possession and used the property for all these years, we see nothing wrong in the direction to return Rs. 56 lacs without interest.

It is possible that Jatan Surana may not be able to recover Rs. 15 lacs from the workers, but we see no reason to interfere with that direction. Mr. Jatan Surana must bear the consequences of his attempt to grab the property. It will be for him to recover, if he can. Accordingly these Appeals stand dismissed. Receiver is directed to take back possession forthwith from Jatan Surana if necessary with police help.

Calcutta High Court will now proceed to dispose of the application filed by IRBI, under Section 40, on merits and in accordance with law. The learned Chief justice is requested to ensure that the Judge who passed the Order of sale does not deal with this matter at any stage. It is expected that now a proper valuation will be first obtained. Then the sale, if any, will only be by a public auction after giving proper notices in prominent newspapers. Jatan Surana will be at liberty to participate in the auction sale if he so chooses to do so. He will also have an opportunity to meet the highest bid. If he meets the highest bid the property to be sold to Jatan Surana at that price.

It is clarified that the order directing return of possession from Jatan Surana to Prerna Rex stands.

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(S.N. Variava)

New Delhi,
April 24, 2003

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(Brijesh Kumar)