

Bank of Baroda v. Shri Siddhi Vinayak Trading Co. & Ors.

Bank of Baroda

...Appellant

Shri Siddhi Vinayak Trading Co. & Ors.

...Respondent

Case No: Appeal No. 69/2013

Date of Judgement: 13/06/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Jayesh R. Patel, Advocate.

For Respondent: Mr Sohel E Kazi, Advocate.

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Facts:

Bank of Baroda (Appellant) filed an appeal challenging the judgment and order dated 11.07.2012 in Original Application (O.A.) No. 170 of 2010 on the files of the Debts Recovery Tribunal No. -II, Mumbai (D.R.T.). The O.A. was filed by Bank of Baroda under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("RDDB & FI" Act) seeking to recover a sum of ₹13,16,462/- due under a Packing Credit Facility and ₹4,01,177.35 under a TOD Facility together with interest at the rate of 13.5% per annum from the Defendants personally and from out of the mortgaged property.

The Defendants:

First Defendant: Shri Siddhi Vinayak Trading Co. (sole proprietorship of the second Defendant)

Second Defendant: Sole proprietor of First Defendant

Third Defendant: Wife of the Second Defendant (also a guarantor)

Fourth Defendant: Purchaser of the property agreed to be mortgaged to the Bank

Fifth Defendant: Pantnagar Shree Ome CHS Ltd (a cooperative society constituting the apartment complex where the mortgaged flat is situated)

In March 2003, the loan account turned into a non-performing asset (NPA). On 19.02.2004, the borrower executed a demand promissory note in favor of the Bank for the then outstanding amount. The Third Defendant executed a letter of guarantee, and both Second and Third Defendants executed acknowledgments of debt on 24.12.2006 and again on 23.03.2009. The Second and Third Defendants had also given an undertaking to create a mortgage but did not do so. On 20.01.2006, an officer of the Bank noticed that the flat agreed to be mortgaged was being occupied by the Fourth Defendant. The secretary of the Fifth Defendant society was asked not to transfer the flat without a 'no objection' from the Bank. However, the society did not abide by the request made by the Bank. The Bank issued a recall notice on 22.04.2010, but there was no response, leading to the filing of the O.A. for recovery of the amount.

Arguments by the Parties:

Defendants 1 to 3:

Denied having signed any documents or receiving any money from the Bank.

Fourth Defendant:

Contended that he had purchased the property by means of a registered sale deed executed on 18.08.2005 for valid consideration from Defendants 2 & 3 after obtaining a no objection certificate from the Fifth Defendant.

Lodged a criminal complaint consequent to his knowledge of the debt.

Fifth Defendant:

Contested the O.A. and denied having given any undertaking to the Bank with respect to the flat belonging to Defendants 2 & 3.

Bank of Baroda (Appellant):

Claimed that an equitable mortgage was created in favor of the Bank with regard to Flat No. 879 in Building No. 30, Pantnagar, Shree Ome CHS, Ghatkopar (East), Mumbai while providing a housing loan on 18.10.2000, and the memorandum of deposit of title deeds was also executed. Original agreement of sale, registration receipt, basic title deed, original share certificate, valuation report, and NOC issued by the society were all produced before the Bank and deposited with the intention to create a mortgage. On 29.03.2003, the Third Respondent had agreed to extend the equitable mortgage with regard to the said flat to cover the outstanding dues. The Second Defendant subsequently made an endorsement on that letter of undertaking, agreeing to extend the mortgage on 28.04.2003. Letters of acknowledgment executed on 01.09.2003, 24.06.2006, and 23.03.2009 also included the undertaking to extend the equitable mortgage. On 21.01.2006, the Appellant Bank had requested the Fifth Defendant society about the lien over the property and not to agree to an assignment without the concurrence of the Bank. Claimed that Defendants 2 & 3 had sold the property to the Fourth Defendant without informing him about the mortgage and had not handed over the original title deeds, making him believe that the documents were lost in a flood.

Court's Elaborate Opinions:

The Ld. Presiding Officer, in the impugned judgment, upheld the Bank's claim regarding the debt and the documents evidencing the debt, granting the monetary relief sought. However, the purported undertaking given by the Second and Third Defendants regarding the mortgage was disbelieved by the Ld. Presiding Officer. Accordingly, the O.A. was allowed with costs against Defendants 1 to 3 without any

charge over the mortgaged property. The Appellate Tribunal observed that under Section 58 of the Transfer of Property Act, 1882, a mortgage may be created for securing the payment of money already advanced or to be advanced by way of a loan, or for an existing or future debt. Section 58(f) of the TP Act defines a mortgage by deposit of title deeds, which states that the delivery of documents of title to the immovable property to the creditor or its agent with the intent to create a security thereon is sufficient to create a mortgage by deposit of title deeds. In the present case, the equitable mortgage was created by the deposit of the title deed as early as 18.10.2000, and subsequently, Defendants 2 & 3 agreed to extend that mortgage to subsequent debt as well, expressing their intention to create an equitable mortgage. The fact that the mortgagor did not redeem the title deeds consequent to the closure of the housing loan further fortified the case of the Appellant that Defendants 1 to 3 intended to create an equitable mortgage. The Ld. Presiding Officer was not justified in declining to grant a charge over the property while decreeing the O.A. The Appellate Tribunal allowed the appeal and modified the impugned judgment and order to the extent that the amount decreed shall be realizable from out of the mortgaged property, namely Flat No. 879 in Building No. 30, Pantnagar, Shree Ome CHS, Ghatkopar (East), Mumbai. A fresh Recovery Certificate incorporating the mortgage charge was directed to be issued by the D.R.T. in accordance with the above order.

Sections and Laws Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993
("RDDB & FI" Act)

Section 58 of the Transfer of Property Act, 1882

Section 58(f) of the Transfer of Property Act, 1882

Case Laws Referred:

No case laws were referred in the order.