

Bank of Baroda v. Vijeta W/o Dinesh Wadhvani & Ors.

Bank of Baroda

...Appellant

Vijeta W/o Dinesh Wadhvani & Ors.

...Respondent

Case No: Appeal No. 104/2015

Date of Judgement: 28/07/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Anant B. Shinde, Advocate.

For Respondent: None.

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Facts:

Bank of Baroda (Appellant) granted a loan of ₹6 lakhs to Mr. Dinesh Wadhvani (3rd Respondent), the sole proprietor of M/s Shivaji Traders, with Mrs. Vijeta Wadhvani (4th Respondent) as a guarantor. Mr. Dinesh Wadhvani created an equitable mortgage over his residential flat No. 203 at Jamuna No. 1 Cooperative Housing Society Ltd., Nagpur, in favor of Bank of Baroda by depositing the original title deeds. The loan account became a Non-Performing Asset (NPA) due to default in repayment by Mr. Wadhvani. Bank of Baroda initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and took symbolic possession of the mortgaged flat. Ms. Anita Gupta (1st Respondent) and Mr. Ramesh Gupta (2nd Respondent) filed a Securitisation Application (S.A.) No. 57 of 2013 before the Debt Recovery Tribunal (DRT), Nagpur, claiming to be the exclusive owners

of the flat. They claimed to have purchased the flat from Mr. Wadhvani and had created a simple mortgage over it in favor of Dewan Housing Finance Corporation (6th Respondent) on 28.04.2009. The DRT dismissed the S.A. on 31.01.2014, holding that if Mr. Wadhvani could not purchase or mortgage the property, he could not have validly sold it to the Applicants (1st and 2nd Respondents). The Applicants filed a Review Application No. 01 of 2014, contending that Mr. Wadhvani, being a Pakistani national, could not have purchased or mortgaged the property without the Reserve Bank of India's (RBI) permission. The DRT allowed the Review Application on 09.04.2014, holding that no valid mortgage could be created in favor of the Bank because a Pakistani national could not purchase or mortgage property in India without RBI's permission. Bank of Baroda filed an appeal (Appeal No. 104/2015) before the Debt Recovery Appellate Tribunal (DRAT), Mumbai, against the DRT's review order.

Arguments by Parties:

Bank of Baroda (Appellant):

The DRT erred in allowing the Review Application and undoing its earlier judgment dismissing the S.A.

The power of review is limited to correcting apparent errors on the face of the record and cannot be exercised to substitute a view or re-appreciate evidence.

There was no evidence to establish that Mr. Wadhvani (3rd Respondent) was a Pakistani national.

Even if Mr. Wadhvani was a Pakistani national, the subsequent sale of the property to the Applicants (1st and 2nd Respondents) would not be binding on the Bank since it was after the mortgage in the Bank's favor.

Applicants in S.A. (1st and 2nd Respondents):

A Pakistani national cannot purchase or mortgage property in India without RBI's permission, rendering the mortgage created by Mr.

Wadhvani (3rd Respondent) in favor of the Bank invalid.

As owners of the property by virtue of the sale deed executed by Mr. Wadhvani, they have the locus standi to challenge the Bank's SARFAESI measures.

Court's Elaborate Opinions:

The DRT has the power to review its orders, akin to the power of a Civil Court under the Code of Civil Procedure (CPC). However, this power is limited to correcting mistakes or errors apparent on the face of the record and cannot be exercised to substitute a view or re-appreciate evidence. A review is not a re-hearing of the original matter or an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. The DRT erred in allowing the Review Application and reviewing its earlier judgment dismissing the S.A. on a further hearing of the matter. Even on merits, the Applicants (1st and 2nd Respondents) did not have a strong case because: a. There was no evidence to establish that Mr. Wadhvani (3rd Respondent) was a Pakistani national. b. Even if Mr. Wadhvani was a Pakistani national, the subsequent sale of the property to the Applicants would not be binding on the Bank since it was after the mortgage in the Bank's favor. Under the Foreign Exchange Management Act, 1999 (FEMA), and the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000, citizens of certain countries, including Pakistan, cannot acquire or transfer immovable property in India without prior permission from the RBI. Since the sale of the property to the Applicants (1st and 2nd Respondents) was consequent to the mortgage created by Mr. Wadhvani (3rd Respondent) in favor of the Bank, it would not be binding on the Bank.

Cases Cited:

M/s Jain Studios Ltd vs. Shin Satellite Public Co. Ltd. (2006) 5 SCC 501

State of West Bengal & Ors vs. Kamal Sengupta & Anr. (2008) 8 SCC 612

Lily Thomas & Ors vs. Union of India & Ano. (2000) 6 SCC 224

Inderchand Jain (Dead) through LRs vs. Motilal (Dead) through LRs.
(2009 14 SCC 663

Kamlesh Verma vs. Mayawati & Ors (2013) 8 SCC 320

Sections and Laws Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Debts Recovery Tribunal (Procedure) Rules, 1993 – Rule 5-A (Review)

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB & FI Act) – Section 22(2)(e) (Power to review decisions)

Code of Civil Procedure, 1908 – Order 47 Rule 1 (Power to review)

Foreign Exchange Management Act, 1999 – Section 6(2) (Power to specify permissible capital account transactions), Section 6(3)(i) (Power to regulate acquisition or transfer of immovable property), Section 47(2)(a) (Power to make regulations)

Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000 – Regulation 7 (Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries)