

Hotel Mid Town v. Punjab National Bank & Anr.

Hotel Mid Town

...Appellant

Punjab National Bank & Anr.

...Respondent

Case No: Misc. Appeal No. 33/2023

Date of Judgement: 15/06/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Nirav R. Parikh along with Ms Mumtaz Khan, Advocate.

For Respondent: Mr. O.A. Das along with Ms. Pallavi Chari, Advocate.

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Facts:

The matter relates to I.A. No. 125/2023 (Stay) filed in Misc. Appeal No. 33/2023 before the Debts Recovery Appellate Tribunal (DRAT), Mumbai. The Appellant is Hotel Mid Town, a partnership firm, and the Respondents are Punjab National Bank (Respondent No. 1) and another party (Respondent No. 2). The appeal is filed under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 (RDB Act), challenging the order dated 18.02.2023 in Appeal No. 01 of 2023 on the files of the Debts Recovery Tribunal No. II, Ahmedabad (D.R.T.). The Appellant claims to be a bona fide purchaser of a property situated in Survey No. 30 of Sadhananagar Co-operative Society, B-2 Fatehgunj, Vadodara, admeasuring a plot of 2000 sq. ft. with a constructed area of 3000 sq. ft. consisting of ground and four floors, where the firm is running a hotel under the name "Hotel Midtown". The property was originally purchased under a registered deed executed on 16.11.2013 by the second

Respondent from a person named Raj Ranjan Sinha Roy for a sale consideration of ₹1.50 crores. The mutation was also affected in the property card. The second Respondent was approached by the Appellant for the purchase of the property, and he executed an affidavit on 25.04.2015 declaring the fact regarding the sale deed in his favor. However, nothing was stated regarding encumbrances or mortgages over the property. The Appellant conducted a search concerning the property and the office of the Sub-Registrar, Vadodara, for the period of 30 years, which revealed the registration of two mortgage deeds dated 17.02.2014 and 20.06.2014. The mortgage dated 17.02.2014 was with respect to the creation of a mortgage by deposit of title deeds by the second Respondent, as the sole proprietor of M/s. A.R. Enterprises, for a sum of ₹2 crores in favor of the first Respondent Bank. On 20.06.2014, a memorandum of extension of equitable mortgage was executed for ₹42 lakhs. The Appellant enquired about the outstanding dues towards the mortgage debt with the Bank and the second Respondent, and it was informed that there was an outstanding of ₹1.65 crores towards the term loan creating the mortgage. It was agreed that the Appellant would purchase the property for ₹2.10 crores, out of which ₹1.65 crores outstanding as dues to the first Respondent Bank would be deposited directly in the Bank towards clearance of the debt, and thereafter, the Bank would issue a No Dues Certificate. Subsequently, a sum of ₹42,90,000/- would be paid to the second Respondent. The Appellant deposited a total sum of ₹1.65 crores towards the term loan account in three tranches on different dates, and on 09.10.2015, the first Respondent Bank issued a letter stating that there was no overdue towards the said account of M/s. A.R. Enterprises. On 09.10.2015, a registered sale deed was executed by the second Respondent in favor of the Appellant, accepting two post-dated cheques for ₹21,45,000/- as agreed, and a sum of ₹2,10,000/- was also credited as TDS. The Appellant applied for necessary permission to run the hotel and obtained an electricity connection. The hotel business has been conducted by the firm in the said property ever since. The Appellant demanded the Bank to release the title deeds deposited by the second Respondent, but the Bank did not release them and threatened recovery against the second Respondent. On 02.02.2021, the first Respondent Bank filed O.A. No. 111/2021 against Respondent No. 2

for the recovery of ₹1,93,55,476.12 allegedly due in respect of three-term loans availed by the second Respondent for the purchase of three Audi cars by way of hypothecation. The first Respondent Bank also initiated SARFAESI measures against the property and the second Respondent by the issuance of a notice under Section 13(4) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) for the recovery of ₹48,52,412.02. The second Respondent had addressed a letter to the Respondent Bank in response to the SARFAESI measures, seeking to settle the dues by way of one-time settlement (OTS). The second Respondent had availed further vehicle loans in 2016, hypothecating his vehicles.

Arguments by the Parties:

Appellant's Arguments:

The Appellant, being a bona fide purchaser, is entitled to the right of redemption. Reliance on Variavas Saraswati & Anr. vs. Eachampi Thevi & Ors. (1993) Supp (2) SCC 201, Shivdev Singh & Ano. vs. Sucha Singh & Ano. (2000) 4 SCC 326, L.K. Trust vs. EDC Ltd. & Ors. (2011) 6 SCC 780, Tax Recovery Officer II, Sadar, Nagpur vs. Gangadhar Vishwanath Ranade (1998) 6 SCC 658, Shamim Bano vs. Oriental Bank of Commerce Ltd. & Ors. MANU/MH/1159/2007, and Allokam Peddabbayya & Ors vs. Allahabad Bank & Ors. MANU/SC/0700/2017. The Appellant had purchased the property after due diligence, and the mortgage debt was cleared, with a letter obtained from the Bank. The second Respondent had availed further vehicle loans in 2016, after the sale to the Appellant, and there is no document to indicate an extension of the earlier mortgage for these loans.

Respondent Bank's Arguments:

Reliance on Section 53 of the Transfer of Property Act and the decision in SBI Home Finance Ltd. vs. Credential Finance Ltd & Ors. AIR 2001 Bombay 179. Reliance on the decision in Prestige Light Ltd. vs. State Bank of India (2007) 8 SCC 449 and K Madhusoodanan Nair vs Kochunni & Ors. 2001 AIHC 982 to argue that the creditor is entitled

to realize future loans as well from the mortgaged property.

Court's Elaborate Opinions:

The Appellate Tribunal considered the decision in Tax Recovery Officer II, Sadar, Nagpur vs. Gangadhar Vishwanath Ranade (1998) 6 SCC 658, which dealt with the jurisdiction of the Recovery Officer proceeding under Rule 11 of the Second Schedule to the Income Tax Act. The Supreme Court held that Section 281 of the Income Tax Act declares any transfer made by the assessee during the pendency of proceedings under the Act, with the intention to defraud the revenue, as void. However, the powers of the Tax Recovery Officer under Rule 11 are different. Under Rule 11, when any claim is preferred or objection is made to the attachment or sale of any property on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall investigate the claim or objection. If the property is found to be in possession of some other person due to a transfer by the defaulter, the Tax Recovery Officer cannot declare any transfer made by the assessee in favor of a third party as void. The creditor would have to sue under Section 53 of the TP Act for a declaration that the transfer was void as it was in fraud of the creditors. In the present case, the Appellant had purchased the property after due diligence. The memorandum of deposit of title deeds was registered, and upon getting information about the encumbrances of mortgage and extended mortgage from the Sub-Registrar's Office, the Appellant had taken steps to clear the mortgage debt. The then outstanding dues were ascertained from the Bank and cleared, and a letter to that effect was obtained from the Bank. The balance sale consideration, after clearing the mortgage debt, was handed over to the second Respondent. The sale deed was registered, and mutation was effected in 2015. Admittedly, there was no other debt payable by the second Respondent to the Bank at that point in time. The second Respondent had thereafter, in 2016, availed three vehicle loans on hypothecation from the Bank. There is no document to indicate an extension of the earlier mortgage for these three loans. Hence, the Appellate Tribunal held that it cannot be said that the Respondent Bank had an existing lien over the property. The Appellant was entitled to a stay of the proceedings before the

Recovery Officer in R.P. No.357/2021, D.R.T-II, Ahmedabad, till the disposal of the appeal.

Sections and Laws Referred:

Recovery of Debts and Bankruptcy Act, 1993 (RDB Act)

- Section 20 (Appeal to the Appellate Tribunal)

Transfer of Property Act, 1882

- Section 53 (Transfer of Property undervalued for consideration)
- Section 60 (Right of Redemption)

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

- Section 13(2) (Notice of Demand)
- Section 13(4) (Enforcement of Security Interest)

Income Tax Act

- Section 281 (Transfer of property to be void in certain cases)
- Rule 11 of the Second Schedule (Procedure in making and canceling attachment and investigation of claims)

Cases Cited:

Variavas Saraswati & Anr. vs. Eachampi Thevi & Ors. (1993) Supp (2) SCC 201

Shivdev Singh & Ano. vs. Sucha Singh & Ano. (2000) 4 SCC 326

L.K. Trust vs. EDC Ltd. & Ors. (2011) 6 SCC 780

Tax Recovery Officer II, Sadar, Nagpur vs. Gangadhar Vishwanath Ranade (1998) 6 SCC 658

Shamim Bano vs. Oriental Bank of Commerce Ltd. & Ors. MANU/MH/1159/2007

Allokam Peddabbayya & Ors vs. Allahabad Bank & Ors. MANU/SC/0700/2017

SBI Home Finance Ltd. vs. Credential Finance Ltd & Ors. AIR 2001
Bombay 179

Prestige Light Ltd. vs. State Bank of India (2007) 8 SCC 449

K Madhusoodanan Nair vs Kochunni & Ors. 2001 AIHC 982