

Jyoti Hemant Patel & Ors. v. Asset Reconstruction Company (India) Ltd & Ors.

Jyoti Hemant Patel & Ors.

...Appellant

Asset Reconstruction Company (India) Ltd & Ors.

...Respondent

Case No: Appeal No. 119/2016

Date of Judgement: 27/03/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: A. Sakpal along with Mr Kapil Jha & Mr Darshan Naik, Advocate.

For Respondent: None.

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Facts:

Appeal No. 119/2016 was filed before the Debts Recovery Appellate Tribunal, Mumbai by Jyoti Hemant Patel & Ors. (Appellants) against Asset Reconstruction Company (India) Ltd & Ors. (Respondents). The Appellants challenged the order dated 05/04/2016 of the Debts Recovery Tribunal-III, Mumbai (DRT) in Original Application (O.A.) No. 322 of 2005. The DRT had dismissed the O.A. filed by Development Credit Bank (DCB) for the realization of debt from the defendants under Section 19(1) of the Recovery of Debts Due to Banks & Financial Institution Act, 1993 (RDDDB & FI Act). DCB had assigned the debt to the 1st Respondent, Asset Reconstruction Company (India) Ltd. (ARCIL), which was substituted as the Appellant in the O.A. The 2nd Respondent

company had allegedly availed financial assistance from DCB, with Respondents Nos. 3 to 7 as guarantors (directors of the company). The original 8th defendant, late Virmati H. Patel, had contested the O.A. by filing a written statement objecting to the documents relied upon by DCB. After her death, her legal representative, Hemanth H. Patel, was impleaded as an additional defendant (8A). Upon his death, the Appellants were impleaded as additional defendants (8B to 8D) as his legal representatives. The DRT dismissed the O.A., holding that DCB had not produced any document regarding the L/C transactions and that there was no proof of payment made to the party concerned. The DRT also observed that the 8th defendant (through whom the Appellants claimed their right) had not signed the sanction letter dated 09.11.2002. The DRT rejected the Appellants' application (Ext. 70) and their specific prayer to return their title deeds and discharge the mortgage.

Arguments by the Parties:

Appellants:

The Appellants prayed for the discharge of the mortgage allegedly created in favor of ARCIL (1st Respondent) and the return of title deeds pertaining to the mortgaged property (6th Floor, Varsova Sai Darshan Apartment, Andheri, Mumbai). They also sought to set aside the DRT's order dismissing their application (Ext. 70) and allow the initiation of action against the Bank officials of the 1st Respondent Bank under Section 340 read with Section 195 of the Code of Criminal Procedure (CrPC).

Respondents:

The 1st Respondent Bank (ARCIL) did not challenge the impugned order of the DRT in the O.A. Despite service of notice, none of the Respondents appeared before the Appellate Tribunal, and they were set ex-parte.

Court's Elaborate Opinions:

The Appellate Tribunal observed that since the DRT had concluded that

no debt could be realized or recovered from the defendants, it was incumbent upon the DRT to order the return of the documents deposited by way of mortgage. Regarding the prayer to initiate action under Section 340 CrPC, the Appellate Tribunal stated that the Court/Tribunal should be of the opinion that it is expedient in the interest of justice to inquire into any offence under Section 195(1)(b) CrPC, which appears to have been committed in relation to a proceeding in that Court/Tribunal or concerning a document produced or given in evidence. The Appellate Tribunal did not find it necessary to interfere with the DRT's decision not to proceed against the Bank or its officials under Section 195 CrPC.

Sections and Laws Referred:

Section 19(1) of the Recovery of Debts Due to Banks & Financial Institution Act, 1993 (RDDB & FI Act)

Section 58 of the Transfer of Property Act (regarding the creation of a mortgage for existing or future debts)

Section 340 of the Code of Criminal Procedure (CrPC)

Section 195 of the Code of Criminal Procedure (CrPC)

Cases Cited:

No specific cases were cited in the order.

Order:

The Appellate Tribunal allowed the appeal in part regarding the return of title deeds pertaining to the mortgaged property. The Appellate Tribunal directed the 1st Respondent (ARCIL) to return the title deeds to the Appellants within one month upon due acknowledgment. The Appellate Tribunal dismissed the appeal regarding the DRT's decision not to invoke provisions under Section 340 for committing an offence under Section 195 of the CrPC.