

Mahesh Duhlani vs Union Bank of India & Anr.

Mahesh Duhlani

...Appellant

Union Bank of India & Anr.

...Respondent

Case No: Appeal No. 26/2018

Date of Judgement: 20/01/2023

Judge:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Rajesh Nagory, Ms Sanjana Ghogare Advocates.

For Respondent: None.

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Facts:

This is an order passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai, in Appeal No. 26/2018, filed by Mahesh Duhlani (the Appellant) against Union Bank of India & Anr. (the Respondents).

The Appellant was a third-party purchaser of two secured assets, Flat Nos. 5 and 6, along with garages, at Moon Rock Apartments, Bandra (West), Mumbai. He was aggrieved by the dismissal of Securitisation Application (S.A.) No. 47 of 2018 by the Debts Recovery Tribunal (DRT)-I, Mumbai, vide order dated 26.04.2018.

The second Respondent, the original owner of the flats, along with his partner Mr. Ketan Shah, had borrowed money from the first Respondent Bank (Corporation Bank, later merged into Union Bank of India) in 2008 and had created a security interest by depositing the title deeds. He

defaulted on the payment, leading to the initiation of SARFAESI measures against him.

The Appellant claimed to have purchased the properties from the second Respondent vide an agreement of sale dated 19.09.2013 and had been in possession and enjoyment of the properties. An e-auction of the secured properties was proposed to be held on 27.03.2018 after the creditor Bank had taken physical possession of the properties.

Arguments by the Appellant:

The Appellant approached the DRT with the S.A. as a person aggrieved by the SARFAESI measures under Section 17 of the SARFAESI Act, 2002, challenging the action. He argued that the outstanding amount due to the creditor Bank was only Rs. 86,16,685/- as per the sale notice, which could be recovered by the sale of Flat No. 5 alone. He also contended that the reserve price fixed for the flats was highly inadequate.

The Appellant filed a rejoinder along with affidavits from the second Respondent and his partner, Ketan Shah, stating that the sale of flats in favor of the Appellant was genuine.

Arguments by the Respondent Bank:

The Respondent Bank opposed the application, contending that the Appellant had no locus standi to file the application because the sale in his favor was subject to the mortgage, which was much prior to the purported sale. Once SARFAESI measures were initiated with the issuance of a demand notice under Section 13(2) of the SARFAESI Act, the borrower was precluded from transferring the assets by way of sale, lease, or otherwise under Section 13(13). Furthermore, the secured debtor (second Respondent) and his partner were languishing in jail following criminal cases registered against them for duping several banks and financial institutions, raising doubts about the genuineness of the alleged sale in favor of the Appellant.

Court's Elaborate Opinions:

The court observed that the e-auction scheduled for 27.03.2018 had failed for want of bidders, and since the Appellant had prayed only to stall the said sale in the S.A., the application could have been dismissed as infructuous on that ground alone. However, the Presiding Officer deemed it appropriate to dispose of the S.A. on merits.

The Presiding Officer concluded that the Appellant had no legal right over the property since he had purchased it during the pendency of the mortgage. Doubts were also raised regarding the genuineness of the transaction in favor of the Appellant by the borrowers who were in jail. The affidavits filed by the borrowers were not acceptable to the Presiding Officer because they were not attested by the Jail Authorities as they ought to have been. Consequently, the S.A. was dismissed.

The Appellant's counsel submitted that based on the assurance given by the second Respondent and his brother-in-law, Ketan Shah, that the properties were free of encumbrances, the Appellant entered into an agreement of sale and paid Rs. 50 lacs towards consideration.

The Appellant further argued that the first Respondent Bank proceeded with the sale of the flat on 27.04.2018 and confirmed the sale in favor of one Javed Shaikh Aliahbux for a sale consideration of Rs. 3,50,25,000/-, which was in violation of Rule 9(2) of the Security Interest (Enforcement) Rules, 2002, since the consideration was less than the reserve price of Rs. 3,69,00,000/- stipulated in the e-auction notice dated 09.03.2018.

Based on an interim application filed by the Appellant, the DRAT had permitted the Appellant to deposit the entire outstanding debt with costs and interest as calculated by the first Respondent Bank, and accordingly, a sum of Rs. 1,12,00,000/- was deposited with the Registrar of the DRAT. The Appellant argued that in view of the deposit of the entire debt due from the second Respondent to the first Respondent Bank, the first Respondent Bank was obliged to release the title deeds of the property to the Appellant.

The Appellant relied on several cases, including the decision of the

Bombay High Court (Nagpur Bench) in Writ Petition No. 32/2022, Sunil Ratnakar Gutte vs. Union Bank of India, which held that it was not open for the Bank to exercise a general lien over the title deeds deposited by the borrower after the entire loan amount was fully satisfied. The Appellant also cited the Supreme Court's decision in Narayanadas Karsondas vs. S.A. Kamtam & Anr. (1977) 3 SCC 247, which held that the right of redemption embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless extinguished by the act of the parties, and that the conferment of power to sell without the intervention of the court in a mortgage deed by itself would not deprive the mortgagor of his right to redemption.

The Appellant further relied on the decision of the Punjab and Haryana High Court in Pal Alloys & Metal India Pvt. Ltd & Ors. vs. Allahabad Bank & Ors. AIR 2022 P&H 23, which held that the right of the mortgagor is not extinguished until the sale certificate is issued and the sale is registered in favor of the auction purchaser, even where the sale is held under the SARFAESI Act.

Cases Cited:

Writ Petition No. 32/2022, Sunil Ratnakar Gutte vs. Union Bank of India (Bombay High Court, Nagpur Bench)

Narayanadas Karsondas vs. S.A. Kamtam & Anr. (1977) 3 SCC 247 (Supreme Court)

Pal Alloys & Metal India Pvt. Ltd & Ors. vs. Allahabad Bank & Ors. AIR 2022 P&H 23 (Punjab and Haryana High Court)

Kapil Kumar & Anr. vs. Oriental Bank of Commerce & Ors. Civil Writ Petition No. 18724 of 2017 (Punjab and Haryana High Court)

Sections and Laws Referred:

Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Section 13(2) of the SARFAESI Act

Section 13(13) of the SARFAESI Act

Section 13(8) of the SARFAESI Act

Section 60 of the Transfer of Property Act

Rule 9(2) of the Security Interest (Enforcement) Rules, 2002

Order:

The appeal was disposed of with a direction permitting the first Respondent Bank to withdraw the entire amount deposited by the Appellant in the Registry, along with accrued interest. The title deeds pertaining to Flats Nos. 5 and 6 in the possession of the first Respondent Bank were ordered to be released to the Appellant on proper acknowledgment within a period of one month.