

Mallapu Jesuraju Sunkanna v. Central Bank of India & Ors.

Mallapu Jesuraju Sunkanna

...Appellant

Central Bank of India & Ors.

...Respondent

Case No: Appeal No. 171/2015

Date of Judgement: 31/10/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr. Raju Uttam Shinde, Advocate.

For Respondent: Mr. J.K. Jadhav, Advocate.

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Facts:

M.A. No. 449/2015 (Stay) was filed in Appeal No. 171/2015 by Mallapu Jesuraju Sunkanna (Appellant) against Central Bank of India & Others (Respondents). The Appellant was aggrieved by the judgment and order dated 14/01/2015 of the Debts Recovery Tribunal-II, Mumbai (D.R.T.), which allowed Original Application (O.A.) No. 105 of 2012 filed by Central Bank of India (1st Respondent). The O.A. was filed by Central Bank of India for the recovery of ₹10,03,100/- along with 12% interest per annum from the date of filing the O.A. till realization, from the defendants and from the mortgaged flat bearing No. 203 under the 2nd floor of Nikita Apartments, Plot No. 7-A, Sector 5, Koperkhairne, Navi Mumbai. The 2nd Respondent was a firm represented by the 3rd Respondent as its partner. They were the builders of the apartment that was sold to the Appellant. On 13/12/2004, Central Bank of India sanctioned a housing loan of ₹8.65 lakhs to the Appellant, which he

undertook to repay with interest at 9% per annum in 180 equated monthly installments (EMI) of ₹8775/- each, commencing from January 2005. Respondents Nos. 2 and 3 (builders) addressed a letter on 20/11/2004 confirming the sale of the flat to the Appellant and expressed no objection to the mortgaging of the flat as security for the debt. The Appellant deposited his original title deeds for the flat, and a housing loan agreement and memorandum were executed. Central Bank of India issued a banker's cheque on 06/01/2005 for ₹8.65 lakhs in favor of the 2nd Respondent firm, which was acknowledged as received. The Appellant paid some EMIs initially but later defaulted, and the account became a Non-Performing Asset (NPA). Central Bank of India recalled the facility and issued a lawyer's notice on 10/01/2012, calling upon the Appellant and Respondents Nos. 2 and 3 to repay the due amount. The Appellant denied liability in his reply on 03/04/2012, leading Central Bank of India to file the O.A. on 26/04/2012. Respondents Nos. 2 and 3 remained ex-parte, while the Appellant contested the O.A. by filing a written statement. The Appellant contended that though Respondents Nos. 2 and 3 agreed to sell the flat, he was never handed over physical possession, and the flat was in possession of someone else to whom it was sold. The Appellant alleged that Respondents Nos. 2 and 3 conspired with bank officers to cheat him and the bank, and he had lodged a police complaint on 23/09/2005 in this regard. The Appellant claimed that he neither received the loan amount nor the delivery of the flat, and the documents submitted in connection with the loan agreement were forged and fabricated. The D.R.T. declined to accept the Appellant's defense and allowed the O.A., directing the defendants to pay the amount with interest and granting the bank liberty to enforce the security interest on the mortgaged flat, provided Respondents Nos. 2 and 3 handed over possession and the society issued share certificates to the Appellant.

Arguments by the Appellant:

The Appellant raised the plea of limitation, pointing out that despite the account being declared an NPA on 29/09/2006, the O.A. was filed only on 26/04/2012, and the delay was not explained by the bank. The

Appellant pleaded ignorance about the payment of ₹6,79,000/- towards the loan account, stating that those payments were not made by him, and the D.R.T. did not direct the bank to file details of those payments. The purported payment of ₹45,000/- made on 29/09/2011 was also not paid by the Appellant and was recorded by the bank to save the limitation period. The value of the flat was ₹9,25,000/-, but the agreement indicated that the Appellant had paid only ₹51,000/- towards the sale consideration, and the balance of ₹8,65,000/- was disbursed as a loan by the bank directly to Respondents Nos. 2 and 3, which was unbelievable and against banking policy. There was fraud and collusion between the bank officers and Respondents Nos. 2 and 3, and the impugned judgment did not consider these aspects.

Arguments by Central Bank of India (1st Respondent):

The Appellant had approached the bank for a loan and had personally deposited the title deeds and executed the loan agreement. The Appellant was aware of the handing over of the cheque to the builders towards payment of the sale consideration. A letter produced as an exhibit dated 05/01/2005 issued by the builders to the Appellant asked him to take possession of the flat upon completion of construction. The Appellant had written a letter (Exhibit 3) to the bank on 13/12/2004, acknowledging the sanctioning of the debt and deposit of the title deeds. The sanction letter (Exhibit 4) dated 13/12/2004 was addressed to the Appellant regarding the sanctioning of the loan and repayment conditions, and the Appellant acknowledged receipt by signing it on 06/01/2005. There was evidence regarding the payment of ₹8,65,000/- to the builders and a receipt issued by them in favor of the bank (Exhibits 5 and 6). The agreement for sale was executed on 04/11/2004 and signed by the Appellant and Respondent No. 3, and it was registered as per law. After executing the sale deed and acknowledging the payment of the sale consideration by the bank to the builders, the Appellant cannot contend that he is not liable to repay the loan because he was not delivered possession of the flat. It was incumbent upon the Appellant to have insisted on getting possession of the property after executing the sale deed and acknowledging the debt. There was evidence regarding the communication sent by the builder to

the Appellant to take possession of the flat. The Appellant did not take any steps for specific performance to seek possession of the flat. The Appellant admittedly defaulted on payment of the EMIs and did not inquire with the bank regarding the payment of the loan. The contention that the Appellant did not pay any amount towards repayment of the debt cannot be believed, as he is not an illiterate person and cannot be expected to sign documents randomly without knowing their contents. The entire defense set up by the Appellant seemed to be a make-believe story, and the allegation of collusion between the bank officers and the builders was not established.

Arguments by Respondents Nos. 2 and 3 (Builders):

The arguments of Respondents Nos. 2 and 3 (Builders) are not explicitly mentioned in the summary, as they remained ex-parte in the appeal.

Court's Elaborate Opinions:

The court found no reason to disagree with the findings of the Learned Presiding Officer in the impugned judgment. The court observed that after executing the sale deed and acknowledging the payment of the sale consideration by the bank to the builders, the Appellant cannot contend that he is not liable to repay the loan because he was not delivered possession of the flat. It was incumbent upon the Appellant to have insisted on getting possession of the property after executing the sale deed and acknowledging the debt. There was evidence regarding the communication sent by the builder to the Appellant to take possession of the flat, but the Appellant did not take any steps for specific performance to seek possession. The Appellant admittedly defaulted on payment of the EMIs and did not inquire with the bank regarding the payment of the loan. The contention that the Appellant did not pay any amount towards repayment of the debt cannot be believed, as he is not an illiterate person and cannot be expected to sign documents randomly without knowing their contents. The entire defense set up by the Appellant seemed to be a make-believe story, and the allegation of collusion between the bank officers and the builders was not established.