

The Federal Bank Ltd. v. Sandeep Ramesh Kulkarni & Ors.

The Federal Bank Ltd.

...Appellant

Sandeep Ramesh Kulkarni & Ors.

...Respondent

Case No: Appeal No. 71/2009

Date of Judgement: 02/05/2023

Judges:

Mr Justice Ashok Menon, Chairperson

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

For Respondent: None.

Download Court Copy [CLICK HERE](#)

Facts:

Sandeep Ramesh Kulkarni (Respondent No. 1) and another person (Respondent No. 2) agreed to purchase a residential flat bearing No. 501 at Thakur Green Field Co-operative Housing Society Ltd., Thakur Complex, Ali Yavar Jung Marg, Kandivali (E) Mumbai 400101 (subject flat) belonging to the 3rd Respondent through her Power of Attorney holder vide a registered agreement for sale dated 25/02/2003. Respondent Nos. 1 and 2 approached the Appellant (Federal Bank Ltd.) for a housing loan, which was sanctioned vide order dated 01/08/2003. Necessary documents such as a loan agreement and a Demand Promissory Note were executed in favor of the Bank by the borrowers (Respondent Nos. 1 and 2). A collateral security of the subject flat was offered by way of equitable mortgage, and the original title deeds of the

subject flat were deposited by way of a memorandum of deposit of title deeds dated 01/08/2003. The share Certificate obtained in the name of the 3rd Respondent was also deposited. Respondent Nos. 1 and 2 defaulted in repayments of the debt, and the Appellant Bank filed an Original Application (O.A.) No. 199 of 2006 before the Debts Recovery Tribunal-III, Mumbai (D.R.T.) for recovery of ₹1,559,219/- together with interest at the rate of 11.67% at monthly rests from the date of filing of the O.A. till realization from the defendants. A charge over the mortgaged flat was also sought. The D.R.T. allowed the recovery of debt from Respondent Nos. 1 and 2 jointly and severally but declined to grant a charge over the allegedly mortgaged property. The Appellant Bank filed an appeal (Appeal No. 71/2009) before the Debts Recovery Appellate Tribunal (D.R.A.T.), Mumbai, aggrieved by the judgment of the D.R.T. Arguments by the Appellant Bank: The Appellant Bank argued that the D.R.T. erred in refusing to grant a charge over the mortgaged flat, despite finding that the Bank is entitled to recover the debt from Respondent Nos. 1 and 2 jointly and severally.

Court's Elaborate Opinions:

The D.R.A.T. observed that the only question for consideration was whether the borrowers (Respondent Nos. 1 and 2) had any valid title over the subject flat in view of the unregistered Power of Attorney used for executing the registered agreement for sale in their favor. The D.R.A.T. noted that the Registration (Maharashtra Amendment) Act, 2010, effective from 1 April 2013, had amended Section 17 of the Registration Act, 1908, making it mandatory to register an Irrevocable Power of Attorney relating to the transfer of immovable property in any way executed on and after the commencement of the Amendment Act. However, the D.R.A.T. observed that the transaction in the present case took place in 2003, much before the amendment to the Registration Act. A Notarized Power of Attorney was acceptable at that point in time. The D.R.A.T. further noted that the agreement for sale was registered by the Sub-Registrar, which would not have been done in case there was an unacceptable Power of Attorney. The D.R.A.T. held that the Ld. Presiding Officer of the D.R.T. committed an error in holding that the sale deed in favor of the borrowers (Respondent Nos.

1 and 2) is not valid and that the third Respondent continues to remain the owner of the subject flat. The D.R.A.T. observed that under what arrangement the third Respondent continues to occupy the flat is something to be explained by the third Respondent. Similarly, the non-issuance of a no objection certificate by the society (fourth Respondent) is to be explained by the fourth Respondent. The D.R.A.T. noted that none of the Respondents appeared to give an explanation to all these either before the D.R.T. or before the D.R.A.T., indicating that the case of the Applicant/Appellant stands unchallenged/undisputed. The D.R.A.T. held that it is not the burden of the Appellant to prove undisputed facts, and the impugned judgment of the D.R.T. required modification.

Sections and Laws Referred:

Section 17 of the Registration Act, 1908 (as amended by the Registration (Maharashtra Amendment) Act, 2010)

The Registration (Maharashtra Amendment) Act, 2010 (effective from 1 April 2013)

Cases Cited:

None

Final Order:

The D.R.A.T. allowed the appeal in part and directed Respondent Nos. 1 and 2 to pay the Applicant (Federal Bank Ltd.) a sum of ₹15,59,219/- together with future interest at 9.67% per annum at monthly rests from the date of filing of the suit till realization, personally, from out of the mortgaged property (i.e., Flat No. 501 at Thakur Green Field Co-operative Housing Society Ltd., Thakur Complex, Ali Yavar Jung Marg, Kandivali (E) Mumbai 400101) and from out of other assets belonging to them. A Recovery Certificate was directed to be issued to this effect. The appeal regarding reliefs sought against Respondent Nos. 3 and 4 was dismissed as unsustainable.