

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**Appeal No. 119/2016**

**Between**

Jyoti Hemant Patel & Ors. ... Appellant/s  
V/s.

Asset Reconstruction Company (India) Ltd &  
Ors. ... Respondent/s

A. Sakpal along with Mr Kapil Jha & Mr Darshan Naik, Advocate  
for Appellants.

**:- Order dated: 27/03/2023:-**

Aggrieved by the order dated 05/04/2016 in Original Application (O.A.) No. 322 of 2005 on the files of the Debts Recovery Tribunal-III, Mumbai (D.R.T.) in not discharging the mortgage despite the dismissal of the O.A., and the rejection of the application Ext. 70 filed by the Appellants, they are in appeal.

2. The above-mentioned O.A. was filed by the Development Credit Bank (DCB), for the realisation of the amount from the defendants therein under Section, 19 (1) of the Recovery of Debts Due to Banks & Financial Institution Act, 1993 ("RDDB & FI Act", for short). Relief with regard to the allegedly mortgaged property was also sought. The original applicant DCB assigned the debt to the 1<sup>st</sup> Respondent Assets Reconstruction Company (India) Ltd. (ARCIL) and consequently, ARCIL was substituted as the Appellant. The 2<sup>nd</sup> Respondent company had allegedly availed of financial assistance from DCB with Respondents Nos.3 to 7, the

directors of the company as guarantors. The original 8<sup>th</sup> defendant in the O.A., late Virmati H. Patel had contested the O.A. by filing a written statement objecting to the documents relied upon by the DCB. During the pendency of the O.A., the aforesaid Virmati died and her only legal representative, namely Hemanth H. Patel was impleaded as additional defendant No. 8A. He too filed written statements. However, he also died during the pendency of the O.A. and the Appellants were impleaded as additional defendants Nos. 8B to 8D being his legal representatives. The Appellants too filed written statements before the D.R.T. After considering the rival contentions raised by the parties, the D.R.T. dismissed the O.A. holding that the applicant has not produced any document in respect of the L/C transactions and that there is no proof of any payment made to the party concerned. It was also observed that the 8<sup>th</sup> defendant, through whom, the Appellants claim their right, had not signed the documents pertaining to the sanction letter dated 09.11.2002. The specific prayer of the Appellants to return their documents of title on the discharge of mortgage was not accepted by the DRT and their application at Ext. 70 was rejected.

3. In this appeal, the Appellants pray that the mortgage allegedly created in favour of Respondent No. 1 may be discharged and the first Respondent may be directed to hand over all title deeds pertaining to the mortgaged property namely 6<sup>th</sup> Floor of Varsova Sai Darshan Apartment Admeasuring 1012 sq. ft. situated at RDP-2, VER-19, MHADA Layout, Survey No. 120, Varsova, Andheri (West) of Andheri Village within the Registration Sub-District of Bandra, Mumbai-400053 and also to set aside and quash the order

of the D.R.T. in so far as Ext.70 was dismissed and allow the application to initiate action against Bank official of the first Respondent Bank under Sec. 340 read Sec. 195 of CrPC.

4. The first Respondent Bank has not challenged the impugned order of D.R.T. in the O.A. Hence, the finding that the liability due from the defendants has not been sufficiently proved stands unchallenged. Despite service of notice on the Respondents, none appeared and they were set ex-parte. The Ld. Counsel appearing for the Appellants submitted written arguments. A mortgage can only be created in specific movable property for the purpose of securing money advanced or to be advanced by way of a loan. A mortgage can also be created for existing or future debts under Sec. 58 of the Transfer of Property Act. When the Ld. Presiding Officer concluded that there was no debt which could be realised or recovered from the defendants, it was incumbent upon the D.R.T. to order the return of the documents deposited by way of mortgage. The Ld. Presiding Officer has, therefore, committed an error by not ordering the return of the title deeds.

5. As far as taking an action under Sec. 340 CrPC is concerned, the Court/Tribunal should be of the opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of Sub-Sec. (1) of Sec.195, which appears to have been committed in or in relation to a proceeding in that Court/Tribunal or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court/Tribunal, such Court or Tribunal may, after such preliminary inquiry, if any, as it thinks necessary proceed to make a complaint

to the Magistrate having jurisdiction. In the instant case, The Ld. Presiding Officer did not deem it necessary to proceed against the Bank or its officials for allegedly committing an offence under the provisions of Sec. 195 CrPC. I am not inclined to interfere with that decision of the D.R.T.

In the result, the appeal is allowed in part and the prayer of the Appellants as regards the return of title deeds pertaining to the mortgaged property is allowed. The document shall be returned to the Appellants on due acknowledgement within a period of one month. The appeal as regards the D.R.T. not invoking provisions under Sec. 340 for committing an offence under Sec. 195 of the CrPC is dismissed.

Sd/-  
Chairperson

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