

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

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 125/2023 (Stay)

In

Misc. Appeal No. 33/2023

Between

Hotel Mid Town ... Appellant/s
V/s.

Punjab National Bank & Anr. ... Respondent/s

Mr Nirav R. Parikh along with Ms Mumtaz Khan, Advocate for
Appellant.

Mr. O.A. Das along with Ms. Pallavi Chari, Advocate for
Respondent No. 1 Bank.

-: Order dated: 15/06/2023:-

The appeal is filed under Sec. 20 of the Recovery of Debts and Bankruptcy Act, 1993 (“RDB Act” for short) challenging the order dated 18.02.2023 in Appeal No. 01 of 2023 on the files of the Debts Recovery Tribunal No. II, Ahmedabad (D.R.T.).

2. I.A. No. 125 of 2023 is an application filed by the Appellant seeking a stay of the impugned order. The facts as necessary for the disposal of this interlocutory application, in brief, are thus:

The Appellant is a partnership firm which claims to be a bona fide purchaser of property situated in Survey No. 30 of Sadhananagar Co-operative Society, B-2 Fatehgunj, Vadodara admeasuring a plot of 2000 sq. ft. with a constructed area of 3000 sq. ft. consisting of ground and four floors in which the firm is running a hotel under

the name and style “Hotel Midtown”. The property was originally purchased under a registered deed executed on 16.11.2013 by the second Respondent from a person named Raj Ranjan Sinha Roy for a sale consideration of ₹1.50 crores. The mutation was also affected in the property card. The second Respondent was approached by the Appellant for the purchase of the property and he executed an affidavit on 25.04.2015 declaring the fact regarding the sale deed in his favour. Nothing was, however, stated regarding encumbrances or mortgages over the property. Public notice was published on 26.04.2015 in two local Daily of Gujarat and a search was also conducted concerning the property and the office of Sub-Registrar Vadodara for the period of 30 years. Apart from the sale deed executed in favour of the second Respondent, it also revealed the registration of two mortgage deeds dated 17.02.2014 and 20.06.2014. No response was received in response to the public notice issued by the Appellant. The mortgage dated 17.02.2014 was with respect to the creation of a mortgage by deposit of title deeds by the second Respondent for himself as the sole proprietor of his proprietorship namely M/s. A.R. Enterprises for a sum of ₹2 crores in favour of the first Respondent Bank. On 20.06.2014 a memorandum of extension of equitable mortgage was executed for ₹42 lakhs. The appellant enquired about the outstanding dues towards the mortgage debt with the Bank and the second Respondent and it was informed that there was an outstanding dues of ₹1.65 crores towards the term loan creating the mortgage. It was agreed that the Appellant would purchase the property for ₹2.10

crores out of which ₹1.65 crores outstanding as dues to the first Respondent Bank would be deposited directly in the Bank towards clearance of the debt. Thereupon, the first Respondent Bank was to issue a No Dues Certificate. Thereafter, a sum of ₹42,90,000/- would be paid to the second Respondent.

3. Acting in accordance with the undertaking, the Appellant deposited a total sum of ₹1.65 crores towards the term loan account No. 3405002100020771 in three tranches on different dates. On 09.10.2015 the first Respondent Bank issued a letter stating that there was no overdue towards the said account of M/s. A. R. Enterprises, the borrower. Thereafter, on 09.10.2015 a registered sale deed was executed by the second Respondent on acceptance of two post-dated cheques for ₹21,45,000/- as agreed. A sum of ₹2,10,000/- was also credited as TDS.

4. On becoming the absolute owner of the property free from encumbrances, the Appellant applied for necessary permission to run the hotel and obtained it. An electricity connection was obtained by the firm. The hotel business is being conducted by the firm in the said property ever since. The Appellant demanded the Bank to release the title deeds deposited by the second Respondent. However, the Bank did not release it and threatened a recovery against the second Respondent. The Appellant caused a lawyer notice issued to the Bank with a copy to the second Respondent.

5. On 02.02.2021 the first Respondent Bank filed O.A, No. 111/2021 against Respondent No. 2 for recovery of ₹1,93,55,476.12 allegedly due in respect of three-term loans availed

by the second Respondent for purchase of three Audi cars by way of hypothecation. Though the said account was declared as a non-performing asset (NPA) long ago, the O.A. was filed for recovery only consequent to the issuance of lawyer notice by the Appellant for the release of the title deeds. The Appellant was neither informed about the existence of such loans nor was the firm impleaded as a party to the O.A.

6. That apart, the first Respondent Bank also initiated Sarfaesi measures against the property and the second Respondent by the issuance of notice under Sec. 13(4) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short) for recovery of ₹48,52,412.02. There is also a reference made to a notice issued under Sec. 13(2) of the SARFAESI Act on 08.04.2019. The Appellant was never aware of that. The second Respondent had addressed a letter to the Respondent Bank in response to the Sarfaesi measures seeking to settle the dues by way of one-time settlement (OTS). The second Respondent has referred to all his financial liabilities to the Bank except the term loan concerning the mortgage of the property. It is pointed out that the second Respondent had also attempted to portray a picture that he continued to be the owner of Hotel Mid Town. The Appellant contends that subsequent to the clearing of the mortgage debt and the assignment of the property to the Appellant in the year 2015, the second Respondent had availed further vehicle loans in the year 2016 hypothecating his vehicles. Hence, the mortgaged property can never be charged for the subsequent debt.

7. The application filed by the Appellant before the R.O. was dismissed and the Appellant preferred an appeal under Sec. 30 before the Presiding Officer that too was dismissed and hence, this appeal.

8. The Appellant seeks a stay of the impugned order.

9. The Ld. Counsel for the Respondent Bank submits that the transfer by the second Respondent to the Appellant is hit by the principles of Sec. 53 of the Transfer of the Property Act and relies on the decision of the Bombay High Court in *SBI Home Finance Ltd. vs. Credential Finance Ltd & Ors.* AIR 2001 Bombay 179. The Ld. Counsel also relies on the decision of the Hon'ble Supreme Court in *Prestige Light Ltd. vs. State Bank of India* (2007) 8 SCC 449 and on a decision of the Kerala High Court in *K Madhusoodanan Nair vs Kochunni & Ors.* 2001 AIHC 982 to argue that the creditor is entitled to realise future loans as well from the mortgaged property.

10. The Ld. Counsel appearing for the Appellant has also relied on a catena of decisions to substantiate his argument that an assignee from a mortgagor is entitled to the right of redemption. In *Variavas Saraswati & Anr. vs. Eachampai Thevi & Ors.* (1993) Supp (2) SCC 201, it was held that the mortgagor may assign or transfer the equity of the redemption or may even create a second mortgage. Once the mortgage debt is discharged by a person beneficially interested in the equity of the redemption the mortgage comes to an end by operation of law. Consequently, the relationship between the mortgagor and the mortgagee cannot subsist. In *Shivdev Singh & Ano. vs. Sucha Singh & Ano.* (2000) 4 SCC 326, it was held that Sec. 60 of the TP Act provides that at any time after the money has

become due, the mortgagor has a right, on payment or tender, at a proper time and place of the mortgage-money to require the mortgagee to deliver the mortgage deed and all documents relating to the mortgaged property and where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor. The Ld. Counsel also relies on the decisions *L.K. Trust vs. EDC Ltd. & Ors.* (2011) 6 SCC 780 and *Tax Recovery Officer II, Sadar, Nagpur vs. Gangadhar Vishwanath Ranade* (1998) 6 SCC 658, *Shamim Bano vs. Oriental Bank of Commerce Ltd. & Ors.* MANU/MH/1159/2007 and *Allokam Peddabbayya & Ors vs. Allahabad Bank & Ors.* MANU/SC/0700/2017.

11. In *Tax Recovery Officer II* (supra) the Hon'ble Supreme Court had considered the jurisdiction of the Recovery Officer proceeding under Rule 11 of the Second Schedule to the Income Tax Act and has held that Sec. 281 declares as void any transfer made by the assessee during the pendency of proceedings under the Act, with intention to defraud the revenue. However, the powers of the Tax Recovery Officer under Rule 11 are somewhat different. Under the said Rule when any claim is preferred to or any objection is made to the attachment or sale of any property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection. Whereupon such investigation, the property is found to be in possession of some other person in consequence of a transfer by the defaulter, the Tax Recovery Officer cannot declare any transfer made by the assessee in favour of a third party as void. The creditor in such circumstances will have to sue under Sec. 53

of the TP Act for a declaration that the transfer was void as it was in fraud of the creditors.

12. In the instant case, the Appellant had purchased the property after due diligence. The memorandum of deposit of title deed was registered and on getting information about the encumbrances of mortgage and extended mortgage from the Sub Registrar's Office, the Appellant had taken steps to clear the mortgage debt. The then outstanding dues were ascertained from the Bank and cleared. And a letter to the effect was also obtained from the Bank. The balance sale consideration after clearing the mortgage debt alone was handed over to the second Respondent. The sale deed was registered and mutation was effected in the year 2015. Admittedly, there was no other debt payable by the second Respondent to the Bank at that point in time. The second Respondent had thereafter, in the year 2016 availed three vehicle loans on hypothecation from the Bank. There is no document to indicate an extension of the earlier mortgage for these three loans. Hence, it cannot be said that the Respondent Bank had an existing lien over the property.

The Appellant is, therefore, entitled to a stay of the proceeding before the Recovery Officer in R.P. No.357/2021, D.R.T-II, Ahmedabad, till the disposal of the appeal.

Post on 29.08.2023 for hearing.

Sd/-
Chairperson

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