

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

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

**Appeal No. 71/2009**

**Between**

The Federal Bank Ltd.

... Appellant/s

V/s.

Sandeep Ramesh Kulkarni & Ors.

... Respondent/s

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

**:- Order dated: 02 /05/2023:-**

The Appellant Federal Bank is in appeal aggrieved by the judgment of the Debts Recovery Tribunal-III, Mumbai (D.R.T.) dated 07/11/2008 in Original Application (O.A.) No. 199 of 2006 which allowed the recovery of debt from defendants Nos. 1 and 2 jointly and severally but declined to grant a charge over the allegedly mortgaged property.

2. The facts and brief are thus:

Respondent Nos. 1 and 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 3<sup>rd</sup> 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 Bank for a housing loan and the same was sanctioned vide order dated 01/08/2003. Necessary documents such as a loan agreement and a Demand Promissory Note were executed in favour

of the Bank by the borrowers. A collateral security of the subject flat was also 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 3<sup>rd</sup> Respondent was also deposited.

3. Respondent Nos. 1 and 2 defaulted repayments of the debt and the Appellant Bank filed the aforesaid O.A. 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 realisation from the defendants. A charge over the mortgaged flat was also sought.

4. The Ld. Presiding Officer in the impugned order found that the Appellant Bank is entitled to recover the debt from the defendant Nos. 1 and 2 jointly and severally but refused to grant a charge over the mortgaged flat for the reason that the ownership of the flat could not have been conveyed the defendant Nos. 1 and 2 by virtue of an unregistered General Public Attorney purportedly executed by the seller 3<sup>rd</sup> Respondent. The Share Certificate pertaining to the flat continues to remain in the name of the 3<sup>rd</sup> Respondent and it is also contended by the bank that the no objection certificate patently issued by the society to the bank is fake. The Appellant Bank is aggrieved because no charge over the subject flat has been decreed and hence in appeal.

5. The only question that arises for consideration in this appeal is whether the borrowers 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 favour of the debtors.

6. None of the Respondents appeared despite being served with notice and would therefore set ex parte. The defendants remained ex-parte in the proceedings before the D.R.T. as well.

7. The Registration (Maharashtra Amendment) Act, 2010 effective from 1 April 2013 had undergone an amendment of Section 17 of the Registration Act, 1908 I (Act) in sub-section 1 in its application to the State of Maharashtra. As per the said amendment, an Irrevocable Power Attorney relating to the transfer of immovable property in any way executed on and after the commencement of the Registration (Maharashtra Amendment) Act, 2010 shall be compulsorily registered. Thus, any power granted to a person for the sale of immovable property shall necessarily have to be registered with the Sub Registrar of Assurances, failing which the same cannot be put to use. The registration of Power of Attorney was, prior to the amendment, optional under the Registration Act, of 1908. It was only required to be notarized before the Notary Public. However, lately, it had become a practice in case of sale transactions to seek an unregistered Power of Attorney from the owner of an immovable property instead of executing a Deed of Conveyance and using the same for the transfer of immovable property. This led to avoiding the payment of stamp duty that is chargeable on a deed of transfer of an immovable property leading to a huge loss of revenue to the State Government. The amendment seeks to address the loopholes and curb such wrongful practices of transferring property without registering and avoiding payment of requisite stamp duty. It would be pertinent to

note that though a Power of Attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property an Attorney Holder may however execute a Deed of Conveyance in the exercise of the power granted under the Power of Attorney and convey title on behalf of the grantor.

8. However, the transaction in the case at hand took place in the year 2003, which is much prior to the above-mentioned amendment to the Registration Act. A Notorised POA was acceptable at that point in time. The agreement for sale was also registered by the Sub-Registrar which would not have been done in case there was an unacceptable POA. The Ld. Presiding Officer has, therefore, committed an error in holding that the sale deed in favour of the borrowers is not valid and that the third Respondent continues to remain as owner of the subject flat. Under what arrangement the third Respondent continues to occupy the flat is something to be explained by the third Respondent. The non-issuance of a no objection certificate by the society is also to be explained by the fourth Respondent. None of the Respondents appeared to give an explanation to all these either before the D.R.T. or before this Tribunal. This would indicate that the case of the Applicant/Appellant stands unchallenged/undisputed. It is not the burden of the Appellant to prove undisputed facts. The impugned judgment would, therefore, require a modification.

The appeal is allowed in part and defendants Nos. 1 & 2 are directed to pay the Applicant a sum of ₹15,59,219 /- together with future interest @9.67% per annum at monthly rests from the date of filing of the suit till realisation personally, from out of the mortgaged

property namely 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 shall be issued to this effect.

The appeal regarding reliefs sought against defendants Nos. 3 and 4 are unsustainable and hence, dismissed.

Sd/-  
Chairperson

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