

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

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

**Appeal No. 26/2018**

Mahesh Duhlani

... Appellant/s

V/s.

Union Bank of India &Anr.

...Respondent/s

Mr Rajesh Nagory, i/b Ms SanjanaGhogare, Advocate for Appellant.

**:- Order dated: 20/01/2023:-**

The appellant is a third-party purchaser of the secured assets consisting of two flats namely Flat Nos. 5 and 6 on the first floor of Moon Rock Apartments together with garages, Bandra (West) Mumbai. He was aggrieved by the dismissal of the Securitisation Application (S.A.) No. 47 of 2018 on the files of the Debts Recovery Tribunal -I, Mumbai (D.R.T.) vide order dated 26.04.2018 and is, therefore, in appeal.

2. The facts, in brief, can be summarised thus:

The second Respondent who was the owner of the aforesaid flats had together with his partner Mr Ketan Shah as partners of a firm named M/s KamlaLandmarc Properties borrowed money in the year 2008 from the first Respondent Bank namely Corporation Bank, which later merged into Union Bank of India and had created a security interest by way of deposit of title deeds in favour of the said Bank. He defaulted payment, and resultantly, Sarfaesi

measures were initiated against him. The Appellant claims to have purchased the property vide agreement of sale dated 19.09.2013 and has been in absolute possession and enjoyment of the properties. E-auction of the secured properties was proposed to be held on 27.03.2018 after the creditor Bank had taken physical possession of the properties.

3. The Appellant approached the D.R.T. with the aforesaid S.A. as a person who is aggrieved with the Sarfaesi measures challenging the action under Sec. 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short). The Respondent Bank opposed the application contending that the Applicant has no locus to file the application for the simple reason that the sale in favour of the Applicant was subject to the mortgage which was much prior to the purported sale. Once Sarfaesi measures are initiated with regard to secured assets by the issuance of demand notice under Sec. 13(2) of the SARFAESI Act, the borrower is precluded from transferring the assets either by way of sale, lease or otherwise under Sub-Sec. (13) of Sec. 13. Moreover, it is also contended that the secured debtor namely Jitendra Jain and his partner Ketan Shah were languishing in jail following criminal cases registered against them for having duped several Banks and Financial Institutions. Hence, it is doubtful whether the alleged sale in favour of the Applicant is genuine.

4. The Appellant had raised contentions against Sarfaesi measures by pleading that the outstanding amount due to the

creditor Bank was only ₹86,16,685/- as per the sale notice and the same can be recovered by the sale of Flat No. 5 alone. The reserve price fixed for the flats is highly inadequate. The Applicant had also filed a rejoinder together with affidavits of Jitendra Jain and Ketan Shah duly notarized by a Notary Public to the effect that the sale of flats in favour of the Applicant is genuine. Under the circumstances, it was pleaded that the sale of the flats may be stalled.

5. The e-auction scheduled to be held on 27.03.2018 failed for want of bidders. Since the Applicant had prayed only to stall the said sale in the S.A., the application became infructuous and could have been dismissed on that ground alone. However, the Ld. Presiding Officer deemed it appropriate to dispose of the S.A. on merits.

6. The Applicant had proposed to offer the entire balance of debt due to the Respondent Bank but the Bank expressed apprehension about the legal consequences of accepting the amount from the Applicant who is a third party.

7. The Ld. P.O. in the impugned order concluded that the Applicant has no legal right over the property for the simple reason that he had purchased the property during the pendency of the mortgage. Doubt was also expressed regarding the genuineness of the transaction in favour of the Applicant by the borrowers who were in jail. The affidavits filed by the borrowers were also not acceptable to the Ld. P.O. because the affidavits were not attested by the Jail Authorities as they ought to have

been. The S.A. was, therefore, dismissed.

8. The first Respondent appeared but there was no appearance of the second Respondent borrower who was set ex-parte. Heard Mr Rajesh Nagory, the Ld. Counsel for the Appellant. No arguments were advanced for the first Respondent although a reply was filed on behalf of the first Respondent Bank. Records perused.

9. The Ld. Counsel for the Appellant submits that on the assurance given by the second Respondent and his brother-in-law Ketan Shah that the properties were free of encumbrances, the Appellant entered into an agreement of sale ₹50 lacs also paid towards consideration and handed over to Mr Ketan Shah who has filed an affidavit on 11.05.2022 admitting this fact. The first Respondent proceeded with the sale of the flat on 27.04.2018 and confirmed the sale in favour of one Javed Shaikh Aliahbux for a sale consideration of ₹3,50,25,000/-. 25% of the said amount was paid by the auction purchaser and for the payment of the balance, time was granted till 25.07.2018. The sale is in violation of Rule 9(2) of the Security Interest (Enforcement) Rule, 2002, since the consideration is less than the reserve price of ₹3,69,00,000/- stipulated in the e-auction notice dated 09.03.2018.

10. On the basis of the interim application filed by the Appellant, this Tribunal had, vide order dated 09.05.2018 permitted the Appellant to deposit the entire outstanding debt with cost and interest as calculated by the first Respondent Bank and accordingly, a sum of ₹1,12,00,000/- was deposited by the

Appellant with the Registrar of this Tribunal. In view of the deposit of the entire debt due from the second Respondent to the first Respondent Bank in complete satisfaction of the loan, the first Respondent Bank is obliged to release the title deeds of the property to the Appellant. It is further submitted for the Appellant that the right of redemption is available to the borrower under the statute and that it can be exercised at any time before the sale is confirmed. It is pointed out that the first Respondent Bank has not indicated or demonstrated by means of evidence to show that the borrower is liable to pay any other amount to the Bank and that the subject properties would remain securities for any other amount due. Even if there is some amount due to be paid to the first Respondent, it is holding another Flat No.1001 on the 10<sup>th</sup> floor of the same building as security, submits the Ld. Counsel.

11. The Ld. Counsel for the Appellant relies on the decision of the Hon'ble Bombay High Court Nagpur Bench in *Writ Petition No. 32/2022 Sunil RatnakarGutte vs. Union Bank of India* wherein it was held that it is not open for the Bank to exercise a general lien over the title deeds deposited by the borrower after entire loan amount was fully satisfied. The Ld. Counsel also relies on the decision of the Hon'ble Supreme Court in *NarayandasKarsondas vs. S.A. Kamtam&Anr. (1977) 3 SCC 247* wherein it is held that the right of redemption which is embodied in Sec. 60 of the Transfer of the Property Act is available to the mortgagor unless it is extinguished by the act of the parties. In India, it is only on execution of the conveyance and registration of transfer of the

mortgagor's interest by the registered instrument that the mortgagor's right of redemption will be extinguished. The conferment of power to sell without the intervention of the court in a mortgage deed by itself will not deprive the mortgagor of his right to redemption.

12. Considering the question as to the fact till what time or date can the right of redemption of the mortgage be exercised by the mortgagor/borrower in the light of the amendment to Sec. 13(8) of the SARFAESI Act, the Hon'ble High Court Punjab and Haryana held in *Pal Alloys & Metal India Pvt. Ltd & Ors. vs Allahabad Bank & Ors.* AIR 2022 P&H 23, it was held that the right of the mortgagor is not extinguished until the sale certificate is issued and the sale is registered in favour of the auction purchaser even where the sale is held under the SARFAESI Act. The Punjab and Haryana High Court had allowed a Writ Petition holding the right to redeem the mortgage till the execution of conveyance in *Kapil Kumar & Anr. vs. Oriental Bank of Commerce & Ors.* Civil Writ Petition No. 18724 of 2017. Under the circumstances, it is prayed that the Appellant may be permitted to retrieve the title deeds in respect of Flats Nos. 5 & 6 from Respondent No. 1 Bank.

13. The second Respondent borrower did not appear to contest the Appeal. Nor did he contest the S.A. The fact that borrower and his brother-in-law who is the partner of the firm consisting of the second Respondent have no objection to the contention raised by the Appellant that he has purchased the property. Though the sale is consequent to the mortgage, in view of the fact that the

Appellant has deposited the entire amount outstanding to the first Respondent Bank in accordance with the statement given by them, the borrower is entitled to exercise his right of redemption provided under Sec. 13(8) of the SARFAESI Act, as long as the sale certificate has not been issued and registered in favour of the auction purchaser. The fact that the sale is subsequent to the mortgage would make the sale subject to the encumbrance. The Appellant steps into the shoes of the mortgagor by virtue of the assignment in his favour, and therefore, the Appellant is entitled to redeem the mortgage and retrieve the title deeds pertaining to the secured assets namely Flats Nos. 5 and 6 from the first Respondent Bank.

In a result, the Appeal is disposed of with a direction permitting the first Respondent Bank to withdraw the entire amount deposited by the Appellant in the Registry together with accrued interest. The Title deeds pertaining to the Flats Nos 5 and 6 in the possession of the first Respondent Bank shall be released to the Appellant on proper acknowledgement, within a period of one month.

Sd/-  
Chairperson

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