

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

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

**M.A. No. 449/2015 (Stay)**

**In**

**Appeal No. 171/2015**

**Between**

Mallapu Jesuraju Sunkanna

... Appellant/s

V/s.

Central Bank of India & Ors.

... Respondent/s

Mr. Raju Uttam Shinde, Advocate for Appellant.

Mr. J.K. Jadhav, Advocate for Respondent No.1

**:- Order dated: 31/10/2023:-**

The 1<sup>st</sup> defendant in Original Application (O.A.) No. 105 of 2012 on the files of the Debts Recovery Tribunal-II, Mumbai (D.R.T.) is in appeal aggrieved by the judgment and order dated 14/01/2015 allowing the O.A.

2. The O.A. was filed by the 1<sup>st</sup> Respondent Central Bank of India for recovery of ₹10,03,100/-together with interest at the rate of 12% per annum from the date of filing of the O.A. till realisation from the defendants and from out of the mortgaged flat bearing No. 203 under 2<sup>nd</sup> floor of Nikita Apartments, Plot No. 7-A, Sector 5, Koperkhairne, Navi Mumbai.

3. The 2<sup>nd</sup> Respondent is a firm represented by the 3<sup>rd</sup> Respondent as its partner. They are the builders of the apartment that was sold to the Appellant, who approached the bank for a housing loan facility, and on 13/12/2004 a loan of ₹8.65 lakhs was sanctioned which he

undertook to repay together with interest at the rate of 9% per annum with monthly rests in 180 equated monthly instalments (EMI) of ₹8775/-each commencing from January 2005. Respondents Nos. 2 and 3 had addressed a letter to the bank on 20/11/2004 confirming the sale of the flat to the Appellant and expressed their 'no objection' to the mortgaging of the said flat as security for the debt. The Appellant deposited his original title deeds in respect of the aforesaid flat to create a mortgage, and a housing loan agreement and a memorandum were also executed. The Respondent bank issued a banker's cheque on 06/01/2005 for ₹8.65 lakhs in favour of the 2<sup>nd</sup> Respondent firm. Respondents Nos. 2 and 3 acknowledged receipt of that amount.

4. The Appellant paid some instalments towards the EMI but after that, the payments became irregular, and he defaulted on payment altogether. The account became a Non-Performing Asset (NPA). The bank recalled the facility and issued a lawyer notice on 10/01/2012 calling upon the Appellant and Respondent Nos. 2 and 3 to repay the amount due. Though the notice was accepted by the Appellant, it was returned unclaimed by Respondents Nos. 2 and 3. The Appellant sent a reply to the notice on 03/04/2012 denying his liability. The bank was therefore constrained to file the aforesaid O.A. 26/04/2012. Respondents Nos. 2 and 3 remained ex-parte while the Appellant contested the O.A. by filing a written statement contending that though Respondents Nos. 2 and 3 had agreed to sell a flat under construction to the Appellant, he was never handed over physical possession of the flat till date. It is submitted that the aforesaid flat is

in the actual possession of someone else to whom the flat was sold by Respondents Nos. 2 and 3, and the present occupant of the flat should also be made a party to the proceedings. It is further submitted that Respondents Nos. 2 and 3 had undertaken to arrange the housing loan for purchasing the flat and they had asked the Appellant to sign certain documents pertaining to the sanctioning of the loan. The Appellant had signed those documents under the bona fide belief that the flat would be handed over to him. The Appellant states that he later realised that Respondents Nos. 2 and 3 had conspired with some bank officers to cheat the Appellant and the bank. The Appellant had also lodged a complaint before the police on 23/09/2005 in this regard. It is pointed out that the loan amount purportedly sanctioned by the bank was handed over to Respondents Nos. 2 and 3 by way of a banker's cheque. The Appellant had neither received the loan amount nor did he get the delivery of the flat which was allegedly sold to him. That apart, the Appellant also contends that he had not repaid any amount towards the debt as claimed by the Respondent bank. It is contended that the amount of ₹45,000/- purportedly deposited by the Appellant on 29/09/2011 towards the debt was actually not paid by him and is probably paid by Respondents Nos. 2 and 3 as a part of the collusion between them and the officers of the bank. It is also contended that the documents purportedly submitted by the Appellant in connection with the loan agreement are forged and fabricated. The purported sale agreement dated 04/11/2004 was never handed over to the Appellant by Respondents Nos. 2 and 3 and therefore, it was not possible for the Appellant to have deposited the

title deed in the bank for the creation of the purported mortgage. The Appellant had refrained from payment of the amount towards the housing loan because he was never delivered any flat by Respondents Nos. 2 and 3.

5. After considering the available records and the evidence adduced by the parties, the Ld. Presiding Officer declined to accept the defence set up by the Appellant and allowed the O.A. directing the defendants therein to pay the amount together with interest as prayed for the bank was also given the liberty to enforce the security interest with respect to the mortgaged flat for the realisation of the amount provided defendants Nos. 2 and 3 handed over possession of the said flat and the society issues shares certificate to the 1<sup>st</sup> defendant. A Recovery Certificate was issued.

6. Heard the Ld. Counsel appearing for the Appellant and the bank. Respondents Nos. 2 and 3 remained ex parte in the appeal as well. Records perused.

7. The Appellant has taken various contentions including the plea of limitation. It is also pointed out that despite the account being declared as NPA on 29/09/2006, the O.A. was filed only on 26/04/2012. The delay has not been explained by the bank. It is pointed out that there is a payment of ₹6,79,000/-towards the loan account. The Appellant had pleaded ignorance about such payments and has stated that those payments were not made by him. The D.R.T. has not taken any effort to direct the bank to file details of those payments. It is stated that the purported payment of ₹45,000/-made on 29/09/2011 is also not paid by the Appellant and that such

payment is recorded by the bank only with the intention to see limitation. It is further pointed out that the value of the flat allegedly purchased by the Appellant was ₹9,25,000/-the agreement indicates that the Appellant has paid only ₹51,000/-towards the debt sale consideration and the balance of ₹8,65,000/- was dispersed as loan by the bank directly to Respondents Nos. 2 and 3. This act of the bank in payment of 93.51% of the loan is unbelievable and against the banking policy. There is fraud and collusion between the officers of the bank and Respondent Nos. 2 and 3. The impugned judgment does not consider all these aspects and hence requires to be set aside in appeal submits the Ld. Counsel appearing for the Appellant.

8. Per contra, the Ld. Counsel appearing for the Respondent bank submits that the Appellant had approached the bank for a loan and had personally deposited to title deeds and executed the agreement of loan. He was aware of the handing over of the cheque to the builders towards payment of the sale consideration. The Ld. Counsel points out a letter produced as an exhibit dated 05/01/2005 issued by the builders to the Appellant asking him to take possession of the flat in view of the completion of the construction. The Appellant had himself written Exhibit 3 letter to the bank on 13/12/2004 acknowledging the sanctioning of the debt and deposit of the title deeds. The sanction letter at Exhibit 4 dated 13/12/2004 is addressed to the Appellant with regard to the sanctioning of the loan and the conditions of repayment. The Appellant has acknowledged the receipt of that letter by subscribing his signature on that letter on 06/01/2005. There is also evidence regarding payment of ₹8,65,000/- to the builders and a

receipt is issued by them in favour of the bank in Exhibits 5 and 6. The agreement for sale was also executed on 04/11/2004 and signed by the Appellant and Respondent No. 3. It is registered in accordance with law.

9. After having executed the sale deed and also having acknowledged the payment of the sale consideration by the bank to the builders, the Appellant cannot now contend that he is not liable to repay the loan because he has not been delivered with the possession of the flat. After having executed the sale deed and acknowledging the debt, it was incumbent upon the Appellant to have insisted on getting possession of the property. There is evidence regarding the communication sent by the builder to the Appellant to take possession of the flat. In case the Appellant has not taken possession of the flat, it was for him to make an enquiry and take steps to seek possession of the flat. The Appellant has not taken any steps for specific performance. Admittedly, the Appellant has defaulted payment of the EMIs. He has not enquired with the bank regarding the payment of the loan. The contention of the Appellant that he has not paid any amount towards repayment of the debt cannot be believed. The Appellant is not an illiterate person and cannot be expected to sign documents randomly without knowing the contents of those documents. The entire defence set up by the Appellant seems to be a make-believe story. The allegation of collusion between the bank officers and the builders is not established. I find no reason to disagree with the findings of the Ld. Presiding Officer in the impugned judgment.

The appeal has no merits and deserves to be dismissed.

Sd/-  
Chairperson

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DRAFT MUMBAI