

(2021) 10 DRT CK 0002

Debts Recovery Tribunal-I Ahmedabad

Case No: Securitisation Application No. 129 Of 2021

Prafulchandra Chandulal Shah
And Anr.

APPELLANT

Vs

Indian Bank And Ors.

RESPONDENT

Date of Decision: Oct. 14, 2021

Acts Referred:

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 13(2), 14, 14(1)

Hon'ble Judges: Laxman Madnani, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sr. No., Amount (in Rs.), Date/Mode of payment, Details of Cheque

1, "2,00,000/-", 21/01/2017 Cash, NA

2, "8,00,000/-", 23/01/2017 Cheque, "Cheque bearing No. 849069 of State Bank of India, ONGC Palavasna Branch

3, "8,00,000/-", 23/01/2017 Cheque, "Cheque bearing No. 849070 of State Bank of India, ONGC Palavasna Branch

4, "9,00,000/-", 23/01/2017 Cheque, "Cheque bearing No. 849071 of State Bank of India, ONGC Palavasna Branch

5, "10,00,000/-", 23/01/2017 Cheque, "Cheque bearing No. 154117 of Yes Bank, Limited, Maninagar Branch

6, "2,00,000/-", 23/01/2017 Cheque, "Cheque bearing No. 154122 of Yes Bank,

Limited, Maninagar Branch

7,"10,00,000/-",23/01/2017 Cheque,"Cheque bearing No. 683976 of Yes Bank,

Limited, Maninagar Branch

8,"1,00,000/-",23/01/2017 Cash,NA

, "50,00,000/-",,

Respondent-Bank also filed a Police complaint with Maninagar Police Station, Ahmedabad on 15/05/2019 against Respondent Nos. 2 and 3 and the",,,

Applicants.,,,

3.8 On commission of default in repayment of financial facilities, the accounts of Respondent Nos. 2 and 3 are classified as NPA by the Respondent",,,

Bank on 01/05/2019. Thereafter, the Respondent Bank issued a demand notice dated 07/05/2019 under Section 13(2) of the SARFAESI Act. The",,,

Authorized Officer of the Respondent Bank also attempted to take possession of the Karnavati Flat on 05/08/2019.,,,

3.9 The Applicants filed Civil Suit No. 883 of 2019 before the City Civil Court, Ahmedabad against the Respondents for a permanent injunction",,,

restraining them from obtaining possession of the property in question and for a declaration against Respondent Nos. 2 and 3 herein that Respondent",,,

Nos. 2 and 3 herein shall get the mortgage released and obtain ""No Due Certificate"" from the Respondent Bank. The said suit is pending. The",,,

Applicants averred in the present SA that they undertake to withdraw the said suit against the Respondent Bank, without prejudice to the rights of the",,,

Applicants to claim compensation against the Respondent Bank under the SARFAESI Act.,,,

3.10 The Respondent Bank obtained order dated 21/01/2020 under Section 14 of the SARFAESI Act for taking physical possession of the Karnavati",,,

Flat from the Ld. Chief Metropolitan Magistrate, Ahmedabad. Pursuant to the said order, the Court Commissioner has issued notice dated 07/07/2021",,,

to take possession of the Karnavati Flat on 24/07/2021.,,,

3.11 In the aforesaid circumstances, the Applicants have filed the present SA for the aforesaid reliefs.",,,

4. Respondent No. 1 Bank has filed its Reply vide Exhibit-R/11 and denied the statements and averments made by the Applicants. It is further",,,

contended that the Applicants have filed the present SA in collusion with Respondent Nos. 2 and 3, who are principal borrowers. Neither the principal",,,
borrowers nor the Applicants herein had informed the Respondent Bank that the Applicants are inclined to purchase the property in question. Out of,,,
the total amount of Rs.52 Lacs deposited by the principal borrowers in the Current Account, only Rs.30 Lacs were transferred to Term Loan Account",,,
and the remaining amount of Rs.22 Lacs was utilized by Respondent Nos. 2 and 3 themselves. As the Term Loan was never repaid by Respondent,,,
Nos. 2 and 3 and the Cash Credit Account was again utilized by them, there was no question of releasing the property in question. Respondent Nos. 2",,,
and 3 also never requested the Respondent Bank for releasing the property. The principal borrower executed the sale deed in favour of the Applicants,,,
without knowledge and consent of the Respondent Bank. The Applicants were well aware about the fact that the property is not released from the,,,
charge of Respondent Bank. Therefore, they ought not to have executed sale deed. Therefore, the intention of the Applicants and Respondent Nos.2",,,
and 3 appears to defraud the Respondent Bank. The transaction of transfer of the mortgaged property is fraudulent as the Respondent Bank never,,,
released the property in question from its charge. The letter dated 20/01/2017 was issued by the Respondent at the instance of the principal,,,
borrowers. The principal borrowers were not interested in getting the property in question released at the time of making such request. In view of the,,,
said fraudulent transaction of sale between the Applicants and Respondent Nos. 2 and 3 and classification of the accounts of Respondent No. 2 and 3,,,
as NPA, the Respondent Bank was constrained to initiate SARFAESI measures for recovery of huge public dues. There is no privity of contract",,,
between the Applicants and the Respondent Bank. Even if the Applicants have paid the amount of Rs. 52 Lacs to the principal borrowers, the",,,
Applicants cannot claim priority over the charge of the Respondent Bank. The Applicants have no locus standi to file present SA in absence of any,,,
privity with the Respondent Bank. In these circumstances, the present SA may be dismissed with cost.",,,
5. Respondent Nos. 2 and 3 have not filed any Reply to the present SA though they have appeared through their Ld. Counsel. However, Ld. Counsel",,,

for Respondent Nos. 2 and 3 have made oral submissions at the time of hearing and concurred with the submissions made by the Ld. Counsel for the,,,

Applicants.,,,

6. I have heard Ld. Counsel for both the parties and have carefully perused the documentary evidences on record.,,,

7. In view of the aforesaid pleadings of the parties following points arise for my determination.,,,

POINTS FOR DETERMINATION.,,,

(1) Whether the Applicants have a right to challenge the measures taken by the Respondent Bank under SARFAESI Act qua the property in,,,

question?.,,,

(2) Â If yes, the measures taken by the Respondent Bank under SARFAESI Act qua the property in question are legal and valid?".,,,

(3) Â Relief?.,,,

POINT No.1 - Right of Applicants to challenge measures taken under SARFAESI Act :-.,,,

Â 8. Â Ld. Counsel for the Applicants submitted that the Applicants have paid a total sum of Rs.52 Lacs to Respondent Nos. 2 and 3 by way of,,,

cheques and cash towards sale consideration of the property in question, the details of which are given hereinabove. Respondent No. 2 deposited the",,,

said amount of Rs.52 Lacs in their Current Account with the Respondent Bank. Thereafter, the said amount was transferred by Respondent No. 2 to",,,

their Cash Credit Account on 08/02/2017. Therefore, the negative balance reflected in their Cash Credit Account at the relevant time turned into",,,

positive credit balance of Rs.28,78,041.50 on 08/02/2017. Thereafter, Respondent No. 2 transferred a sum of Rs. 30 Lacs from Cash Credit Account",,,

to the Term Loan Account with the Respondent Bank.,,,

9. Â Ld. Counsel for the Applicants placed heavy reliance on the letter dated 20/01/2017 issued by the Respondent Bank submitted that the,,,

Respondent Bank has agreed to release title deeds of the Karnavati Flat if the amount of Rs. 52 Lacs was deposited the Respondent Nos. 2 and 3,,,

with the Bank. On the basis of the said assurance given by the Respondent Bank, Respondent Nos. 2 and 3 executed sale deed in favour of the",,,

Applicants qua the Karnavati Flat sale deed dated 02/03/2017. Therefore, the Respondent Bank is bound to release the property in question from its",,, mortgage and return the title deeds deposited by Respondent Nos. 2 and 3. He further submitted that the Bank has now turned around from its,, assurance and contends that the Bank has to recover huge amount from the principal borrowers and the Bank is entitled to recover the same by taking,, measures under the SARFAESI qua the property in question. He further submitted, relying on the copy of the letter dated 20/01/2017 issued by the",,, Respondent Bank, that the Applicants paid entire sale consideration of Rs.52 Lacs for the property in question to Respondent Nos. 2 and 3, which in",,, turn, was deposited by the principal borrowers with the Respondent Bank. Thus, the Respondent Bank having received the full amount of Rs.52 Lacs,",, it is bound to release its mortgaged charge over the property in question and return the title documents in terms of letter dated 20/01/2017. He further,, submitted that the intention of the Respondent Bank is mala fide. The Respondent Bank wants to retain and continue its mortgage over the property in,, question in spite of receipt of the value of the said property. When value of the property, as estimated by the Bank itself, is received by the Bank, it",,, ought not to have withheld the papers and thereafter made endeavors to take possession of the property in question. The aspect of continuance of,, Loan Accounts of the principal borrowers is an afterthought. In support of his submissions, he relied on the judgment of Hon'ble Punjab and Haryana",,, High Court in the case of Mehar Chand Goyal Vs. Canara Bank dated 20/03/2014 in Civil Writ Petition No. 1913 of 2014.,,,

10. Per Contra, Ld. Counsel for the Respondent Bank submitted that the principal borrowers never requested Respondent Bank to release the",,, mortgaged property after depositing Rs.52 Lacs in terms of the said letter dated 20/01/2017. He further submitted that neither principal borrowers nor,, the present Applicants sought permission from the Respondent Bank to execute sale deed qua the property in question. The Applicants were well,, aware of the fact that the Bank has not released the property in question from its mortgage and has also not released the titled deeds of the said,, property and therefore the Applicants ought not to have executed sale deed. The Applicants have no right to seek release of the property or its title,,,

deeds in favour of the principal borrowers because applicants have no privity of contract with the Respondent Bank. Therefore, he submitted that the",,,
present SA may be dismissed with cost.,,,

11. Considering the rival submissions of the parties, it is an admitted fact on record, as transpiring from the copy of letter dated 02/01/2017 issued by",,,

the Respondent Bank, that the Respondent Bank has agreed to release title deeds on deposit of Rs. 52 Lacs by Respondent No. 2 with the Bank. It is",,,

also an admitted fact that Respondent No.2 has deposited the said amount of Rs. 52 Lacs with the Respondent Bank after receiving the same from",,,

the Applicants. The aspect of appropriation of the said amount of Rs.52 Lacs in two different Loan Accounts of Respondent Nos. 2 and 3 is an",,,

internal matter between the Bank and the principal borrowers. The Applicants are of course not concerned with the said aspect that how and in what",,,

manner an amount of Rs. 52 Lacs was bifurcated and credited in two different Loan Accounts of the principal borrowers. But the fact remains that",,,

the Bank has received an amount of Rs. 52 Lacs in terms of its letter dated 20/01/2017. At this stage, it is to be noted that the said amount was not",,,

received by the Respondent Bank from the present Applicants. The Respondent Bank also did not give any assurance or promise to the Applicants",,,

that the Bank will release the charge over the property in question. The said letter dated 20/01/2017 was not addressed by the Bank to the Applicants,",,

but it was addressed to the borrowers. The Applicants was not a party to the loan transactions between the Bank and the principal borrowers.,,,

Similarly, the Bank was also not a party to the transaction of sale or to the execution of sale deed between the Applicants and Respondent No. 2 and",,,

3.,,,

12. It is further required to be noted that on receipt of the amount of Rs.52 Lacs, the Bank has not issued ""No Due Certificate"" in favour of the",,,

principal borrowers. Therefore, it implies that the Bank has not fully recovered its dues and the Loan Accounts of the borrowers were not closed. The",,,

Respondent Bank also did not release its charge of mortgage in support of the Karnavati Flat.,,,

13. On perusal of documentary evidences on record by the parties, it appears that neither the Applicants nor the principal borrowers ever requested",,,

the Respondent Bank to release charge of mortgage or the title deeds in respect of the property in question.,,,

14. In view of the aforesaid discussion, it becomes clear that there is no privity of contract between the Applicants and the Respondent Bank qua the",,,

property in question. The charge of mortgage in support of the property in question created by the principal borrowers still subsists as the same has,,,

never been released by the Respondent Bank. The Respondent Bank is still in possession of the title deeds as secured creditor on the basis of,,,

equitable mortgage created by the borrowers in its favour. The Applicants did not obtain permission or consent of the Respondent Bank before,,,

purchasing or executing sale deed qua the property in question. It is also mentioned in the copy of the sale deed dated 02/03/2017 that ""No Due",,,

Certificate"" was yet to be issued by the Respondent Bank. Therefore, the Applicants were well aware that the charge of mortgage in favour of the",,,

Bank was not released on the date of execution of the sale deed. Therefore, the Applicants have to thank themselves for whatever they have done.",,,

15. In the case of the Mehar Chand Goyal (Supra) relied on by Ld. Counsel for the Applicants, the Bank had given specific letter to the prospective",,,

purchaser that the Bank would release the property from mortgage on payment of certain amount. Moreover, the prospective buyer in that case was",,,

also not aware that the property was mortgaged with the Bank at the time entering into the agreement to sell dated 01/02/2012. In the present case,",,,

the Respondent Bank had not issued any letter to the Applicants that the Bank would release the mortgaged property on depositing Rs.52 Lacs.,,,

Further, the Applicants were well aware about the mortgage created by Respondent Nos. 2 and 3 qua the property in question in favour of the",,,

Respondent Bank. In spite of the knowledge of the said fact, the Applicants ventured to pay an amount of Rs.52 Lacs towards consideration of the",,,

property and executed the sale deed without having original title deeds and ""No Due Certificate"" from the Bank. Thus, the facts of the present case",,,

are different from the facts in Mehar Chand Dayal's case {Supra} before the Hon'ble Punjab & Haryana High Court. Therefore, the said judgment",,,

would not be applicable to the facts of the present case.,,,

16. In view of the aforesaid discussion, I am of the opinion that the Applicants have no right to challenge the measures taken by the Respondent Bank",,,

under SARFAESI Act qua the Karnavati Flat for recovery its outstanding dues from the principal borrowers. Accordingly, the said point is answered",,,

in negative.,,,

POINT No.2,,,

17. The Respondent has issued demand notice dated 07/05/2019 under Section 13(2) of the SARFAESI Act for recovery of its dues in the sum of Rs.,,,

45,46,086/- as on 06/05/2019. On perusal of the said demand notice, it appears that it contains all necessary details like outstanding principal amount",,,

interest amount, description of mortgage property etc. Therefore, I do not find any infirmity or the illegality in the said notice. I have also perused the",,,

order dated 21/01/2020 passed by Ld. Chief Metropolitan Magistrate, Ahmedabad under Section 14 of the SARFAESI Act. The Court Commissioner",,,

has also issued notice dated 07/07/2021 for taking physical possession of the property in question on 24/07/2021 pursuant to the order passed by the",,,

Ld. Chief Metropolitan Magistrate, Ahmedabad. I am of the view that the process under Section 14 of the SARFAESI Act, 2002 is non-adjudicatory",,,

and administrative in nature. At this stage, a reference deserves to be made to the Division Bench judgment of the Hon'ble High Court of Gujarat in",,,

the case of IDBI Bank Ltd. V /s. Hytaisun Magnetics Ltd., dated 09/02/2011 in SCA No.15084 of 2010. It has been observed therein as under:",,,

All such determination is to be made by the Debts Recovery Tribunal including the question whether the asset is a secured asset or not and",,,

the Chief Metropolitan Magistrate or the District Magistrate has not been empowered to adjudicate such dispute, but is directed only to",,,

assist the secured creditor in taking possession of the secured asset. If they are not empowered to adjudicate the dispute, they cannot also",,,

call for the secured creditor to produce any document to decide whether the asset is secured asset or not, which will be futile exercise in",,,

absence of power to adjudicate such issue. Under Clauses (a) and (b) of Section 14(1), the Chief Metropolitan Magistrate or the District",,,

Magistrate and on request, are bound to take possession of the secured assets as also the documents relating thereto. If the documents are",,,

to be obtained by them, the question of asking the secured creditor to produce the document in all cases does not arise. Therefore, they do",,,

not have jurisdiction even to call for the documents."""",,,

18. In view of the above observations, the Magistrate cannot make any inquiry into the truth of the contents of the affidavit. The Magistrate is not",,,

called upon to issue any notice to any person who is likely to be affected by any order passed or action taken under such provisions. Section 14 is only,,,

ministerial action to assist the secured creditor in taking possession of the secured asset after examining the whole record and the factual correctness,,,

of the assertions made in the affidavit but not the legal niceties of the transaction. Therefore, I do not find any infirmity or illegality in the order of the",,,

Ld. Magistrate as it has been passed after due application of mind. As observed earlier, the Applicants have no right to challenge the said measures",,,

and therefore, it is not necessary to discuss objections raised by them against such measures."",,,

POINT NO.3 RELIEF,,,

19. In the aforesaid circumstances, the present SA being devoid of merits, is hereby dismissed with no order as to cost."",,,

20. While dismissing the SA, I deem it proper in the interest of justice to protect possession of the Applicants of their residential property at this stage",,,

for a period of 30 days from today in order to enable them to approach the higher forum by way of appropriate proceedings. Meanwhile the,,,

Respondent Bank is directed not to take any coercive action qua possession of the property in question for a period of 30 days.,,,

Pronounced in the open Court on 14th day of October 2021.,,,