

(2023) 06 DRAT CK 0020

Debts Recovery Appellate Tribunal, Kolkata Bench

Case No: Regular Appeal No. 86 Of 2019

Punjab National Bank

APPELLANT

Vs

Reliance Corporate It Park

RESPONDENT

Date of Decision: June 21, 2023

Acts Referred:

- Code of Civil Procedure, 1908 - Order 1 Rule 10
- Recovery of Debts and Bankruptcy Act 1993 - Section 19
- Transfer of Property Act 1882 - Section 58

Hon'ble Judges: Anil Kumar Srivastava, Chairperson

Bench: Single Bench

Advocate: Sanjana Nandi, A. K. Dhandhanian, Sweta Mishra, Soumo Mukherjee,

Final Decision: Allowed

Judgement

Anil Kumar Srivastava, Chairperson

THE APPELLATE TRIBUNAL :

1. Feeling aggrieved by an order dated 02.08.2019 passed in I.A. No. 359 of 2019 arising out of O.A. No. 56 of 2018, Applicant in the O.A. Union Bank of India (now merged with Punjab National Bank) preferred the Appeal.

2. O.A. No. 56 of 2018 was filed by the Applicant Union Bank of India for issuance of a certificate in the matter of loan taken by the opposite party namely Sri Debasish Chakrabarty. Pending O.A. an application being I.A. No. 359 of 2019 was filed by the Intervenor Reliance Corporate IT Park limited contending that the purchased portion of the ground floor admeasuring 450 sq.ft 1st and 2nd Floor admeasuring 1540.43 sq.ft each of a ground + three storeyed building situated at R.S. and L.R. Dag No. 27, Mouza Pumla, J.L.

No. 14, R.S. Khatian No. 400, L.R. Khatian No. 1383 under Tatla No. 2 Gram Panchayat near Chakdah More Crossing and beside N.H. 34 for Rs. 97 lakhs from Debasish Chakraborty vide registered sale deed dated 05.02.2015. Mutation was done. Since a portion of the property was purchased, hence original sale deed was not handed over. Still the defendant is owner of entire 3rd floor and remaining part of the building. Intervenor was informed by the Appellant Bank that the properties in question are mortgaged with the Bank by creating equitable mortgage by deposit of title deeds for a loan of Rs. 50 (fifty) lacs availed by the defendant Sri Debasish Chakraborty. Intervenor had purchased the property after creation of the mortgage.

3. A Civil suit No. 108 of 2016 was filed by the Intervenor before the Civil Judge (Senior Division) at Kalyani for injunction which was refused on 05.11.2016. An appeal being No. FMAT No. 1248 of 2016 was filed before the Hon'ble Calcutta High Court which was disposed of vide order dated 03.04.2017 with an observation that there is no restraint order for the Bank to dispose of the property which is still unsold. Accordingly, an application was made by the Intervenor to implead him as Proforma Respondent in the proceedings so that he may watch his interest.

4. Objections were filed by the Bank stating that SARFAESI actions were taken in accordance with law. Credit facility was sanctioned by the Bank to the defendant Sri Debasish Chakraborty on 12.07.2013 creating mortgage of the remaining four decimal of land and building thereon which was left after acquisition of three decimal of land by the NHAI. It is further submitted that Bank was not restrained by the Hon'ble High Court to sell the property to realize the loan amount. Intervenor has no right title or ownership over the alleged purchased property and has no locus standi to be impleaded as a party. It is further stated that the Intervenor has no right to claim the proportional share in the compensation amount. Ld. DRT allowed the impleadment application on the ground that no prejudice will be caused to the Bank by impleading the intervenor as Proforma Respondent.

5. I have heard the Learned Counsel for the parties and perused the record.

6. Learned Counsel for the Appellant submits that the Intervenor is neither a necessary nor a proper party. Land was mortgaged prior to his purchase. It is a prerogative of the plaintiff as to who should be impleaded as a party. Reliance is placed upon Sudhamayee Pattnaik and others Vs Bibhu Prasad Sahoo and others Civil Appeal No. 6370 of 2022 SCC OnLine SC 1234 decided on September, 16, 2022.

7. Learned Counsel for the Respondent has placed reliance upon Section 58 of the Transfer of Property Act. He has placed reliance upon J.P Builders and another Vs. A. Ramadas Rao and another (2011) 1 SCC 429 Civil Appeals Nos. 9821-22 of 2010 with Nos. 9824-25 of 2010 and 9826 of 2010 decided on November, 22, 2010.

8. As far as question of impleadment is concerned, Respondent herein prayed for impleadment on the ground that portion of the building is purchased by the Intervenor Applicant. Rest of the portion is still with the original owner borrower. In order to protect his rights in the O.A. proceedings, he may be impleaded as a party. In Sudhamayee Pattnaik and others Vs Bibhu Prasad Sahoo and others (supra) Hon'ble Apex Court held that the suit was for declaration, permanent injunction and recovery of possession. It was held that-

“As per the settled position of law, the plaintiffs are the dominus litis. Unless the court suo motu directs to join any other person not party to the suit for effective decree and/ or for proper adjudication as per Order 1 Rule 10 CPC, nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. Not impleading any other person as defendants against the wish of the plaintiffs shall be at the risk of the plaintiffs. Therefore, subsequent purchasers could not have been impleaded as party defendants in the application submitted by the original defendants, that too against the wish of the plaintiffs.”

9. In Narayan Deorao Javle (Deceased) through LRs. Versus Krishna and others (supra) it was a case of foreclosures filed by the mortgagee after the purchase of part of the mortgaged land. In the present case no doubt portion of the building was purchased by the Intervenor after mortgage was created. It was an equitable mortgage. The first charge over the property is of the Bank. Bank filed an O.A. under Recovery of Debts and Bankruptcy Act 1993 for issuance of Certificate against the borrower who had created the equitable mortgage of the property in question by depositing the title deeds. It was not a suit for foreclosures. Hence, the Intervenor cannot take advantage of the law laid down in Narayan Deorao Javle (Deceased) through LRs. Versus Krishna and others (supra).

10. Finding recorded by the Hon'ble Calcutta High Court is final and still is in force. Parties are bound by the findings of the Hon'ble Calcutta High Court.

11. Original O.A. was filed by the Bank for issuance of the Certificate on the basis of equitable mortgage created by the borrower. Rights and liabilities of the parties have to be determined by the DRT on the basis of equitable mortgage created by the borrower.

12. The law laid down in the case of J.P Builders and another Vs. A. Ramadas Rao and another (2011) 1 SCC 429 is not applicable to the facts of the present case. Bank filed the application for issuance of Certificate against the borrower u/s 19 of the Recovery of Debts and Bankruptcy Act 1993. Admittedly equitable mortgage was created by the borrower by depositing the title deeds. Hence, as held by the Hon'ble Apex Court in Sudhamayee Pattnaik and others Vs Bibhu Prasad Sahoo and others Civil Appeal No. 6370 of 2022 SCC OnLine SC 1234 (supra), the plaintiffs are dominus litis unless the Court suo motu directs to join any other person not party to the suit for effective decree and /or for proper adjudication. As per order (1) Rule 10 of Code of Civil Procedure nobody can be permitted to be impleaded as defendants against the wish of the plaintiffs. This case law is squarely applicable in the facts of the present case wherein petition under Section 19 of Recovery of

Debts and Bankruptcy Act 1993 is filed for issuance of certificate against the borrower. Hence, the intervenor is neither a necessary nor a proper party in the proceedings. I am of the view that the Ld. DRT erred in impleading the Intervenor as Respondent in the original application. Accordingly, Appeal deserves to be allowed. Impugned order is liable to be set aside.

ORDER

Appeal is allowed. Order dated 02.08.2019 passed by Ld. DRT-2 Kolkata is set aside. Ld. DRT-2 is hereby directed to proceed with the matter in accordance with law.

No Order as to costs.

File be consigned to Record Room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 21st day of June, 2023.