

(2024) 06 DRAT CK 0003**Debts Recovery Appellate Tribunal, Mumbai Bench****Case No:** Appeal No. 244 Of 2010

M/s Priyanka Finance

APPELLANT

Vs

Vidya Sahakari Bank Ltd. & Anr

RESPONDENT

Date of Decision: June 20, 2024**Acts Referred:**

- Registration Act, 1908 - Section 47
- Bombay Money Lenders Act, 1946 - Section 10
- Maharashtra Co operative Societies Act, 1960 - Section 23(2)

Hon'ble Judges: Ashok Menon, Chairperson**Bench:** Single Bench**Advocate:** Rajesh Nagori, Sanjana Ghogare, Vijay V. Chandavale, Vishal S. Tambe**Final Decision:** Dismissed

Judgement

Ashok Menon, Chairperson

1. The appellant claims to be a firm which is aggrieved by the judgment and order dated 07.09.2010 dismissing Securitisation Application (S.A.) No. 50 of 2009 by the Debts Recovery Tribunal, Pune (D.R.T.).

2. The appellant claims to have purchased the subject property namely plot No. 16 survey No. 28/8/7/1 of Dhankawadi Village in Haveli Taluka of Pune District admeasuring 364 sq. mtrs from Ms Nalini Prabhakar Gore who was a member of the Raghvnagar Sahakari Griha Rachna Sanstha Maryadit, a co-operative society which had admitted the aforesaid Nalini as a member on 15.02.1970 and issued five shares of ₹50 each. Thereafter, the subject property was allotted to her on 21.08.1993. A registered lease deed was executed on 02.09.1994 by society in favour of Ms Nalini for 999 years.

3. The appellant claims that the right title and interest of Ms Nalini Gore was assigned to the appellant firm on 01.02.1998, and a registered assignment deed was presented for registration before the SRO, Haveli No. 9 on 16.03.1998 and the document was registered as No. 2176 on 17.12.1998. The applicant requested for transfer of membership by the society, but that was not complied with, and hence, an application under Sec. 23(2) of the Maharashtra Co-operative Societies Act. 1960 (Societies Act) was filed before the Deputy Registrar of Co-operative Societies. The application was allowed. Challenging that, the society filed revision application No. 802 of 1999 before the Division Joint Registrar. The revision was dismissed.

4. The first respondent is a co-operative bank named Vidya Sahakari Bank. It is alleged that Ms Nalini Gore and Anant Prabhakar Gore had a financial transaction with the first respondent and the subject property was mortgaged as security on 16.07.1998 by execution of a mortgaged deed. The repayment of debt was defaulted resulting in the first respondent initiating Sarfaesi measures concerning the secured property. The property was sold in an auction to the second respondent.

5. Threatened with deprivation of the subject property, the present S.A. was filed challenging the Sarfaesi measures initiated by the first respondent and to get the sale in favour of the second respondent set aside.

6. The case of the appellant is that the mortgage created in favour of the first respondent was only on 16.07.1998 whereas, the sale deed in favour of the appellant was executed on 01.02.1998, much before the mortgage. The mortgagor did not therefore have any existing right in the subject property at the time of the creation of the mortgage. It is further averred that though the sale deed was registered only on 17.12.1998, it was executed on 01.02.1998 and therefore, the document relates to the date of execution under Sec. 47 of the Registration Act.

7. The respondents contested the S.A. challenging the right of the appellant to file the S.A. It is pointed out that Ms Nalini Gore together with Anant Gore had executed a power of attorney in favour of the first respondent bank on 13.10.1997 authorising the bank to sell or dispose of the property and appropriate the sale proceeds towards the debt incurred by them from the first respondent. The appellant was aware of the execution of the mortgage deed on 16.07.1998 as document No. 5748 of 1998.

8. It is further contended for the respondents that the purported deed of assignment dated 01.02.1998 relied upon by the appellant mentions that the firm had granted loan facilities to Ms Nalini Gore and since she was unable to repay the loan, the outstanding amount was adjusted towards the sale consideration for transfer of the property to the creditor. The document would, therefore, indicate that the relationship between the appellant firm and the owner of the property Ms Nalini Gore was that of a creditor and borrower. The firm was carrying on the business of leasing and finance. But there is no

document to indicate that the appellant has a money-lending licence to carry on the business of money lending as provided under the Bombay Money Lenders Act, 1946. Sec. 10 of the said Act precludes a court from passing a decree in favour of a money lender unless it is satisfied that at the time when the loan or part thereof was granted, the money lender held a valid licence. And in case the court is satisfied that the money lender did not hold a valid licence, it shall dismiss the suit.

Admittedly, there is not a scintilla of evidence to indicate the existence of a money-lending licence issued in favour of the appellant at the time of the alleged transaction between the appellant and Ms Nalini Gore. The Ld. Counsel for the appellant has produced a licence which was issued on 29.11.2009. The Ld. Presiding Officer was, therefore, justified in non-suiting the appellant.

The appeal has no merit and is, therefore, dismissed.