

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____/2024
(@SLP (C) No. 330/2017)

SANJAY SHARMA

APPELLANT(S)

VERSUS

KOTAK MAHINDRA BANK LTD. & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

2. Being aggrieved by the order dated 30.05.2016 passed by the Division Bench of the Delhi High Court in W.P.(C) No.6881/2014, the appellant is before this Court.

3. For the sake of convenience, the parties herein may be referred to in terms of their status in the entire gamut of proceedings: the appellant herein is the auction-purchaser who was successful in the auction conducted by respondent No.1-Kotak Mahindra Bank Ltd. ("respondent No.1") on 21.12.2010 inasmuch as the sale certificate has also been issued in favour of the appellant on 27.12.2010. Respondent No.1 is the Bank to whom Champa Bhen Kundia is indebted as a borrower; respondent No.2 is said to be the person who is in possession of the scheduled premises pursuant to an Agreement to sell and a General Power of Attorney; respondent Nos.3 to 8 have really no connection with the present dispute in question.

4. Briefly stated, the facts of this case are that the secured asset, in this case, is the piece and parcel of land (measuring 55.7 Sq. yards) and the building and the Basement of House property bearing no. 2/22, Old Rajinder Nagar, New Delhi-110018 (hereinafter referred to as "secured asset"). One Champa Bhen Kundia was the owner of the said secured asset. The basement of the secured asset was sold in favour of her son Chandu Bhai vide an unregistered sale deed dated 28.04.2000 allegedly for a consideration of Rs.4,00,000/-. Chandu Bhai again created an unregistered document to show the sale of the basement of the secured assets in favour of Satnam Singh and Surinder Wadhwa vide an unregistered sale deed dated 30.03.2001 for an alleged consideration of Rs.90,000/-. Further, once again, Satnam Singh and Surinder Wadhwa created unregistered document, i.e., Agreement to Sell dated 23.04.2001 for the sale of the basement of the secured assets in favour of Raj Kumar Vij, i.e., respondent No. 2.

5. Be that as it may, Champa Bhen Kundia, the original owner of the secured asset took a loan from M/s Associated India Financial Service Pvt Ltd and mortgaged the secured asset on 16.06.2001. Said financing Company M/s Associated India Financial Service P Ltd, was taken over by M/s Citi Financial Consumer India Ltd which ultimately assigned its debts to M/s Kotak Mahindra Bank, i.e., respondent No. 1.

6. Respondent No.1 served notice dated 28.10.2006 under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") to Champa Bhen Kundia as the loan was not repaid. The notice remained non-complied, therefore, respondent No. 1 got the secured asset attached and took the physical possession of the secured asset by appointment of a Court Receiver under Section 14 of the SARFAESI Act under the orders of Chief Metropolitan Magistrate, Delhi vide order dated 06.09.2007.

7. After the physical possession of the secured asset was taken over by the Court Receiver, respondent Nos. 2 to 6 herein filed an application under Section 17 of the SARFAESI Act being S.A. No. 118/2007 before the Debt Recovery Tribunal-III ("DRT") claiming themselves to be the successor-in-interest of the principal borrowers and purchasers of the property.

8. By its order dated 23.11.2007, the DRT directed respondent Nos.2 to 6 to deposit Rs.2,00,000/- by 26.11.2007 and further directed respondent No.1 to restore their possession on payment of the said amount. Respondent Nos. 3 to 6 availed the benefit of the order dated 23.11.2007 and deposited the amount. However, respondent No.2 herein did not make the said payment. Subsequently, by order dated 08.09.2009, the DRT disposed of the S.A. No. 118/2007, *inter alia*, directing respondent No.2 to pay respondent No.1 a sum of Rs.2,50,000/- approximately within a period of sixty days from the date of receipt of the order. The DRT further went on to hold that if respondent Nos.3 to 6 deposit the remaining amount

with the Bank, the authorised officer of the bank shall immediately issue a "No Dues Certificate" and return the Original Title Deed to the five appellants before the DRT after obtaining five Certificates of Acknowledgment from them. The said order of DRT dated 08.09.2009 was challenged by respondent Nos.3 to 6 before the Debt Recovery Appellate Tribunal, New Delhi ("Appellate Tribunal") by filing Appeal No.3 of 2010. However, this came to be disposed of by an order dated 02.06.2010 without interfering with the order passed by the DRT dated 08.09.2009.

9. Thereafter, respondent No.1 gave a notice in the Newspaper "Business Standard" on 20.11.2010 regarding a public auction to be conducted on 21.12.2010 with respect to the basement of the secured asset. The appellant being the successful bidder made the payment of the bid amount of Rs. 7,50,000/- to respondent No. 1 and the latter issued a confirmation certificate dated 22.12.2010. Thereafter, respondent No. 1 issued a sale certificate in favour of the appellant on 27.12.2010.

10. Being aggrieved, respondent No.2 approached the Appellate Tribunal in MA Nos.22 and 23 of 2011 in Appeal No. 3 of 2010 contending that respondent No.2 was not summoned at all in the proceedings before the Appellate Tribunal while passing the order dated 02.06.2010 while there is a dispute concerning the ownership of the basement of the secured asset. By order dated 21.02.2011, the Appellate Tribunal directed the DRT to examine the case of respondent No.2. Pursuant to the remand, the DRT by its order dated 30.08.2012, allowed the case of respondent No.2 and set aside the

auction holding that respondent No.2 has the right of redemption under Section 13(8) of the SARFESI Act subject to deposit of amount due to respondent No.1 with 9% simple interest.

11. Being aggrieved by the above order dated 30.08.2012, the appellant approached the Appellate Tribunal and filed Appeal No. 368 of 2012. By order dated 03.09.2014, the Appellate Tribunal allowed the appeal preferred by the appellant and set aside the order dated 30.08.2012. Thereby, the auction sale was restored. The Appellate Tribunal observed that respondent No.2 cannot be given an unfettered right to deposit the amount at any time according to his convenience. The Appellate Tribunal further observed that there are serious disputes regarding the title of respondent No.2 to be a subsequent purchaser of the secured asset.

12. Being aggrieved, respondent No.2 approached the High Court by filing Writ Petition (Civil) No.6881 of 2014. By the impugned order, the High Court has set aside the order dated 03.09.2014 passed by the Appellate Tribunal and has restored the order dated 30.08.2012 passed by the DRT in setting aside the auction sale and has directed respondent No.2 herein to comply with the order of the High Court within a period of thirty days. Consequently, the appellant herein was entitled to a refund of the amount Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand Only) deposited by him with such interest as he would be entitled to as per the order passed by the DRT. The High Court has also permitted respondent No.2 to redeem the mortgage by paying proportionately and to recompense the appellant to pay interest at 9% of the sum

deposited by the appellant and consequently, has disposed of the Writ Petition. Hence this instant appeal.

13. We have heard learned counsel for the appellant, learned counsel for respondent No.1 and learned counsel for respondent No.2 and we have perused the material on record.

14. Learned counsel for the appellant submitted that the appellant is the successful auction-purchaser of the scheduled property which was conducted by respondent No.1 on 21.12.2010; that he had purchased the said property for a total valuable consideration of Rs.7,50,000/- being the highest bidder and this bid being accepted, sale certificate dated 27.12.2010 was also issued to the appellant herein. However, respondent No.2 has sought to get the sale certificate cancelled and consequently, the High Court has held in favour of respondent No.2.

15. Learned counsel for the appellant submitted that respondent No.2 has no right, title and interest in the scheduled property and despite the same is seeking to set aside the auction which was conducted by respondent No.1 and is trying to get the sale certificate dated 27.12.2010 set aside. He submitted that respondent No.2 has no locus standi to interfere in the matter and therefore, the appeal may be allowed by restoring the order dated 03.09.2014 and setting aside the order passed by the Appellate Tribunal and setting aside the order dated 30.08.2012 passed by the DRT.

16. On the other hand, learned counsel for respondent No.1 submitted that the Bank has acted in accordance with Section 13 of the SARFAESI Act and when the original borrower Champa Bhen Kundia did not respond to the notices issued under the said provisions, the Bank was constrained to put up the secured asset for auction and consequently, seek to recover the unpaid debt by the original borrower Champa Bhen Kundia. He submitted that the auction was conducted by respondent No.1 subsequent to the proceeding under Section 14 of the SARFAESI Act and on taking possession of the secured asset. That respondent No.1 has not been in a position to comply with handing over of possession to the appellant herein owing to the litigation that was commenced by respondent No.2 herein.

17. In the circumstances, this Court may protect the action taken by respondent No.1 and, accordingly, pass appropriate orders in this appeal.

18. Learned counsel for respondent No.2 submitted that Champa Bhen Kundia, the original owner of the scheduled property and also the borrower, on 28.04.2000 had executed a registered Power of Attorney in favour of her son Chandu Bhai. Thereafter Chandu Bhai had entered into a registered General Power of Attorney in favour of Satnam Singh and Surinder Wadhwa on 30.03.2001. Satnam Singh and Surinder Wadhwa had executed a registered will, a General Power of Attorney and an agreement to sell on 16.04.2001. The will dated 16.04.2001 was registered, the general power of attorney in favour of respondent No.2 was also a registered one. Thereafter, Champa

Bhen Kundia mortgaged the Scheduled Property in favour Associate Finance Limited on 16.06.2001 and respondent No.1 is an assignee of the said mortgage.

19. Learned counsel for respondent No.2 therefore submitted that the transactions entered into with respondent No.2 being prior to the actual mortgage and the debt which came into existence subsequently on 16.06.2001, respondent No.2 had an equitable right to get the title to the scheduled property; therefore respondent No.2 raised objections even prior to auctioning of the said property. However, the respondent No.1 did not take into consideration, his objections and instead proceeded to auction the property on 21.12.2010.

20. In the circumstances, respondent No.2 was constrained to file S.A. No.118/2007 before the DRT and after two rounds of litigation ultimately passed an order in favour of respondent No.2 on 30.08.2012 which order was set aside by the Appellate Tribunal on 03.09.2014. Therefore, respondent No.2 was constrained to file W.P. (C) No.6881/2014 before the Delhi High Court which has disposed of the said writ petition in favour of respondent No.2 herein. Learned counsel, therefore submitted that there is no merit in this appeal and hence, the same may be dismissed.

21. The detailed narration of facts and contentions would not call for a reiteration. Although learned counsel for respondent No.2 emphasized the fact that respondent No.2 is presently in possession of the scheduled premises on the strength of the registered General

Power of Attorney dated 16.04.2001 as well as the agreement to sell of the same date, the fact remains that the agreement to sell executed by Smt. Champa Bhen Kundia is not by a registered document. In the circumstances, respondent No.1 could not have known that even prior to her seeking a loan and mortgaging the very same property to the Bank on 16.06.2001, there was already an encumbrance as such created in favour of respondent No.2. Therefore, the Bank although had done its due diligence would not have known the fact that there was a prior transaction in respect of the very same secured asset.

22. Learned counsel for respondent No.2 submitted that the fact that there was a registration of the General Power of Attorney in favour of respondent No.2 and thereafter there was an agreement to sell also executed in his favour which created an interest in the secured asset and therefore, the said fact having been brought to the notice of respondent No.1, the objection raised by respondent No.2 ought to have been taken note of by the Bank. Respondent No.1 having ignored the objection raised by respondent No.2 *vis-a-vis* the proposed auction of the secured asset has in fact let down not only the potential auction-purchaser but also has adversely affected the right, title and interest of respondent No.2 *vis-a-vis* the secured asset.

23. We do not think that the aforesaid submission could have any bearing insofar as the rights of the appellant is concerned for the reason that the said appellant would have been under an obligation to conduct a due diligence exercise in respect of the secured asset

and ascertain the encumbrance accrued therein, had the agreement to sell been a registered agreement to sell. But in the absence of there being any registration of the said agreement dated 23.04.2001, the appellant could not have detected, whether there was any kind of prior interest created in favour of respondent No.2. In fact, for the very same reason, respondent No.1 also would not have been in the knowledge of the said fact even if due diligence exercise had been carried out by the Bank as stated above as the agreement to sell was not a registered instrument.

24. In the circumstances, respondent No.1 sought to recover the outstanding debt on the basis of the fact that there was a mortgage dated 16.06.2001 which was made in favour of Associated Finances Limited from whom Champa Bhen Kundia had borrowed certain amounts and which date was assigned to respondent No.1. The respondent No.1 consequently, as a financial institution took steps against the borrower under Sections 13 and 14 and other relevant provisions of the SARFAESI Act and conducted the auction of the property on 21.12.2010 so as to recover the outstanding debt. The appellant herein being the highest bidder promising to pay Rs.7,50,000/- was permitted by respondent No.1 and the sale certificate was issued in his favour on 27.12.2010 after accepting his bid. It is thereafter that during the pendency of its appeal before the DRT that the auction proceedings were challenged by respondent No.2.

25. Learned counsel for respondent No.1 drew our attention to the fact that on three occasions that is by orders dated 23.11.2007, 08.09.2009 and 30.08.2012 opportunities were given to respondent

No.2 to pay the outstanding dues so as to ensure that secured asset could be saved from the auction proceedings conducted and possibly the appellant could be paid the amount that he had deposited with the Bank with suitable rate of interest. But respondent No.2 did not make use of the said opportunities to repay the outstanding dues.

26. In the circumstances, we find that the Appellate Tribunal was justified in holding in favour of the appellant herein by order dated 03.09.2024 by setting aside the order dated 30.08.2012 passed by the DRT. The High Court has reversed the said orders and consequently, the appellant has been directed to receive the amounts deposited by him as the sale certificate dated 27.12.2010 has been set aside on the basis that the auction conducted itself was not in accordance with law. The High Court, in our view, was not justified in holding so.

27. Section 54 of the Transfer of Property Act, 1882, defines a "sale" as the transfer of ownership in exchange for a price that is either paid, promised, or part-paid and part-promised. This provision further describes the manner in which a sale is effected. It stipulates that, in the case of tangible immovable property valued at one hundred rupees or more, the transfer can be made only through a registered instrument. The use of the term "only" signifies that, for tangible immovable property valued at one hundred rupees or more, a sale becomes lawful only when it is executed through a registered instrument. Where the sale deed requires registration, ownership does not pass until the deed is

registered, even if possession is transferred, and consideration is paid without such registration. The registration of the sale deed for an immovable property is essential to complete and validate the transfer. Until registration is effected, ownership is not transferred.

28. In the present case, the original owner/borrower, Champa Ben Kundia, 'sold' the secured asset to her son, Chandu Bhai by an unregistered sale deed dated 28.04.2000. Subsequently, the basement of the secured asset was "transferred" to Satnam Singh and Surinder Wadhwa through another unregistered sale deed dated 30.03.2001. Further, an unregistered agreement to sell, dated 23.04.2001, allegedly transferred the basement of the secured asset to respondent No.2. Therefore, all the documents relied upon by respondent No.2 to claim ownership of the basement of the secured asset are unregistered documents and fail to meet the requirements of a valid sale under Section 54 of the Transfer of Property Act. Respondent No.2 thus did not have any title to claim the ownership of the basement of the secured asset. All the transactions made in respect of the secured asset from Champa Bhen Kundia to the subsequent vendors were through an unregistered deed including the agreement to sell dated 23.04.2001 through which respondent No.2 was claiming ownership of the basement of the secured asset.

29. This Court in Babasheb Dhondiba Kute vs. Radhu Vithoba Barde in SLP(C) No.29462 OF 2019 held that the conveyance by way of sale would take place only at the time of registration of a sale deed in accordance with Section 17 of the Registration Act, 2008. Till

then, there is no conveyance in the eyes of law.

30. The High Court went on to observe that respondent No.1 which advanced the loan would be deemed to have notice of the possessory rights in favour of Satnam Singh and later in favour of respondent No.2 relying on Explanation II to Section 3 of the Transfer of Property Act. However, we do not find merit in the said finding of the High Court. We say so, because, unless the deeds of conveyance through which the alleged transfer took place were registered in accordance with the provision of the Registration Act, respondent No.1 did not have access to the said information since there would be no entry of the said transfer of an immovable property in the encumbrance records.

31. We also take note of the fact that respondent No.1 has conducted the auction in terms of the provisions of the SARFESI Act. When the original owner/borrower Champa Bhen Kundia failed to repay the loan, respondent No.1 issued a notice under Section 13 of the SARFESI Act on 28.10.2006. Thereafter, physical possession of the secured asset was taken over and a Receiver was appointed in terms of Section 14 of the SARFESI Act on 06.07.2007. Thereafter, a notice was issued regarding the public auction of the basement being the secured asset as per Section 13 of the Act on 20.11.2010. The appellant herein participated in the said auction and was declared the highest bidder. Ultimately, respondent No.1 also issued a sale certificate in favour of the appellant on 27.12.2010. Thus, the auction was in due compliance with the statutory requirements and constituted a valid sale.

32. No doubt, objections were raised by respondent No.2 in respect of the said public auction as well as in the issuance of a sale certificate to the appellant. The counsel for respondent No.2 vehemently argued that respondent No.2 has to have the right of redemption of the property on payment of the dues. However, this right is not unfettered and there is a statutory limitation prescribed to it. As per the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. Subsequent to the amendment in 2016, the right of redemption available to the borrower would be available only till the date of publication of the notice under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002. The material on record shows that ample opportunities were given to respondent No.2 to avail the said right on redemption *vide* orders dated 23.11.2007, 08.09.2009 and 30.08.2012 passed by the DRT. However, respondent No.2 failed to make use of the said opportunities provided to him.

33. It is now a well-settled principle that a sale by way of public auction cannot be set aside until there is any material irregularity and/or illegality committed in holding the auction or if such auction was vitiated by any fraud or collusion. This Court in V.S. Palanivel vs. P. Sriram reported in 2024 INSC 659 held that unless there are some serious flaws in the conduct of the auction as for example perpetration of a fraud/collusion, grave irregularities that go to the root of such an auction, courts must ordinarily refrain from setting them aside keeping in mind the

domino effect such an order would have. Recently, this Court in Celir LLP vs. Ms Sumati Prasad Bafna and others Contempt Petition (C) Nos.158-159 of 2024 in Civil Appeal Nos. 5542-5543 of 2023 held as follows:

“218.Any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set-aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or underbidding. Mere irregularity or deviation from a rule that does not have any fundamental procedural error does not take away the foundation of authority for such a proceeding. In such cases, courts, in particular, should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or where no substantial injury has been caused on account of such irregularity.”

34. Consequently, the impugned order of the High Court is set aside. The order of the Appellate Tribunal dated 03.09.2014 is restored and consequently, the order dated 30.08.2012 passed by the DRT is set aside. Respondent No.1 shall take steps to hand over possession of the scheduled premises to the appellant herein. We also reserve liberty to the appellant herein to take possession in accordance with law by making a suitable application before the DRT or the High Court, as the case may be, for the purpose of collecting the keys of the scheduled premises that have been deposited by respondent No.2.

35. The amounts with accrued interest, if any, deposited by respondent No.2 before the DRT, the Appellate Tribunal, the High Court or with the Bank would be withdrawn by respondent No.2 by making suitable applications. If such applications are made, the

same shall be considered expeditiously and disposed of.

36. The appeal is allowed and disposed of in the aforesaid terms.

No costs.

....., J.
(B.V. NAGARATHNA)

....., J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
DECEMBER 10, 2024.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 330/2017
[Arising out of impugned final judgment and order dated 30-05-2016
in WPC No. 6881/2014 passed by the High Court of Delhi at New
Delhi]

SANJAY SHARMA

Petitioner(s)

VERSUS

KOTAK MAHINDRA BANK LTD. & ORS.

Respondent(s)

Date : 10-12-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. R. C. Kaushik, AOR
Mr. M.K.Goel, Adv.

For Respondent(s) Mr. Arun Aggarwal, AOR
Ms. Anshika Agarwal, Adv.
Mr. Shivam Saini, Adv.
Mr. Praful Rawat, Adv.

Ms. Kanika Agnihotri, Adv.
Ms. Supriya Juneja, AOR

Mr. Rajeev Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed and disposed of in terms of the
signed order.

Pending application(s), if any, shall stand disposed
of.

(RADHA SHARMA)

ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)

COURT MASTER (NSH)

(Signed order is placed on the file)