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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6766/2024 & CM APPL. 28206/2024**

**CAPT RAMINDER SINGH WADHWA** ..... Petitioner

Through: Lt. Col. P.K. Saran, Advocate

versus

**AXIS BANK LIMITED AND ORS** ..... Respondents

Through: Mr. Ramesh Singh, Mr. Anupam Singh and Ms. Nika Tiwari, Advs. for Axis Bank  
Mr. Prashant Tripathi and Ms. Sampanna Pani, Advs.  
Mr. Rishabh Sahu, Advocate with Mr. Mayank Solanki, Adv. for R-7

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Date of Decision: 01<sup>st</sup> June, 2024

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**JUDGMENT**

**MANMOHAN, ACJ : (ORAL)**

1. Present writ petition has been filed under Article 226 of the Constitution of India challenging the order dated 29<sup>th</sup> April, 2024 ('impugned order') passed by the Debt Recovery Appellate Tribunal ('DRAT') in Misc. Appeal No. 97/2024 ('Appeal'), whereby the said appeal



was dismissed and the order dated 26<sup>th</sup> February, 2024 passed by Debt Recovery Tribunal-II, Dehi ('DRT') in S.A. 75/2024 was upheld.

2. The Petitioner herein is the present owner of the property comprising Basement and Ground Floor, A-1/303, Safdarjung Enclave, New Delhi-110029 ('subject property'), which was purchased by him *vide* registered sale deed dated 21<sup>st</sup> November, 2011 against payment of total sale consideration amount of Rs. 1.25 crores. The Petitioner further states that for the purpose of purchase of the subject property, he took a home loan of Rs. 50 lakhs from HDFC Bank i.e., Respondent No. 7 herein. The Petitioner states that he is thus, a *bona fide* purchaser for valuable consideration of the subject property.

3. The Petitioner states that upon the grant of aforesaid home loan, Respondent No. 7 Bank had created its security interest on the subject property on 31<sup>st</sup> October, 2011 and subsequently, the said security interest was registered by Respondent No. 7 Bank on CERSAI Portal on 24<sup>th</sup> November, 2011.

4. The Petitioner states that he had no notice that the Respondent Nos. 4 and 5 [vendors of the subject property] had availed a loan of Rs. 4.25 crores from Respondent No. 1 Bank and/or that they created a mortgage of the entire property i.e., Plot no. A-1/303, Safdarjung Enclave, New Delhi-110029 ad measuring 216 sq. mtrs. ('secured asset') on 26<sup>th</sup> December, 2006 in favour of Respondent No. 1 Bank.

5. The Petitioner states that on 17<sup>th</sup> January, 2007 Respondent Nos. 4 and 5 entered into a collaboration agreement with Respondent No. 6 for demolishing the old structure and re-building a new structure comprising basement, ground, first, second and third floor on it. It is stated that a Power



of Attorney ('POA') was executed by Respondent Nos. 4 and 5 in the name of Respondent No. 6; and Respondent No. 6 thereafter, knocked down the old building and re-constructed a new building.

6. The Petitioner states that Respondent Nos. 4 and 5 did not disclose the existence of the loan and the mortgage in favour of Respondent No. 1 Bank with respect to the secured asset to the Petitioner, any time prior to the sale, or thereafter. The Petitioner states that Respondent Nos. 2 to 5 have defrauded the buyers of all the newly constructed floors including the Petitioner herein.

7. Learned counsel for the Petitioner states that in order to verify whether the subject property was free from all encumbrances, the Petitioner had done his due diligence which includes the following: -

- a) he had checked the details of the subject property on the CERSAI<sup>1</sup> Portal, which showed that the subject property was free from all encumbrances.
- b) he was shown the original sale deeds as well as the complete chain of sale deeds executed in respect of the subject property by Respondent Nos. 4 and 5 herein, prior to the sale.

7.1. He states that since, Respondent No. 1 Bank had not registered its alleged security interest in the Plot no. A-1/303, Safdarjung Enclave, New Delhi-110029 on the CERSAI portal till date, thus, it is disentitled from claiming any relief under the SARFAESI Act, 2002<sup>2</sup>. In this regard, he relies upon Section 26-D of the SARFAESI Act, 2002. He states that in view of Section 26-E of the SARFAESI Act, 2002, Respondent No. 7 Bank has

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<sup>1</sup> Central Registry of Securitisation Asset Reconstruction and Security Interest of India.

<sup>2</sup> Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002



priority over Respondent No. 1 Bank in order to claim relief under the SARFAESI Act, 2002 and in fact, Respondent No. 1 is disentitled.

7.2. He states that as per Section 27(c) of the SARFAESI Act, 2002, Respondent No. 1 Bank is liable to pay penalty of Rs. 5,000/- per day during the default in registration of its security interest on the CERSAI Portal. He states that the security interest has since been registered by Respondent No. 1 Bank on CERSAI Portal albeit with a delay of 727 days.

7.3. He states that Respondent No. 1 Bank has not registered its charge on CERSAI Portal even till date, which is mandatory as per RBI circular dated 26<sup>th</sup> May, 2011.

8. Learned counsel for Respondent No. 7 Bank states that the original title deed dated 21<sup>st</sup> November, 2011 of the subject property executed in favour of the Petitioner herein has been deposited with Respondent No. 7 Bank.

9. Learned senior counsel for Respondent No. 1 Bank states that original title documents whereby, Respondent Nos. 4 and 5 acquire right, title and interest in Plot no. A-1/303, Safdarjung Enclave, New Delhi-110029 are in the custody of Respondent No. 1 Bank. He states that the mortgage over the secured asset has been duly registered on the CERSAI Portal as of 22<sup>nd</sup> June, 2013 and it records the date of creation of the security interest on the said secured asset, as 26<sup>th</sup> December, 2006. He states that the Petitioner is making contradictory statements with respect to registration of the security interest on the CERSAI Portal.

10. We have heard the learned counsel for the parties and perused the record.

11. The DRT *vide* order dated 26<sup>th</sup> February, 2024 dismissed the common



application filed by the Petitioner herein along with the owner of the first floor flat. In this application, the Petitioner and the other flat owners sought restraint orders against Respondent No. 1 Bank from proceeding against their respective flats for auction sale and possession.

12. In the said order, DRT has recorded a finding that since the mortgage of Plot no. A-1/303, Safdarjung Enclave, New Delhi-110029 was created in favour of Respondent No. 1 Bank in the year 2006 for the loan advanced to Respondent Nos. 2 to 5, the Petitioner who is a subsequent purchaser of the subject property in 2011, cannot oppose the SARFAESI action initiated by Respondent No. 1 Bank.

13. The DRAT *vide* impugned order dated 29<sup>th</sup> April, 2024 as well upheld DRT's order dated 26<sup>th</sup> February, 2024 and held that as per the record, a mortgage was created over Plot no. A-1/303, Safdarjung Enclave, New Delhi-110029 in the year 2006 in favour of Respondent No. 1 Bank for the loan availed by Respondent Nos. 2 to 5 and a charge was registered on the CERSAI Portal. The DRAT observed that the delay in registering the charge beyond the thirty (30) days period has been reasonably explained by Respondent No. 1 Bank.

14. The DRAT held that it appeared from the record that Petitioner had been cheated by Respondent Nos. 2 to 5 as they had misrepresented to Respondent No. 6 and the Petitioner that the property was free from mortgage or any encumbrance. The DRAT concluded that the Petitioner had been cheated by Respondent Nos. 2 to 5 and the remedy of the Petitioner was to take recourse to civil and criminal remedies against the said Respondents. However, DRAT held that Petitioner cannot resist and oppose the SARFAESI actions initiated by Respondent No. 1 Bank.



15. In the facts of this case, there is no dispute that a loan of Rs. 4.25 crores was availed by Respondent Nos. 4 and 5 on 27<sup>th</sup> December, 2006 from Respondent No. 1 Bank and a mortgage was created over Plot no. A-1/303, Safdarjung Enclave, New Delhi-110029 on 26<sup>th</sup> December, 2006 in favour of Respondent No.1 Bank. The aforesaid transaction of creation of security interest by Respondent No. 1 Bank was registered on the CERSAI Portal on 22<sup>nd</sup> June, 2013.

16. Since the Respondent No. 1 Bank registered its security interest in the secured asset on the CERSAI Portal on 22<sup>nd</sup> June, 2013, the reliance placed by the Petitioner on Section 26-D of the SARFAESI Act, 2002 is misconceived and therefore, the Respondent No. 1 Bank is entitled to exercise the rights of enforcement under the SARFAESI Act, 2002.

17. In view of the fact that security interest in favour of Respondent No. 1, Bank was created earlier on 26<sup>th</sup> December, 2006 and the security interest in favour of Respondent No. 7, Bank was created subsequently, on 31<sup>st</sup> October, 2011, as per Section 48 of the Transfer of Property Act, 1882. Respondent No. 1 will admittedly have priority over Respondent No. 7.

18. The original title deeds dated 27<sup>th</sup> December, 2006 by which Respondent Nos. 4 and 5 acquired ownership rights in Plot no. A-1/303, Safdarjung Enclave, New Delhi-110029 are lying deposited with Respondent No. 1 Bank since 2006, whereas, Respondent No. 7 Bank has advanced loan against the subsequent title deed dated 21<sup>st</sup> November, 2011. The reliance placed by the Petitioner on Section 26-E of the SARFAESI Act, 2002 is not attracted in the facts of this case as Respondent No. 1's mortgage is prior in time to Respondent No. 7 Bank.

19. The Petitioner has placed reliance upon Section 27(c) of the



SARFAESI Act, 2002 to contend that Respondent No. 1 Bank is liable to pay penalty of Rs. 5,000/- per month for the delay in registering its charge on the CERSAI Portal. However, admittedly, Section 27 has since been omitted and is not in force anymore. In fact, simultaneously, Section 23(1) of the SARFAESI Act, 2002 was amended by the Amendment Act of 2016<sup>3</sup>, which came into effect on 24<sup>th</sup> January, 2020, whereby the obligation that the transaction of security interest should be registered on the CERSAI Portal within 30 days of the date of the transaction has been done away with. The legislative intent behind the aforesaid amendment is to extend the time for registration of the transaction of security interest on the CERSAI Portal. In fact, by way of the Amendment Act of 2016, the legislature has omitted the provisions of Section 27 of the SARFAESI Act, 2002, which provides for the imposition of the penalty in case of delay in registering the transaction of security interest with the CERSAI. The delay in registering the transaction of a security interest in the aforesaid secured asset, by Respondent No. 1 Bank on the CERSAI Portal, therefore, does not extinguish its right to enforce its claims under the SARFAESI Act, 2002.

20. The contention of the Petitioner that he alongwith Respondent No. 7, Bank had inspected the original title deeds dated 27<sup>th</sup> December, 2006 before purchasing the subject property in the year 2011, is an assertion of fact, which is not borne out from the record. Respondent No. 7 Bank has not stated any such fact on record. Respondent No. 1 Bank has disputed this fact. We cannot therefore opine upon these disputed facts in the writ jurisdiction and the same will be decided by DRT in the SA No. 75/2024,

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<sup>3</sup> The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016



which is pending before the DRT.

21. We accordingly find no merit in the present petition and the same is dismissed along with pending applications.

**ACTING CHIEF JUSTICE**

**MANMEET PRITAM SINGH ARORA, J**

**JUNE 1, 2024/hp/MG**