

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7324 of 2024

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LALIT CHIMANLAL RAO
Versus
PUNJAB NATIONAL BANK
=====

Appearance:

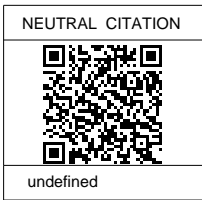
MS BHAVNA V SHAH(11047) for the Petitioner(s) No. 1
for the Respondent(s) No. 1
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CORAM:HONOURABLE MR. JUSTICE UMESH A. TRIVEDI
and
HONOURABLE MR. JUSTICE CHEEKATI
MANAVENDRANATH ROY

Date : 08/05/2024

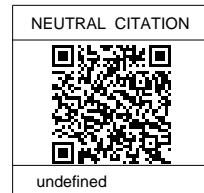
ORAL ORDER
(PER : HONOURABLE MR. JUSTICE UMESH A. TRIVEDI)

[1] This Petition is filed under Articles 226 and 227 of the Constitution of India, challenging the judgment and order dated 13.03.2024 passed by the Debts Recovery Appellate Tribunal at Mumbai (hereinafter referred to as 'DRAT') in Appeal No.78 of 2014. A prayer for interim order of staying the operation, effect and implementation of the same is also prayed for, with further making interim prayer not to proceed against the property described as third floor "Shailabh" Building, near Sunrise Park, Vastrapur, Ahmedabad along with even status quo qua third floor as well, in Recovery Proceedings No.388 before the Recovery Officer, Debt Recovery Tribunal, Ahmedabad (hereinafter referred to as 'DRT').



[2] The brief facts, as coming out from the impugned order, can be summarized as under:

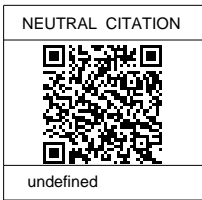
[2.1] Oriental Bank of Commerce had filed Original Application (hereinafter referred to as OA) against M/s Kashiparekh Construction Private Limited & Ors. for recovery of Rs.54,01,670/-. The OA was allowed on 30.03.2000 as per the consent terms filed by the parties. The copy of consent terms though not produced separately, it has been mentioned extensively in the judgment and order passed by the Presiding Officer of 'DRT' in OA No.94 of 1999. Though OA was filed by Oriental Bank of Commerce, on its merger, it came to be known as Punjab National Bank now. Since the original borrower defaulted in making payment as per the agreed terms, Recovery Proceedings came to be initiated by the Certified Creditor. The present petitioner was neither a borrower nor a guarantor. He claimed to have purchased a property consisting of the third floor of Kashiparekh Construction Private Limited, 29 Adarsh Society, Navrangpura, Ahmedabad from M/s Kashiparekh's Construction Private Limited – a Certified Debtor by payment of Rs.11,000/- initially on 14.12.1998 and a further sum of Rs.21,000/- on 12.06.1999. An agreement by and between original borrower and the petitioner, as claimed by the petitioner, entered into dated 22.07.1999 and on the same date, an allotment letter was issued followed by a possession letter on 28.07.1999. Thus, the present petitioner claimed to be in exclusive possession of the said property. The respondent – Bank published a notice in Gujarat Samachar on 14.08.1999 stating that the Certified Debtors had created a negative lien over the said property. According to the petitioner, the property was never mortgaged by the Certified Debtors and there is no existing charge over the property.



[2.2] Therefore, the petitioner filed an objection Exhibit – T/75 before the Recovery Officer to declare that the property was free from encumbrances or charges. The respondent – Bank filed a Reply denying the averments made in the claim petition. It was contended that the petitioner has not paid any sale consideration towards the purchase of the property and no title was conveyed to him. The Recovery Officer, vide order dated 15.05.2008, rejected the claim made by the petitioner.

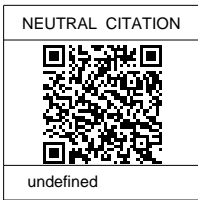
[2.3] Being aggrieved by the order of Recovery Officer, petitioner preferred an appeal before the Presiding Officer, DRT-I, Ahmedabad under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, now known as Recovery of Debts and Bankruptcy Act, 1993 w.e.f. 01.12.2019 (hereinafter referred to as ‘the Act, 1993’). The DRT-I, Ahmedabad, vide judgment and order dated 16.08.2013, allowed the Appeal No.9 of 2009 preferred by the petitioner under Section 30 of ‘the Act, 1993’ and allowed the prayers A, B and C made in the Appeal memo, essentially quashing and setting aside the order dated 15.05.2008 passed by the Recovery Officer in Recovery Proceedings No.388 below Exhibit T/75. At the same time, attachment over the property in question i.e. third floor and terrace right in building known as “Shailabh”, came to be attached on the ground as recovery certificate as well as judgment of OA are silent regarding property in question, Recovery Officer cannot attach or sale the property in question owned by the present petitioner – original appellant before the Presiding Officer, DRT-I, Ahmedabad in Appeal No.9 of 2009, merely on the strength of assumption or claim made by the certificate Holder Bank that valid mortgage was created by the defendants.

[2.4] However, the respondent – Bank, being aggrieved,



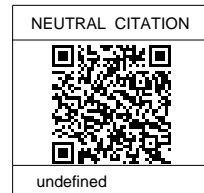
challenged the said order by way of an appeal No.78 of 2014 before the 'DRAT'. The 'DRAT', vide judgment dated 13.03.2024, allowed the appeal and quashed the judgment and order passed by the DRT-I, Ahmedabad in Appeal No.9 of 2009 and restored the order passed by the Recovery Officer, dismissing the claim put-forth by the petitioner herein. It is against that order of 'DRAT', present petition is filed.

[3] Heard Mr. Vishwas K. Shah, learned advocate for Ms. Bhavna V. Shah, learned advocate for the petitioner. According to him, petitioner purchased third floor of the premises from the Certified Debtor since 1998 and towards the said purchase, on two occasions, Rs.11,000/- as also Rs.21,000/- were paid through cheque dated 05.11.1998 and 20.02.1998 and the receipts thereof appear to be issued on 14.12.1998 and 12.06.1999 respectively. Drawing attention of the Court to Agreement, at page – 25 of the compilation, it is submitted that petitioner entered into an agreement vide Agreement dated 22.07.1999 and unit no.3 on third floor at "Shailabh" came to be allotted on 27.07.1999. According to his case, possession thereof was also handed over to him. In support of his claim, he has produced his share certificate bearing No.42, claimed to have been issued on 31.01.2003 for third floor under the signature of the President / Secretary of Om Shailabh Owners Association. He has further submitted that for the property on the third floor, Bodakdev Gram Panchayat issued a property tax bill, copy of which is produced at page No.58, dated 24.09.2003. It is further submitted that on 26.09.2003, the said property tax was paid with the Bodakdev Gram Panchayat for the third floor. Therefore, it is submitted that he being the owner of the property on third floor as also the terrace, without issuing any notice to him, no attachment order could be passed, either by the Recovery Officer or by any Authority.



[3.1] Drawing attention of the Court to Section 29 of 'the Act, 1993', it is submitted that provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962 shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income tax. Drawing attention of the Court to Rule 11, more particularly sub rule 3(a), of Second Schedule of Income Tax Act, it is submitted that petitioner is supposed to object to the attachment or sale of the property and he should show to the authority some interest in or property was possessed of at the date of service of the notice issued under the Schedule to pay the arrears. Therefore, it is submitted that by producing the documents before the Recovery Officer, DRT-I, Ahmedabad as also DRAT, Mumbai, documents were produced to show that petitioner had some interest in or was possessed of, the property in question at the date of service of the notice issued under the Second Schedule, as aforesaid. Despite that, according to his submission, all authorities have failed to consider his objection and the case pleaded.

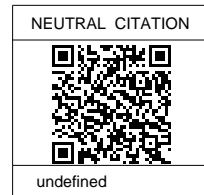
[3.2] Drawing attention to Sub Rule (1) of Rule 11 of second Schedule, as aforesaid, it is submitted that Recovery Officer was supposed to investigate the claim or objection made to the attachment by the petitioner. Drawing attention to Sub Rule (2), it is submitted that during the time claim is being investigated into, even sale is required to be postponed of the attached property. On the aforesaid submissions, it is vehemently submitted that when DRT-I, Ahmedabad in an Appeal under Section 30 of 'the Act, 1993' quashed and set aside the action of Recovery Officer, as an appellate authority, 'DRAT' could not have allowed the Appeal preferred by the certificate Holder Bank. Therefore,



he has submitted that this petition be admitted and allowed.

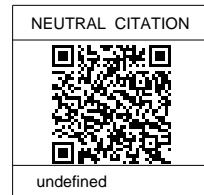
[4] Having heard the learned advocate for the petitioner and going through the memo of petition as also the document annexed with it as also certain documents produced before us at the time of hearing, it emerges that though this petition is styled as petition under Articles 226 and 227 of the Constitution of India, essentially it would be a petition under Article 227 of the Constitution of India. Even if it is presumed that a writ of certiorari, though not asked, is prayed for, when there are concurrent findings on facts by two authorities, this Court would be very slow in entertaining the petition challenging those orders.

[5] Though DRT-I, Ahmedabad has allowed the appeal preferred by the petitioner under Section 30 of 'the Act, 1993', there appears total non application of mind in allowing the same. Though detail scrutiny of the documents produced by the petitioner is not required or necessary in this petition, let us refer the same as it is annexed and heavy stress is laid on them. First of all, let us examine the order passed by the 'DRT' in OA No.94 of 1999 which was filed against the original borrower, maybe based on consent terms, however, it specifically refers that certificate Debtor i.e. original borrowers agree that the mortgage / charge over the land and office premises owned and allotted or to be allotted by it and the same including the office premises / unit to be constructed on the third floor as well as the terrace right shall stand released on the bank recovering the full amount under the consent terms. That is very suggestive of the fact that not only the entire land and building including existing structure and structure to be made thereon i.e. third floor or even terrace was to be released from the mortgage / charge only on certificate Debtor making payment as per



consent terms, it is nobody's case that certificate Debtors have ever paid the amount as agreed. The said judgment and order based on consent terms referring to the aforesaid clause came to be passed on 30.03.2000.

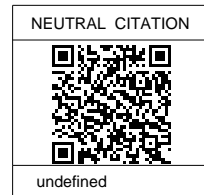
[6] However, the advertisement, at page No.43, which is produced by the petitioner himself which is dated 11.08.1999, maybe published in newspaper of next day thereafter or some other day subsequent thereto, it appears that the entire property is mortgaged to the certificate Holder Bank and therefore, DRT-I, Ahmedabad had enjoined to transfer or assign the same to anyone else, that too, in the year 1999. However, petitioner claims to have entered into an agreement on 22.7.1999, first page of which deceptively showing a seal of some Office of the Superintendent, rest is not readable, polytechnic which may suggest that it is part of some registered document as Office of Registrar was then situated in the Polytechnic area. However, in the entire agreement only first page bears that stamp and no other pages over the same has such stamp. Not only that, no registration number or date thereof is anywhere mentioned and no signature of any registering authority is finding place in it. Over and above that, it appears to be on 20 rupees stamp, not the stamp paper but adhesive stamp is affixed thereon. Surprisingly, the said agreement does not reflect any consideration in it for the purchase of property to be made. Though it is claimed that in the year 1998 by way of two different receipts Rs.11,000/- and Rs.21,000/- were paid towards the said consideration, is nothing but merely an eye-wash. If two receipts are seen, those receipts appear to have been issued as a deposit and not any consideration paid towards anything or any booking amount. Though we may not further doubt that it is payment made by cheque but no



certificate that cheques have been debited from his account, is shown to any Court or authority. Suffice it to say that the said agreement is only a paper agreement between two parties alone and not before any authority, which can be created at any time applying even back date.

[7] Though petitioner has claimed that he has been allotted unit No.3 on third floor, vide allotment letter dated 22.07.1999, before the Court he claims that entire third floor is purchased by him under the said agreement referred to here-in-above. However, so-called allotment letter at page No.41 refers about unit No.3 only on the third floor, that too, in the year 1999 on a request and application for allotment made at the instance of the petitioner. Though no application for allotment is produced before the Court, for the present controversy we may not enter into it in a great detail. One another letter at page No.42 said to have been issued by the original borrower i.e. certificate Debtor claiming that it has done the construction of different types of shops and units at the land in question which allotted the shop No.2 on ground floor to the petitioner and also he is said to have acquired shop No.1 on the ground floor and the entire third floor in the same building, which bears no date.

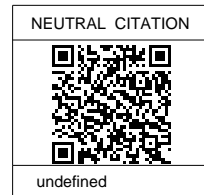
[8] Not only that, petitioner has produced at page No.57 the share certificate bearing No.42 said to have been issued on 31.01.2003, which refers about third floor which may be the document of being member of Non-Trading Corporation and/or a Cooperative Society. As such, the said share certificate appears to be forged one. If one may have look at the round seal of the owners association, it refers about not the “Om Shailabh Owners Association” it spells as “Om Shilabh Owners Association” in the share certificate of the Non-Trading Corporation,



whereas the copy of share certificate for shop No.2 which was purchased by the petitioner, does not reflect said mistake in copy for other share certificate issued on 31.07.2000. Not only that, even so-called agreement is also referring about unit No.3 on the third floor without any consideration even mentioned in it, whereas as on date, claim is made that of ownership of the entire third floor. That agreement also appears to have been subsequently created with a view to help the certificate Debtor, for whom petitioner has acted as Contractor to construct the said building.

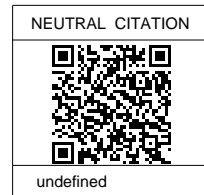
[9] Over and above that the property tax bill of the Panchayat and the payment made and the receipts for the payment made towards it is produced of the year only 2003-2004 and thereafter, no property tax bill or receipt is ever produced of any Panchayat. However, in an Additional document shown to the Court, which shows receipt of payment made for some property in “Om Shailabh Owners Association” in the name of Lalitkumar C. Rao for the years 2008-09, 2009-10 and 2010-11 issued by Ahmedabad Municipal Corporation, which never reflects whether the said bill is for shop No.2 which was purchased by him and for the entire third floor as claimed by him.

[10] As rightly held by the DRAT, Mumbai that the Presiding Officer, DRT-I, Ahmedabad has not delved deep into the documents produced and when mortgage was never challenged by the original borrower, petitioner who claims to have purchased the property based on agreement which is nothing but merely an eye-wash subsequent to the injunction ordered by the DRT, which is very clear from even consent terms entered into between the original borrower and the Bank that the mortgage / charge is to be released only after certificate Debtor



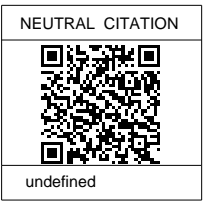
pays the entire amount as agreed in consent terms. The said order of the DRT is of the year 2000. Therefore, so called share certificate dated 2003 is subsequent to the mortgage made by the original borrower of the entire property and subsequent to the injunction granted by the 'DRT' and therefore, that certificate also which bears a false rubber stamp, is nothing but a creation of a document to stake claim of subsequent purchase with a view to help the original borrower for whom he worked as contractor to construct the building. Though petitioner was asked to produce the original of the agreement, xerox copy of which is annexed with the petition at page No.25, he is unable to produce the same otherwise it would have revealed so many other facts. Therefore, based on such false and forged documents, a wrong claim is made by the petitioner with a view to help original borrower and certificate Debtor which can never be countenanced, that too, in a petition under Articles 226 and 227 of the Constitution of India challenging the orders of Recovery Officer and DRAT, Mumbai.

[11] So far as submission in respect of staking claim belatedly, a justification is sought for with the help of Rule 2 of Second Schedule of Income Tax Act that it is only after the recovery officer ordered the attachment and issued the notice, he came to know about it and therefore, he stakes claim in the year 2006. However, since the petitioner was having shop No.2 in that very building since long and the entire property was injunctioned as also attached, it cannot be presumed that petitioner was not aware about any order of attachment of entire building, more particularly, third floor and terrace thereof. Furthermore, Recovery Officer under that Rule 11 was supposed to investigate the claim or objection and not adjudicate the so-called right or claim of



ownership. Though he might not happily inquired into the same, that will not give any right to the petitioner to stake a claim on those forged documents of share certificate which is issued in the year 2003 i.e. after the order or mortgage / charge as also the order of attachment. As per sub rule 3 of Rule 11 of the Second Schedule under the Income Tax Act, the petitioner should have adduced evidence to show that he had some interest in or was possessed of the property in question. Even he is not able to show us that on the basis of which evidence, he claims not only some but any interest or was he possessed of the property in question. Thus, even Rule under the Income Tax Act which are made applicable as far as possible under Section 29 of the Act cannot be pressed into service whereas Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act, 2002') and 'the Act, 1993' are code in themselves so far as property in which any security interest is created and governed by those provisions where not only the attachment even the possession of which is availed through the said provisions without resorting to the rules and any rules which are not as far as practical to be followed like 'the Act, 2002' as also 'the Act, 1993' and therefore, reliance placed on that provisions appears to be misconceived.

[12] Since the claim is made based on such forged document as referred to here-in-above which has no support and even the construction of the third floor and even terrace was not available on the date on which original borrower consented for the payment to be made which he defaulted, there is no question of construction of a third floor and having booking of any unit, apart from entire third floor, over it and even any right on a terrace. Thus, this petition having no substance in it, we deem it fit to reject the same with cost quantified to be Rs.25,000/-



to be paid with the Gujarat State Legal Services Authority within a period of four (04) weeks from today.

(UMESH A. TRIVEDI, J.)

(CHEEKATI MANAVENDRANATH ROY, J.)

Lalji Desai