

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5248 OF 2018
(Arising out of SLP (C) No.32031/2016)

THE AUTHORISED OFFICER,
STATE BANK OF INDIA

....Appellant(s)

:Versus:

M/S. ALLWYN ALLOYS PVT. LTD. AND ORS.Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. The judgment and order dated 30th August, 2016 of the Division Bench of the High Court of Judicature at Bombay in Writ Petition No.7480 of 2014, is assailed in this appeal, whereby the High Court without formally setting aside the order passed by the Debts Recovery Appellate Tribunal, Mumbai dated 20th November, 2013 in Appeal No.273 of 2013

connected with M.A. No.886 of 2013, disposed of the writ petition with liberty to respondent Nos.5 & 6 (writ petitioners) to approach the competent forum for adjudication of their right, title and interest in respect of a flat/apartment, i.e. Flat No.C-203 on the Second Floor of Blue Heaven Apartment, C-Wing, Rebellow Road, Bandra (West), Mumbai, which was mortgaged to the appellant Bank by the directors of respondent No.1 Company by way of an equitable mortgage.

2. The Debts Recovery Tribunal (“DRT”) as well as the Debts Recovery Appellate Tribunal (“DRAT”) after examining the plea taken by respondent Nos.5 and 6 came to hold that the document styled as Memorandum of Understanding dated 13th March, 2011, relied upon by respondent Nos.5 and 6, was subsequently created after the equitable mortgage and moreover it was an unregistered document which would not confer any right, title and interest in their favour in the said flat. Further, the share certificate of the said flat has already been transferred by the Society in the name of the directors of respondent No.1 Company i.e. Mrs. Zahoor K. Dhanani, Mr.

Karim K. Dhanani and Mrs. Habika K. Dhanani (respondent Nos.2, 3 and 4 herein). It is also held that the Society has contemporaneously recorded the factum of mortgage created by the said respondents in respect of the subject flat in favour of the Bank; and that the said respondents were not coming forward to deny the stated mortgage. On the basis of the documentary evidence, DRT as well as the DRAT concurrently held that it is well established that the said respondents had legitimately created an equitable mortgage in respect of the said flat in favour of the Bank, which has had security interest upon the said flat. On the other hand, respondent Nos.5 and 6 (writ petitioners) have failed to file any documentary evidence to establish their subsisting title over the subject flat. On that basis, the relief claimed by respondent Nos.5 and 6 (writ petitioners) to restrain the Bank from proceeding with the auction of the subject flat stood rejected.

3. This decision of the DRAT dated 20th November, 2013 was assailed by respondent Nos.5 and 6 (writ petitioners) by way of Writ Petition No.7480 of 2014. The Division Bench of

the High Court noted the plea of the writ petitioners and opined that the question regarding the right, title and interest or marketable title of the writ petitioners or any interest that could have been parted by respondent Nos.2 to 4 under the so called mortgage, involved disputed facts and would require evidence and a full-fledged trial. After so noting, the High Court went on to observe that with a view to give full opportunity to the parties to bring on record the relevant facts in terms of the pleadings and for full and complete adjudication of the matters in issue, it is apposite to give liberty to the writ petitioners to contest the matter before a proper forum where all the issues could be agitated. For, indisputably, respondent No.5 (writ petitioner No.1) is in physical possession of the stated flat. The High Court proceeded to pass the following operative order in the said writ petition:

“6] Accordingly, we dispose of the writ petition with the following directions:

a] Period of 8 weeks is granted for the writ petitioners to approach proper forum to get adjudication of the rights of the writ petitioners as contended in the writ petition and within the said period of 8 weeks, they shall file and seek

proper interim relief in their favour. Till expiry of 8 weeks, the 1st respondent bank shall not proceed with the matter in terms of the order obtained by them before Debts Recovery Tribunal so far as the property in question;

b) Amount of Rs.25 Lacs shall be deposited in an interest earning deposit, by the respondent No.1 bank and profits of the said deposit shall enure to the benefits of the parties, who become successful in the litigation; and

c) No order as to costs.”

4. The Bank has assailed the aforesaid decision of the High Court primarily on the ground that all issues concerning the mortgaged/secured property are required to be decided only by the DRT; and not in any civil proceedings as has been observed by the High Court in the impugned judgment. For, filing of a civil suit in respect of secured assets is barred by law. Secondly, the DRT as well as DRAT have examined the merits of the controversy and justly answered the same against the writ petitioners. The concurrent finding of fact recorded by the said Tribunals is that the writ petitioners have failed to establish any right, title or interest in the subject flat. That finding has neither been disturbed nor is it assailable. According to the Bank, the High Court judgment under appeal is untenable and deserves to be set aside.

5. The contesting respondent Nos.5 and 6 (writ petitioners), however, supported the view taken by the High Court and would contend that it is indisputable that respondent No.5 (writ petitioner No.1) is in physical possession of the subject flat and was entitled to pursue his claim about the right, title and interest in the subject flat in view of the Memorandum of Understanding dated 13th March, 2011, executed between the writ petitioners and respondent Nos.2 to 4 regarding re-sale of the subject flat in their (writ petitioners) favour. The respondent Nos.5 and 6 would also contend that the original share certificate and few receipts of payments made to the Society were still in their possession and that the entries effected in the Society's record to transfer the share certificate in favour of respondent Nos. 2 to 4 are fabricated.

6. After having considered the rival submissions of the parties, we have no hesitation in acceding to the argument urged on behalf of the Bank that the mandate of Section 13 and, in particular, Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (for short, “the 2002 Act”), clearly bars filing of a civil suit. For, no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine and no injunction can be granted by any Court or authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. The fact that the stated flat is the subject matter of a registered sale deed executed by the respondent Nos. 5 and 6 (writ petitioners) in favour of respondent Nos. 2 to 4 and which sale deed has been deposited with the Bank along with the share certificate and other documents for creating an equitable mortgage and the Bank has initiated action in that behalf under the 2002 Act, is indisputable. If so, the question of permitting the respondent Nos.5 and 6 (writ petitioners) to approach any other forum for adjudication of issues raised by them concerning the right, title and interest in relation to the said property, cannot be countenanced. The High Court has not analysed the efficacy of the concurrent finding of fact recorded by the DRT and DRAT but opined that the same

involved factual issues warranting production of evidence and a full-fledged trial. The approach of the High Court as already noted hitherto is completely fallacious and untenable in law.

7. The learned counsel appearing on behalf of the Bank persuaded us to decide the merits of the controversy between the parties but as noted earlier, the High Court has not analysed the same at all but chose to dispose of the writ petition by giving liberty to the writ petitioners to pursue their remedy before a proper forum. The respondent Nos.5 and 6 (writ petitioners) would, however, contend that crucial aspects have been glossed over by the DRT and DRAT including the effect of admitted position that respondent No.5 (writ petitioner No.1) is in possession of the subject property and also having custody of the original share certificate and few receipts issued by the Society. In these circumstances, we deem it appropriate to relegate the parties before the High Court by setting aside the impugned judgment and leaving all questions open, to be decided by the High Court on its own merits and in accordance with law.

8. We find force in the submission made on behalf of the Bank that the High Court could not have directed the Bank to deposit Rs.25 Lacs in an interest earning deposit and the profits of the said deposit to enure to the benefit of the successful party. Such a direction, in our view, was wholly uncalled for.

9. Be that as it may, since we are setting aside the impugned judgment of the High Court, we direct that Writ Petition No.7480 of 2014 shall stand restored to the file of the High Court to its original number for being decided on its own merits and in accordance with law. As the proceeding for recovery is pending since 2010, concerning the equitable mortgage created by respondent Nos. 2 to 4 in respect of the subject flat and having failed to repay the loan amount, which is quite substantial, we request the High Court to dispose of the writ petition expeditiously, preferably by the end of July, 2018.

10. The appeal is allowed on the above terms, with no order as to costs.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

**New Delhi;
May 17, 2018.**