

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

% *Date of Decision: November 30, 2009*

+ **L.P.A. 843/2004**

KAMLESH SHARMA Appellant
Through: Mr.Ashok Bhalla, Advocate.

versus

DELHI FINANCE CORPORATION & ORS. Respondents
Through: Mr.Sanjay Poddar, Advocate for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 14.7.2004 the writ petition filed by the appellant has been dismissed.

2. It is not in dispute that vide deed of mortgage dated 19.2.1992 respondent No.1 sanctioned loan in sum of Rs.7,19,250/- to the appellant to be given by way of loan and stipulated therein that the loan would bear interest @18% per annum with further interest to be paid

@4% per annum in case there was a default in repayment of the loan.

3. It is also not in dispute that on 3.9.1992 further loan in sum of Rs.1,01,000/- was sanctioned and in respect thereof another deed of mortgage was executed as per which interest agreed to be paid was 20% with further 4% interest in case of default.

4. It is also not in dispute that the amount under the mortgage deeds had to be advanced in installments contingent upon the appellant performing her reciprocal obligations and since she defaulted, the actual loan disbursed to her was in sum of Rs.5,46,000/-. Repayment had to commence with effect from 1.2.1994 but was re-scheduled with effect from 1.5.1994. The very first repayment was defaulted. The loan was recalled and on 6.6.1994 the appellant was directed to pay back the entire loan with interest which had accrued. She was informed that action would be taken under Section 29 of the State Financial Corporation Act 1951. The appellant agreed to repay the entire loan and issued a post-dated cheque which was replaced with a cash deposit on 16.6.1994. The second cheque issued by her in sum of Rs.1,50,962.30 was dishonoured. She deposited Rs.1 lakh

in cash on 27.9.1994 and tendered another post-dated cheque in sum of Rs.51,000/- which was dishonoured and on 9.11.1994 she deposited Rs.50,000/- in cash.

5. The loan which was recalled was never sought to be rescheduled and to enforce its right, respondent No.1 invited bids for sale of the mortgaged property. Respondent No.5 gave the highest bid in sum of Rs.9,35,000/- which was communicated to the appellant informing her that if she could get a bid higher than Rs.9,35,000/-, respondent No.1 would accept the same. The appellant never offered to bring a buyer who was willing to pay more than Rs.9,35,000/-. The result was that the bid of respondent No.5 was accepted. On receipt of Rs.9,35,000/- from respondent No.5 the necessary sale certificate was issued and possession handed over to respondent No.5 since the mortgaged assets were taken possession of by respondent No.1.

6. Since alleging default committed by the appellant, Delhi Finance Corporation (DFC) i.e. respondent No.1 had proceeded to recover the loan which was advanced, the appellant filed a civil suit seeking injunction against DFC restraining it from taking possession of the mortgaged property and sell the same to realize the loan.

7. On 31.5.1996, an interim order was granted in favour of the appellant requiring her to pay 50% of the amount due and payable and as claimed by DFC. She did not do so and withdrew the suit unconditionally. Thereafter, the appellant filed the writ petition in question raising various issues pertaining to the proposed action of DFC to sell her property.

8. It may be noted at the outset that in the writ petition it was not questioned that the interest charged by DFC was excessive. It was nowhere pleaded that being a lady, under some scheme of the Government, the petitioner was entitled for loan to be disbursed at a rate of interest less than what was stipulated in the two mortgage deeds.

9. In the writ petition various grievances were urged against DDA pertaining to encroachments in the area in respect whereof the appellant alleged being rendered incapacitated to perform her obligations under the mortgaged deeds.

10. Needless to state, said issue raised in the writ petition had no concern with the enforcement of its right by respondent No.1; the right being under the deed of mortgage and the State Financial Corporation Act 1951.

11. The writ petition suffered a dismissal vide order dated 14.7.2004.

12. Two pleas were raised before the learned Single Judge. The first was that the appellant was not a defaulter when the property was sold and secondly that DFC could not sell the property without paying 50% unearned increase to DDA as the subject property was held under a leasehold tenure through DDA which stipulated that in case of sale 50% unearned increase would have to be paid to DDA.

13. With respect to the first plea urged, learned Single Judge has returned a finding that the appellant became a defaulter from day one i.e. even in respect of the amount which was disbursed to her she returned not a penny when the notice under Section 29 of the State Financial Corporation Act was issued by DFC to the appellant. Though not expressly stated in the impugned order, it is apparent that since the loan had been recalled due to defaults, the entire amount due and payable in the month of June 1994 has been treated by the learned Single Judge as the amount which was to be repaid.

14. Holding that the writ petitioner was a defaulter the learned Single Judge held that DFC would be entitled to sell the mortgaged assets.

15. With respect to the amounts which were paid by the appellant from time to time after the loan was recalled, the learned Single Judge has held that after adjusting its dues from the sale proceeds and giving credit for the amounts paid by the appellant, if any surplus is in the hand of DFC, the same needs to be refunded and for which the appellant can file a civil suit.

16. The plea that without paying 50% unearned increase to DDA the property could not be sold has been repelled with a finding that issue of payment of unearned increase has to be post sale for only then can unearned increase be determined.

17. The finding pertaining to the second plea returned by the learned Single Judge is absolutely correct and we simply reiterate the same.

18. The plea of learned counsel for the appellant that having paid money to DFC in installments commencing from the month of June till the month of November 1994, the appellant ceased to be a defaulter has to be rejected for the reason the same is premised as

if the loan stood and was repayable in installments. The appellant is treating the payments made by her as return of the equated monthly installments. The plea ignores the fact that with the default committed in May 1994, the entire loan was recalled. Thus, the full amount advanced together with interest thereon became payable in June 1994. The appellant never requested for the loan to be restored and made repayable in installments.

19. Thus, the learned Single Judge has returned a correct finding that when the property was put to sale, even after adjusting the amounts paid by the appellant, she was a defaulter.

20. It is apparent that the appellant was not guided properly. Had she tendered the amounts with penal interest and simultaneously made a request to re-schedule the loan, probably she would have got the desired relief. But she did not do so. The result was that the loan which was recalled on default being committed continued to remain outstanding and hence due and payable.

21. Respondent No.1 has complied with the requirement of law inasmuch as the fair market value of the mortgaged property was ascertained by inviting offers

and the highest bid submitted by respondent No.5 was duly intimated to the appellant who was clearly told that if she brought a buyer who was willing to pay more than what was offered by respondent No.5, respondent No.1 would be more than willing to accept the said amount.

22. Thus, there is no infirmity in the sale of the mortgaged asset.

23. We concur with the view taken by the learned Single Judge that after adjusting the amount due and payable with reference to the amounts paid by the appellant as also the money paid by respondent No.5 as also whatever has been paid to DDA towards unearned increase, if anything remains to be paid to the appellant, she can recover the same by filing a suit.

24. We may note that an attempt has been made to urge that the appellant applied for the loan as a woman entrepreneur and was entitled to interest being charged at a lower rate.

25. The plea is meritless for the reason the rate of interest between the parties has been stipulated in the registered mortgage deeds and as per law requires to be paid at the agreed rate of interest. If the appellant had a problem with the rate at which the interest was charged

to her, she ought to have raised the issue when the mortgage deeds were drawn up.

26. We find no merit in the appeal. The appeal is dismissed but with a direction to respondent No.1 to forward a statement of account to the appellant showing how the respondent No.1 has appropriated the amounts received from the appellant as also the amount realized upon sale of the mortgaged assets and if some money is lying surplus with the respondent No.1, the same be refunded to the appellant within 8 weeks from today. Needless to state, if the appellant is aggrieved with the adjustment given by respondent No.1, remedy as per law would be available to her. We clarify that the respondent No.1 would be entitled to charge interest at the rate specified in the deeds of mortgage and said issue stands closed between the parties.

27. No costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

NOVEMBER 30, 2009
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