

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

Date of decision: 21st April, 2011.

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W.P.(C) 2322/2008

RAM MANI PANDAY

..... Petitioner

Through: Petitioner in person.

Versus

PNB HOUSING FINANCE LTD. & ANR.

..... Respondents

Through: Mr. R.K. Dhawan, Mr. Rahul Gaur &
Mr. Pulkit Sachdeva, Advocates for
PNB Housing Finance Ltd.
Mr. Ajay Arora & Mr. Kapil Dutta,
Advocates for MCD.
S.I. Hukum Singh, P.S.-Seemapuri.

AND

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CONT.CAS(C) 226/2008

RAM MANI PANDAY

..... Petitioner/Relator

Through: Petition in person.

Versus

GURMEET SINGH & ANR.

.... Respondents/Alleged contemnors

Through: Mr. R.K. Dhawan, Mr. Rahul Gaur &
Mr. Pulkit Sachdeva, Advocates for
PNB Housing Finance Ltd.
Mr. S.N. Gupta & Vivek Singhal,
Advocates for R-2.
Mr. Ajay Arora & Mr. Kapil Dutta,

Advocates for MCD.

AND

+ **CONT.CAS(C) 757/2009**

RAM MANI PANDAY Petitioner/Relator

Through: Petitioner in person.

Versus

SHIV KUMAR AND ORS ... Respondents/Alleged contemnors
Through: Mr. R.K. Dhawan, Mr. Rahul Gaur &
Mr. Pulkit Sachdeva, Advocates for
PNB Housing Finance Ltd.
Mr. Ajay Arora & Mr. Kapil Dutta,
Advocates for MCD.
S.I. Hukam Singh, for SHO-
Seemapuri.

AND

+ **CONT.CAS(C) 770/2010**

RAM MANI PANDAY Petitioner/Relator

Through: Petitioner in person.

Versus

SHIV KUMAR & ORS Respondents/Alleged contemnors
Through: Mr. R.K. Dhawan, Mr. Rahul Gaur &
Mr. Pulkit Sachdeva, Advocates for
PNB Housing Finance Ltd.
Mr. Ajay Arora & Mr. Kapil Dutta,
Advocates for MCD.
Mr. Amit Mehra, Adv. for Mr. Ajay
Verma, Adv. for DDA.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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|----|---|----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The writ petition was filed seeking to restrain the respondent no.1 M/s P.N.B. Housing Finance Limited from taking any action under the Securitization and Reconstruction of Financial Assests and Enforcement of Security Interest (SARFAESI) Act, 2002 with respect to the property constructed on Plots no.D-1 & D-2, Dilshad Colony, Delhi – 110 095 and for quashing all actions already taken and from visiting, trespassing or damaging the said property. The petitioner also claims compensation for the damage caused to him.

2. The petition came up before this Court first on 25th March, 2008 when the Judge was not holding the Court and the same was adjourned to 21st

May, 2008. The petitioner filed an application for early hearing and which was listed on 2nd April, 2008 when early hearing was allowed and the writ petition taken up for hearing and notice thereof issued and vide *ex parte* order a Court Commissioner appointed to visit the property and to report on occupation thereof and *status quo* qua title, possession and construction of the property ordered.

3. It is the case of the respondent no.1 that the petitioner without intimating the respondent no.1 which had been served advance copy of the writ petition, got the hearing of the writ petition preponed to obtain the *ex parte* order aforesaid. It is further the case of the respondent no.1 that the petitioner on 2nd April, 2008 misrepresented to this Court that the respondent no.1 had after the filing of the present writ petition taken law into its own hands and illegally and forcibly sealed the property with the goods of the petitioner inside. The respondent no.1 on the basis of documents since filed has shown that in pursuance to the proceedings initiated under the SARFAESI Act it had taken possession of the property on 15th January, 2007 and had auctioned the same and executed and registered the sale

certificate in the name of the highest bidder M/s Bright Buildwell (P) Ltd. on 31st March, 2008 and on the same day delivered actual physical possession of 26 flats in the property to the said purchaser and symbolic possession of the remaining 06 flats in the property which had been unauthorizedly occupied by the petitioner and his family members to the said purchaser. It is the case of the respondent no.1 that the petitioner, though in the know of all the said facts, concealed the same in the present petition and from this Court on 2nd April, 2008.

4. Be that as it may, the petitioner who had originally impleaded the respondent no.1 as the sole respondent; thereafter impleaded the said M/s Bright Buildwell (P) Ltd. as respondent no.2 which has also filed a counter affidavit to the petition.

5. The petitioner appearing in person and the counsel for the respondent no.1 and the counsel for the respondent no.2 have been heard.

6. The writ petition is lengthy, without any clarity, full of legalese, not disclosing the facts in *seriatim*. The petitioner appearing in person has been unable to do any better during the hearing.

7. The counsels for the respondents no.1&2 have contended that the 32 flats in the property were mortgaged by 32 persons claiming to be purchasers thereof, with the respondent no.1 and the petitioner was the guarantor in all the 32 transactions; that the petitioner now on the basis of unregistered Agreement to Sell dated 22nd December, 2001 claims title to the flats and denies that he had stood as the guarantor; that the Agreements to Sell dated 22nd December, 2001 relied upon by the petitioner and under which the petitioner claims to have been put into possession of the flats cannot be relied upon, being required to be compulsorily registered vide the Registration (Amendment) Act, w.e.f. 24th September, 2001 and being unregistered. It is further contended that with respect to the 06 flats unauthorizedly occupied by the petitioner, suits for possession have been filed and are pending. It is further contended that the remedy if any of the petitioner is under Section 17 of the SARFAESI Act by way of appeal to the

Debt Recovery Tribunal against the action of the respondent no.1 of sale of property to the respondent no.2 and the present writ petition is misconceived and liable to be dismissed.

8. The challenge by the petitioner to the action of the respondent no.1 under the SARFAESI Act insofar as can be determined from the pleadings is on the ground, that the respondent no.1 having itself labeled the transaction of mortgage of the flats to itself as forged and fabricated, is not entitled to take action under the SARFAESI Act with respect thereto. The petitioner in this regard relies upon the order dated 30th July, 2004 of the Managing Director of the respondent no.1 sanctioning prosecution of Shri D.S. Rawat, the then Branch Incharge of the respondent no.1. The said Sanction Order records that it was the case of the respondent no.1 that Shri D.S. Rawat the then Branch Manager of the Noida Branch of the respondent no.1 entered into a criminal conspiracy with the petitioner and certain other persons object of which was to cheat the respondent no.1 and cause undue pecuniary loss to the respondent no.1 to the tune of ₹ 288.80 lacs and corresponding gain to self and the alleged co-conspirators. The charge of the respondent

no.1 against its employee Shri D.S. Rawat was that he sanctioned and disbursed the said ₹.288.80 lacs to 32 borrowers including the petitioner and his wife and stated to be employees of Vigilance to City Crime of which the petitioner was the Dy. Director (Administration), as individual housing loans for the purchase of 32 flats aforesaid constructed by M/s. Sewa Builders and Constructions. The Sanction Order further records that the 32 borrowers were in fact non-existent.

9. The petitioner also relies upon the order dated 13th May, 2010 of the Addl. District Judge, Delhi rejecting the plaint in the 32 suits filed against the 32 borrowers aforesaid and the petitioner herein on the ground *inter alia* that since it was the case of the respondent no.1 itself including in the FIR/prosecution lodged pursuant to the aforesaid Sanction Order that the borrowers were non-existent and the documents had been forged and fabricated, they could not on the basis of such forged and fabricated documents maintain a suit for recovery of money due under the said documents and the remedy if any of the respondent was to file a suit for recovery of damages against the accused persons.

10. The counsel for the respondent no.1 has stated that in an appeal preferred to this Court against the judgment aforesaid of the Addl. District Judge, the operation thereof has been stayed.

11. The petition also extensively relies upon the preliminary reports in various prosecutions/complaints made by the respondent no.1 and by the petitioner against the respondent no.1 and its officials.

12. No Court/Fora till now has returned any finding qua the documents of borrowing and mortgage with the respondent no.1. It is only the case/charge of the respondent no.1 that upon being unable to recover the monies advanced, its investigation shows the borrowers to be non-existent. The Addl. District Judge also, whose judgment in any case is subject matter of appeal has also merely rejected the plaint and not returned any finding of the borrowers being non-existent or of the documents being forged/fabricated. It thus today cannot be said that the respondent no.1 could not vis-à-vis the said property claim itself to be a secured creditor or could not have taken the action under the SARFAESI Act.

13. Else, the writ petition entails highly disputed questions of fact required to be established by leading evidence. The Apex Court in ***Mardia Chemicals Ltd. v. Union of India*** II (2004) BC 397 (Supreme Court) in para 51 noticed that the remedy of a Civil Suit may be available when fraud is alleged. Else, the SARFAESI Act is a complete Code and the remedy of the petitioner if aggrieved from any action is thereunder only and cannot be permitted by way of this writ petition. The said disputed questions of fact are in any case pending adjudication before several Foras as aforesaid. Moreover, it is not a case where the petitioner can claim to be totally outside the transaction. It is the case of the respondent no.1 that the petitioner was very much a part of the transaction of disbursement of loan with respect to 32 flats on the said property and is the brain behind the transaction intended to cause damage to the respondent no.1

14. I intentionally refrain from commenting on the other factual controversy and which may otherwise prejudice the other remedies if any availed by the petitioner. The writ petition is therefore found to be without any merit.

15. Cont.Cas(C) 226/2008 has been filed by the petitioner/Relator against the Branch Manager of the respondent no.1 and the Director of the respondent no.2 averring that they have defaced and damaged the property inspite of order dated 2nd April, 2008. Notice thereof was issued. Directions thereafter were sought in the said contempt petition against the MCD also and several other Directors of the respondent no.2 impleaded. Needless to state that the allegations have been denied.

16. Cont.Cas(C) 757/2009 has been filed against the Directors and officers of both the respondents as well as against Police officials alleging that they had after 2nd April, 2008 trespassed into the property and got sale deeds registered inspite of the order of *status quo*. No notice of the same has been issued till now.

17. Cont.Cas(C) 770/2010 has been filed with respect to the respondent no.2 having allowed various other persons into possession of the flats inspite of the order of *status quo*. Notice thereof has not been issued as yet.

18. In view of the fact that the allegation against the petitioner is of having duped the respondent no.1 of public monies to the extent of ₹ 288.80 lacs, this Court in the exercise of its discretionary contempt jurisdiction does not deem it appropriate to at the instance of the petitioner enter into any inquiry as sought. Moreover, the nature of the averments in the contempt cases is such that the same will necessarily entail factual inquiry and it is not deemed expedient to conduct the same when the writ petition itself has been dismissed and the petitioner relegated to appropriate remedy. Yet further, the interim order of which contempt is alleged was issued when respondent no.1 was the sole respondent and there is no order extending the same to the respondent no.2, who since prior to the said interim order, is the purchaser in possession of the property.

Accordingly, the writ petition as well as all the contempt petitions are dismissed with no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

21st April, 2011
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