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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision : 27.09.2011

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WP (C) No.4186 of 2011

DILIP KUMAR SAHA

...PETITIONER

Through: Mr. Ashok Kumar Tiwari, Advocate
with Petitioner in person.

Versus

PUNJAB NATIONAL BANK & ORS.

...RESPONDENTS

Through: Mr. Vipin Jai, Advocate for
Respondents 1 to 4.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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

SANJAY KISHAN KAUL, J. (Oral)

1. The petitioner, who was a Private Secretary in the Ministry of Finance, filed an application dated 23.12.2003 for seeking a term loan from the respondent-Bank to the tune of ₹13,41,000.00 for the purchase of flat No.39-C, Second Floor, Pocket-I, Rohini, Delhi-110085. The loan was sanctioned and the petitioner executed various documents including the agreement for housing loan dated 11.2.2004 in terms whereof the petitioner was required to pay monthly

installments of ₹11,950.00 in 216 monthly installments. The petitioner also executed a letter of authority of the even date authorizing the respondent Bank to debit the sum of the monthly installments from his bank account.

2. The petitioner defaulted in paying monthly installments which fact was admitted by the petitioner in its letter dated 23.11.2005 seeking indulgence. The bank responded by calling upon the petitioner to adhere to the financial discipline but despite various reminders the account was not regularized. It may be noticed that as per the agreement between the parties, the petitioner was required to deposit the original Conveyance deed with the respondent-Bank as and when it was executed by the DDA in favour of the petitioner. The petitioner put up a story that the original Conveyance Deed had got misplaced and thus sent a certified copy of that document vide letter dated 4.1.2006 in furtherance of the intention of creating an equitable mortgage. Since the original document was not being submitted, the respondent Bank lodged a criminal complaint with the Crime Branch on 14.2.2006. It is the say of the respondent-Bank that during the course of investigation it transpired that the petitioner had even tried to create a mortgage with some other bank which matter is under investigation. The petitioner had also availed of a personal loan with the Punjab National Bank.

3. The respondent-Bank faced with the defaulting account position declared the same as a NPA and decided to proceed against the secured asset under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') as per a notice under Section 13(2) of the SARFAESI Act dated 10.2.2006. There were even subsequent notices addressed including to the guarantors, one of whom happened to be a Joint Secretary in the Ministry concerned. The guarantor also wrote a letter to the Crime Branch requesting for appropriate action against the petitioner for not handing over the original Conveyance Deed to the respondent-Bank as per conditions of sanction and also as per the Tri-Partite Agreement (for short 'TPA') executed between the petitioner, the respondent-Bank and the DDA. The petitioner after objecting to the notice filed an appeal under Section 17 of the SARFAESI Act, being SA No.22/2006. The parties were given opportunity to lead evidence and this SA was dismissed with costs vide order dated 13.9.2007.
4. It is relevant to note that the plea advanced by the petitioner before the DRT was that a mortgage was never created. The respondent-Bank by citing various judgements established that there was intention to create an equitable mortgage and, in fact, the petitioner falsely withheld the original documents after having received the same and set up a false story of the document having been lost. Not

only that, the petitioner sought to set up a case that he would have to pay interest only for a period of one (1) year. So much for the honesty of the petitioner!

5. The order of the DRT dated 13.9.2007 has at length dealt with the issue of the validity of the mortgage and has examined this aspect even from another perspective, i.e., even in the absence of the original Conveyance Deed, the property in question is a secured asset against which the respondent-Bank can proceed taking into consideration the definition of a Secured Asset, Secured Creditor, Secured Debt and Secured Interest as contained in the SARFAESI Act.
6. The order of the DRT was assailed by the appellant before the DRAT in Appeal No.169/2009 where, once again, the principal plea sought to be advanced, as noticed in the impugned order, was of the lack of any proper mortgage having been created arising from non-deposit of the original Conveyance Deed. This aspect again finds discussion in the impugned order with various judgements being referred to on the issue of creation of a valid mortgage. The appeal was dismissed vide impugned order dated 1.2.2011 of the DRAT.
7. It may be noticed that the property in question was auctioned, the auction purchaser has paid the whole amount and the property stands transferred to the auction purchaser though the original Conveyance Deed continued to remain in possession of the petitioner.

8. Before us learned counsel for the petitioner conceded that he is not seeking to challenge the validity of the mortgage but that the respondent-Bank did not act in accordance with law while seeking to enforce its “security interest”. In this behalf it was firstly urged that the account was never declared NPA prior to the issuance of notice under Section 13(2) of the SARFAESI Act. We, however, find from the notice dated 10.2.2006 that there is a clear averment that the account of the petitioner was declared a NPA as per the Reserve Bank of India guidelines. It was next urged that the reason for the account to be declared a NPA has not been given. We find that reference has been made to repeated failures of the petitioner to pay the dues. The call notice issued by the counsel for the respondent-Bank dated 20.10.2005 has, in fact, been referred to in the notice under Section 13 (2) of the SARFAESI Act dated 10.2.2006. Linked to this aspect, a plea was raised that the petitioner deposited an amount of ₹30,000.00 on 30.12.2005, and therefore the account could be declared a NPA only if for three (3) months no payment had been made. The fact remains that the petitioner chose to deposit ad hoc amounts without adhering to the financial discipline of paying the installments due as per the agreement and there were continuous outstandings in the account.
9. Learned counsel for the petitioner also sought to make out a grievance about the mode and manner in which the auction was carried out and

the property was sold to the auction purchaser. A grievance was also made to the effect that his representation under Section 13 (3A) of the SARFAESI Act was not disposed of. Suffice it to say that not only are these without any merit but the petitioner did not even choose to raise any such pleas in the forums below nor have they been discussed in the impugned order. We are examining the legality and the validity of the orders passed by the DRT and the DRAT under Article 226 of the Constitution of India and not as an appellate authority. This is not a second appeal. An order must be perverse or causing grave injustice for this Court to exercise its extraordinary jurisdiction. The facts of the case show that it is the petitioner who has led the respondent-Bank up the garden path by procuring the original Conveyance Deed from the DDA and not having it deposited with the respondent-Bank contrary to the TPA executed between the parties. He initially sought to take advantage of this fact by claiming that there was no mortgage created since the original document was still in his possession. This plea has been repelled by both the forums below not only on the aspect of creation of mortgage but for the fact that the respondent-Bank had a “security interest” in the property so as to invoke the provisions of the SARFAESI Act.

10. The petitioner is stated to be no more in Government service as he has been removed from service in 2007, an action which is stated to be under challenge in an appeal filed by him. Suffice it to say that such a

conduct is not expected of a person who served with the Government of India.

11. We find the writ petition without any merit and hence is dismissed with costs of ₹20,000.00 to the respondent- Bank to be paid within fifteen (15) days.
12. We may notice at the end that the original title documents relating to the property in question have been deposited in this Court as per our directions, the same be released to the respondent-Bank to be handed over to the auction purchaser.

SANJAY KISHAN KAUL, J.

SEPTEMBER 27, 2011
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RAJIV SHAKDHER, J.