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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : February 01, 2012*
Judgment Pronounced on: February 06, 2012

+ LPA No.827/2011

NEELIMA BAGARIA Appellant
Through: Mr.Pallav Saxena, Advocate.

versus

GNCT OF DELHI & ORS. Respondents
Through: Ms.Sangeeta Sondhi, Advocate for R-1&2
Mr.Rishi Agrawala and Mr.Nakul Mohta,
Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. WP(C) No.6877/2009 filed by the appellant was dismissed vide order dated 27.08.2010 with the observation that such appropriate remedies as may be available to the appellant if a civil suit filed by her challenging the assignment deed dated 29.03.2006 was dismissed. The said suit being Civil Suit No.27/2010 (somewhere recorded as bearing No.77/2010) was dismissed on 19.01.2011 on the ground that the appellant did not have the locus standi to question the deed of assignment. The appellant thereafter filed CM No.6843/2011 praying that the writ petition be revived and

disposed of on merits, which was disposed of vide order dated 27.08.2010.

2. The order dated 27.08.2010 reads as under:-

“1. The prayer in this writ petition is for issuance of directions to Respondent No.2 the Collector of Stamp to impound an assignment deed dated 29th March 2006 stated to have been executed by State Bank of India ('SBI') in favour of Standard Chartered Bank ('SCB') Respondent No.3 herein.

2. Learned counsel for the Petitioner has produced a copy of an order dated 19th May 2010 passed by the Debt Recovery Tribunal-I (DRT), Delhi in IA No. 85 of 2010 in OA No. 480 of 2000 (*SBI v. Vishal Global Ltd.*) where in an application filed by Defendant No.2 in the said OA seeking *inter alia* the relief of holding the assignment deed dated 29th March 2006 to be null and void being based upon a fraudulent averment made therein, the DRT directed the parties to approach the Civil Court to decide the issue. Learned counsel further states that pursuant to the above order dated 19th May 2010, Vishal Global Ltd. the Defendant No.2 in OA No. 480 of 2000 before the DRT, has on 29th May 2010 filed a Civil Suit No.27 of 2010 in the Court of Senior Civil Judge, New Delhi for a declaration that the said assignment deed dated 29th March 2006, as well as a subsequent amendment to it on 15th February 2010 is null and void.

3. Obviously the prayer of the Petitioner to the same effect in the present petition would stand satisfied in the event that the above civil suit is decreed. In any event the Civil Court is seized of the issue whether the said assignment deed is to be declared null and void. In the circumstances, this Court does not consider it necessary to continue with the present petition.

4. While disposing of the writ petition, it is clarified that in the event the Civil Suit is dismissed, or the relief of declaring the assignment deed dated 29th March 2006 to be null and void is refused, it would be open to the Petitioner to seek such appropriate remedies as may be available to her in law.

5. The writ petition is disposed of in the above terms.”

3. We may note at the outset that disposing of WP(C) No.6877/2009, the learned Single Judge had held that the issue raised in the writ petition was the same in respect whereof CS No.27/2010 was filed by the appellant and since a Civil Court was seized of the matter, though the suit was filed subsequently, the learned Single Judge was of the opinion that the Court did not consider it necessary to continue with the petition.

4. Obviously, whatever may be the reason for the suit to be dismissed, the appellant could not seek a revival of the writ petition and if she was aggrieved by the reason for which the suit filed by her was dismissed, appellate remedy had to be availed of.

5. She filed CM No.6843/2011 informing that suit filed by her challenging the Deed of Assignment was dismissed and hence prayer made was for the writ petition to be revived.

6. Disposing of CM No.6843/2011, the learned Single Judge held that there was gross suppression in the writ petition and for said reason the learned Single Judge has held that he found no merit to recall the order dated 27.08.2010 and hear the writ petition on merits. CM No.6843/2011 was accordingly dismissed.

7. Suffice would it be to state that the appellant could not seek revival of the writ petition if the suit filed by her was dismissed, whatever be the reasons for the dismissal of the suit and thus the conclusion arrived at by the learned Single Judge is correct.

8. However, with respect to the reasoning of the learned Single Judge, noting the same to be cryptic, but agreeing that the appellant and her husband are playing ducks and drakes with the Court and are abusing the process of the law, we prefer to be a little verbose, an activity we normally refrain from and commend others to so do, but what the appellant and her husband have been resorting to, must invite some outrage in the form of written words by us.

9. Vishal Global Ltd., a company registered under the Companies Act of which the appellant and her husband Saroj Kumar are directors obtained credit facilities from the State Bank of India for which the appellant and her husband stood guarantees.

10. Alleging that dues payable in sum of ₹7,37,84,093.13 (Rupees Seven Crores Thirty Seven Lakhs Eighty Four Thousand Ninety Three and Paise Thirteen only) were outstanding in the account of the company, SBI filed OA No.480/2000 under Section 19 of the Recovery of Debts Due to Bank and Financial Institutions Act 1993 before the Debts Recovery Tribunal, in which the appellant and her husband were impleaded as co-respondents, being the guarantors. Pendente lite and future interest at the agreed rate was prayed for. Neither the company nor the appellant or her husband joined issues and preferred to remain ex-parte. The claim succeeded. The appellant and her husband have

successfully frustrated the execution of the order dated 05.06.2002, decreeing the claim of the bank, by resorting to one or the other proceedings, in which neither appellant nor her husband impleads the other party as a respondent. Proceedings fought by the husband do not implead the appellant as a respondent and vice-versa. In this manner, the husband and wife have successfully frustrated the process of the law for the bank to execute the decree obtained. Public funds have been successfully withheld and probably squandered by the appellant and her husband.

11. So frustrated was SBI, that on 29.03.2006 it assigned the debt due to Standard Chartered Bank. The Deed of Assignment dated 29.03.2006, unfortunately for the bank, contains a wrong, but an irrelevant recital, in the following words: *'The Purchaser is a Limited Liability Company, duly organized, validly existing and in good standing under the laws of India, has obtained a certificate of registration as a securitization and asset reconstruction company from the Reserve Bank of India, pursuant to Section 3 of SARFAESI and is duly qualified and licensed to do business in each jurisdiction in which the charter of its properties or the nature of its activities requires such qualifications.'*

12. Hereinafter started a game of tricks played by the appellant and her husband.

13. The appellant as also her husband, filed separate applications seeking recall of the ex-parte order dated 05.06.2002 decreeing claim against the company and them, and they also filed objections (separately) before the Recovery Officer in which the appellant questioned the Deed of

Assignment dated 29.03.2006 on the ground that the document was insufficiently stamped.

14. As regards the appellant the objection filed by her was dismissed by the Recovery Officer vide order dated 28.05.2008 against which appellant preferred Appeal No.21/2008 before the Presiding Officer of the Debt Recovery Tribunal in which appeal she managed a stay of recovery proceedings against her.

15. The appellant also preferred a representation to the Collector of Stamps alleging that the Deed of Assignment was inadequately stamped and thus it was prayed that the document be impounded and further orders be passed. The said representation was dismissed by the Collector of Stamps vide order dated 14.01.2009 in which he held that there was no force in the submissions made.

16. What was argued before the Collector of Stamps was that where different debts were assigned under one Deed of Assignment, stamp duty had to be determined on the basis of each assignment. The Collector of Stamps held that if several debts are assigned under a single assignment, for the purposes of Section 5 of the Stamp Act the same would not amount to distinct matters.

17. At this stage it needs to be noted that on 12.01.2006 the Government of NCT Delhi issued a notification in exercise of power conferred by Section 9 of the Indian Stamp Act notifying that instruments of securitization of loan or assignment of debts chargeable under Article 23 of Schedule 1 of the Indian Stamp Act, as applicable to Delhi shall be chargeable to stamp duty in sum of ₹1/- for every thousand

rupees or part thereof of the loan securitized or debt assigned, subject to a maximum of ₹1 lakh.

18. The appellant filed WP(C) No.6877/2009 in which she prayed that the notification dated 12.01.2006 be quashed. She also prayed that the Assignment Deed dated 29.03.2006 be impounded.

19. The grounds on which she challenged the notification is that Article 23 deals with a single conveyance and does not contemplate multiple conveyances and that the State has to protect its revenue and not cause loss by fixing a cap on the maximum stamp duty chargeable.

20. After notice was issued in the writ petition on 16.02.2009 and during its pendency, the Presiding Officer DRT before whom Appeal No.21/2008 was pending, passed an order on 19.05.2010 declaring that the recital in the Deed of Assignment, which recital we have noted in paragraph 11 above, amounted to perjury because Standard Chartered Bank was neither a securitization nor an asset reconstruction company and was not registered with the Reserve Bank of India as required by Section 3 of SARFAESI Act. It needs to be highlighted that when this issue was raised, Standard Chartered Bank took immediate corrective action by getting executed and registered a rectification-cum-confirmation deed on 15.02.2010 amending paragraph 5(a) of the Assignment Deed dated 29.03.2006 and remove the offending clause. Surprisingly, notwithstanding noting the same the Tribunal held that there was perjury but held that the Tribunal was not the competent authority to quash the same and opined that the proper forum has to be the Civil Court.

21. We are surprised at the meager legal knowledge shown by the Presiding Officer of the Debt Recovery Tribunal. A wrong recital in the Deed of Assignment, which was inconsequential for the reason, Standard Chartered Bank is neither a securitization nor a reconstruction company; it is a bank authorized by Reserve Bank of India to do banking business in India and thus on the strength of its character as a bank is authorized to buy debts has been overlooked. Such a simple issue i.e. a wrong recital in a document can never be perjury for the reason it is not a statement made on oath before a Court and in the instant case the wrong recital was inconsequential, could not be understood by the Tribunal.

22. The appellant thereafter filed Civil Suit No.27/2010 (somewhere the number stated is 77/2010) in which she sought a declaration that the Deed of Assignment dated 29.03.2006 is a perjured document and thus be declared null and void, with consequence that Standard Chartered Bank should not be permitted to prosecute the recovery proceedings pertaining to the decree dated 05.06.2002 against the appellant.

23. Since she had filed the Civil Suit questioning the Deed of Assignment on the ground of it being a perjured document, when this fact was brought to the notice of the learned Single Judge who was seized of WP(C) No.6877/2009, it came to be disposed of vide order dated 27.08.2010 and we would highlight immediately that the appellant never told the learned Single Judge that she had made two prayers in the writ petition, one of which pertained to the notification dated 12.01.2006 which was not a subject matter of the Suit.

24. If the appellant was aggrieved by the fact that the learned Single Judge could not have disposed of the writ petition on the strength of the reasoning contained in the order dated 27.08.2010, her remedy was to challenge the said order and not keep quiet. But she kept quiet.

25. The appellant then filed WP(C) No.7707/2010 when Standard Chartered Bank proceeded to take action under Section 13 of the SARFAESI Act and questioned the Deed of Assignment dated 29.03.2006 in which she took the ground that the said document was a perjured document. The writ petition was withdrawn and the order dated November 19, 2010 reads: *'After considerable hearing, the counsel for the petitioner seeks to withdraw the petition. Dismissed as withdrawn with no order as to costs.'*

26. The appellant immediately approached the Presiding Officer DRT by way of an appeal against the order issued by the Standard Chartered Bank under Section 13 of SARFAESI Act and obtained a stay against the bank to proceed and enforce the mortgage which was created with respect to an immovable property bearing No.C-4 Diplomatic Enclave Extension, Westend, New Delhi.

27. On 19.01.2011, Suit No.27/2010 was dismissed, holding that the appellant did not have the locus standi to question the Deed of Assignment and soon thereafter on 18.04.2011 the Presiding Officer DRT disposed of Appeal No.21/2008 rejecting appellant's opposition to the Deed of Assignment but after holding that Standard Chartered Bank being substituted in place of SBI was without jurisdiction.

28. To cut the matter short, on various dates thereafter, the appellant and her husband filed either interim

applications or took resort to substantive action and successfully stayed the recovery proceedings and when everything finally failed, but with a state of utter confusion, for the reason the Deed of Assignment dated 29.03.2006 was held to be a perjured document and Standard Chartered Bank substituting SBI was held to be without jurisdiction, and thus nobody knew how to come out of the confusion, appellant filed CM No.6843/2011 praying that WP(C) No.6877/2009 be revived, resulting in the passing of the impugned order dated 09.08.2011.

29. It is apparent that the appellant and her husband have litigated on frivolous issues. A wrong recital in the Deed of Assignment, which has been corrected, can never constitute perjury for the reason perjury would relate to a false statement deliberately made on oath.

30. A bank or a financial institution does not require to be registered under SARFAESI Act to buy and sell debts.

31. Thus, all orders which hold the said document to be a perjured document are hereby declared null and void.

32. On the subject matter of challenge to the notification dated 12.01.2006, suffice would it be to state that in what manner fiscal policies have to be framed is for the Government to decide and where the Government caps the upper limit of tax or stamp duty payable, we see no scope for anyone to urge that the decision is arbitrary.

33. As regards the challenge to the Deed of Assignment dated 29.03.2006, where various debts held by SBI have been assigned to Standard Chartered Bank, suffice would it be to state that Section 5 of the Indian Stamp Act 1899 would come into play where an instrument comprises more than one

transaction, it being immaterial whether the transactions are of the same category or of different categories as held by the Supreme Court in the decision reported as AIR 1956 SC 35 Member Board of Revenue v. Arthur Paul Benthall.

34. But, it has to be highlighted that the transaction has to be more than one for Section 5 to apply. Where a creditor holding various debts assigns the same to a single assignee, it would be one transaction and thus Section 5 would have no applicability.

35. The appeal has to be dismissed thus, for three reasons. Firstly the reason that the appellant has been abusing the process of the law and regretfully, the Presiding Officer of the Debt Recovery Tribunal has helped the appellant to frustrate the process of the law. A person who abuses the process of the law, would be disentitled to seek any discretionary relief from a Court of Equity. Secondly, having acquiesced in the order dated 27.08.2010 by not challenging the same, no liberty be granted to the appellant to seek revival of WP(C) No.6877/2009, which was disposed of on the reason that the appellant had taken recourse to a civil remedy on the same subject matter, whatever may be the wrong in the order dated 27.08.2010, the appellant could not seek the revival of the writ petition and thus CM No.6843/2011 has to be dismissed in any case; and lastly the reason that there is no substance in the said writ petition either pertaining to the validity of the Deed of Assignment in the context of the challenge that it is a perjured document or with reference to it being inadequately stamped or in relation to the notification dated 12.01.2006 being illegal.

36. The appeal is dismissed imposing costs in sum of ₹1,00,000/- (Rupees One Lakh only) against the appellant to be deposited with the Delhi High Court Legal Service Committee, which costs would be in addition to the costs imposed by the learned Single Judge.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 06, 2012
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