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

Decided on : 11.03.2015

\+ **W.P.(C)2356/2015, C.M. NOS.4231-4233/2015**

M/S. PNB HOUSING FINANCE LIMITED ………………Plaintiff

Through: Sh. Hashmat Nabi, Advocate.

Versus

USHA RANI AND ORS. ………..Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. By these proceedings under Article 226 of the Constitution of India, the Petitioner, PNB Housing Finance Ltd (hereafter called “PNB Housing”) impugns an order of the Debts Recovery Appellate Tribunal, rendered in an appeal preferred under Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter referred to as “SARFAESI Act”)

2. The brief facts are that PNB Housing issued notice under Section 13(2) of SARFAESI Act to the second and third respondents (the borrowers) claiming ₹20,63,870/- by notice dated 14.1.2010. As borrowers failed to pay the amount, PNB Housing sought and secured an order from the Additional Chief Metropolitan Magistrate (ACMM), Delhi, and took possession of the

suit property on 21.5.2011. This action i.e taking possession of the property was challenged in an application preferred by Respondent No. 1 by the Debts Recovery Tribunal (DRT), who sought restoration of possession of the property. Respondent No. 1 claimed that she was owner of the suit property (bearing No.05, area 60 Sq. mtrs, Block No.1, Pocket No.8, Sector 17, Rohini, Delhi). According to her, she purchased the property from Ms. Neetu Paul, W/o Sh. Rajesh Kumar and Ms. Anita Goel, W/o Sh. Raj Kumar Goel. They derived title through a registered Sale Deed, and consequently Respondent No. 1 claimed valid title over the property. PNB Housing had granted a housing loan of ₹20,00,000/- to the second and third respondents on their creating equitable mortgage of this property, on the basis of their claim that that they had valid title - by way of Sale Deed dated 8.3.2007; the title deeds were deposited to create equitable mortgage on 30.5.2007. Respondent No. 1 alleged that the Sale Deed dated 8.3.2007 relied on by PNB Housing was forged and the second and third respondent borrowers did not possess any valid title or possession in respect of the property. PNB Housing contended that the borrowers were advanced amounts on 6.3.2007. They created equitable mortgage of the suit property by deposit of Sale Deed dated 8.3.2007 executed in their favour by one Manoj Gupta. PNB Housing pleaded that the property was allotted to Smt. Kusum Gupta and Sh. V.K. Gupta by the Delhi Development Authority (DDA). It was stated that they executed a General Power of Attorney, Agreement to Sell and Will dated 20.6.2001 in favour of Manoj Gupta, and he secured freehold rights to the said property through a Conveyance Deed dated 31.8.2006.

3. In the proceedings under Section 17 of the SARFAESI Act, Respondent No. 1 filed affidavit and marked eight documents, AW1/1 to AW1/8 and documents ABC. On behalf of PNB Housing, Mr. O.M. Malik, Manager, filed affidavit and proved documents RW1/1 to RW1/11. The borrowers were proceeded against *ex-parte*.

4. The DRT in its decision upheld the contentions of the Respondent No. 1 and found that PNB Housing's action under SARFAESI Act was not legal. It was held that the DDA, by a perpetual Lease deed, granted lease hold rights of the property in favour of Mr. V.K. Gupta and Mrs. Kusum Gupta, in 1993. Both of them had, by General Power of Attorney, Will and Agreement to sell transferred the property on 26.10.1998 in favour of Mr. Vikender Rana. Those documents contained the photograph of the assignors and assignee. Again, however, inexplicably on 20.6.2001, the said owners assigned the property to Manoj Gupta. DRT held that the Guptas had no property left with them which could be validly transferred. Mr. Vikender Rana had transferred the property to Sh. Rajesh Chowdhry on 12.1.1999. He in turn transferred the property (by way of Power of Attorney along with Agreement to Sell, Receipt and Will) to Sh. Amit Aggarwal on 30.11.2003. Freehold rights were transferred in favour of Sh. Amit Aggarwal by registered documents on 13.2.2004. The Originals of those documents were produced before DRT, which held that Amit Aggarwal had a valid title over the property and Manoj Gupta never had a valid title. Consequently, the title claimed through Manoj Gupta by the borrowers (by registered Sale Deed RW1/7 dated 8.3.2007) was held to be without any authority. It was also held that Vivek Mangal (Respondent No. 2) was aware of this fact since he

was a witness to the subsequent documents flowing through Sh. Amit Aggarwal. In this regard, it was noticed that AW1/2, the registered Sale Deed dated 18.3.2004 by Sh. Amit Aggarwal to Smt. Asha Dutt, conveyed only ground floor of the property along with proportionate freehold rights of the land under the said property. AW1/3 was the registered Sale Deed by Smt. Asha Dutt in favour of Smt. Amit Mangal, wife of Vivek Mangal on 8.11.2005. Here too, only the ground floor was conveyed. The original document was produced. AW1/4 was the registered Sale Deed dated 6.4.2010 by which Mrs. Amit Mangal transferred the property, the ground floor, in favour of Neetu Paul and Anita Goel. Respondent No. 2 witnessed this document and disclosed his address as A-8/5, Sector 17, Rohini, Delhi, i.e the same property. Mrs. Neetu Paul and Anita Goel sold the property by AW1/5 registered document dated 8.9.2010 to Smt. Usha Rani, the Respondent No. 1. Thus, the Respondent No. 1 was held to have obtained valid freehold right, title and possession of property bearing No.5, Pocket A-8, Sector 17, Rohini, Delhi of entire ground floor without roof rights along with proportionate freehold right of the land under the said property. The borrowers had no right to create equitable mortgage in respect of this property by deposit of Sale Deed dated 8.3.2007 on 30.5.2007. Therefore, the DRT concluded that PNB Housing had no right to proceed against the ground floor of the property, the title of which belonged to Respondent No. 1 who is a total stranger to the loan transactions.

4. PNB Housing's appeal to the Debt Recovery Appellate Tribunal (DRT) was rejected, after an elaborate discussion of the merits and an

independent appraisal of the evidence led by the parties before DRT. It has therefore approached this court.

5. Learned counsel for PNB Housing argued that the DRT should not have, given the contentious nature of the disputes, rendered factual findings; reliance was placed on *Mardia Chemicals Ltd. & Ors. v. UOI & Ors.* (2004) 4 SCC 311 to say that if fraud or such allegations are levelled, the aggrieved party should approach the civil court. It was argued, in addition, that even if Respondent No. 1 had *locus* to approach the DRT, the latter Tribunal could not have directed the Petitioner institution to deliver possession. In this regard, counsel relied on the judgment in *Harshad Govardhan Sondagar v International Assets Reconstruction Company Ltd.*, 2014 (6) SCC 1 where it was held by the Supreme Court that:

> *"But when we read subsection (3) of Section 17 of the SARFAESI Act, we find that the Debts Recovery Tribunal has powers to restore possession of the secured asset to the borrower only and not to any person such as a lessee. Hence, even if the Debt Recovery Tribunal comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor are not in accordance with the provisions of the Act, it cannot restore possession of the secured asset to the lessee. Where, therefore, the Debts Recovery Tribunal considers the application of the lessee and comes to the conclusion that the lease in favour of the lessee was made prior to the creation of mortgage or the lease though made after the creation of mortgage is in accordance with the requirements of Section 65A of the Transfer of Property Act and the lease was valid and binding on the mortgagee and the lease is yet to be determined, the Debts Recovery Tribunal will not have the power to restore possession of the secured asset to the lessee. In our considered opinion, therefore, there is no remedy available under Section 17*

of the SARFAESI Act to the lessee to protect his lawful possession under a valid lease."

6. This court is of the opinion that the arguments of PNB Housing lack merit. As a creditor, PNB Housing sought to enforce a mortgage security against its borrowers. When possession was obtained on the belief that there was a valid mortgage of a subsisting title to the suit property, the occupant, i.e. Respondent No. 1 was aggrieved and approached the DRT. That course was available to her, because of the decision in *Harshad Govardhan Sondagar* (supra) that third parties – and not only borrowers – can apply under Section 17 of the SARFAESI Act. This is not one of the situations where suits were contemplated in *Mardia* (supra); that decision talked of suits where fraud is alleged by the *borrower.* A third party, whose property interest is affected by SARFAESI Act action, is of a different category; she is entitled to defend that interest. This was recognized in *Harshad Govardhan Sondagar (supra).* Yet, unlike in that case- where the interest sought to be defended was that of a lessee, here the interest defended was the Respondent No. 1's title to the property itself. In such a case, if the DRT concludes that the foundation of the SARFAESI Act notice and action is without authority of law, and patently illegal because the mortgagors/borrowers had no valid title to the mortgage security itself, the position is radically different. The declaration based on finding that the mortgage security claimed by the Bank or financial institution is invalid, is sufficient to base a direction to restore possession. Any other interpretation would mean that the declaration –which results in nullity of the SARFAESI Act action, can still be relied on by the financial institution/ bank to continue in possession (of property) that is obviously and manifestly without legal

foundation. Such a consequence is abhorrent in law; Parliament cannot be attributed with intent to have wished it.

7. For the foregoing reasons, this court finds no merit in the writ petition; it is therefore dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MARCH 11, 2015