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

\+ FAO 226/2013

% Date of decision : 25th May, 2015

INDIAN OVERSEAS BANK ..... Appellant
Through: Mr. Karan Khanna, Advocate.

versus

MR RAJAT SHARMA & ORS .... Respondents
Through: Mr. Harish Malhotra Senior Counsel with Mr. A. Maitri Advocate.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant Bank extended loan facility to M/s. Mittal Trading Company and others in the year 1995 against equitable mortgaged property by deposit of title deeds of entire second floor comprising of two residential flats measuring 2900 sq. ft. in property bearing No.A-3/104C, Permanent Estate, Khasra No.1303/240/2/2, Village Kilokari, Maharani Bagh, New Delhi.

2. The borrowers failed to repay the loan whereupon the appellant, Indian Overseas Bank, instituted O.A. No.129/2000 against M/s. Mittal Metal Trading Company, which is a proprietorship firm of Suresh Chand Jain & Sons (HUF), comprising of coparceners Suresh Chand Jain, Snehlata Jain, Sharat Chand Jain and Sudhir Chand Jain, for the recovery of Rs.74,20,053/- and sale of the mortgaged property.

3. Vide order dated 17th October, 2008, the Debt Recovery Tribunal-I, Delhi allowed the bank's application and directed the debtors to pay the

aforesaid amount within two months failing which the same be recovered by sale of the aforesaid mortgaged property.

4. Vide order dated 21st January, 2013, the Recovery Officer appointed the Receiver to take the physical possession of the mortgaged property. The Recovery Officer also directed the SHO of the area concerned to give protection to the Receiver for compliance of the above order.

5. The respondents preferred an appeal against the order of the Recovery Officer before the Debt Recovery Tribunal which was dismissed on 20th February, 2013 and the receiver was directed to take the possession of the mortgaged property in terms of the order dated 21st January, 2013.

6. On 28th February, 2013, the receiver recovered the physical possession of the mortgaged property with the police assistance.

7. On 05th March, 2013, the respondent instituted a suit for declaration, permanent and mandatory injunction seeking a declaration that they are the owner of flat No.9 in property No.A-3/104C, Parmanand Estate, Maharani Bagh, New Delhi and for restraining the appellant bank from interfering in their property. The respondents also sought mandatory injunction against the bank for de-sealing of the aforesaid property. The Trial Court issued the summons of the suit to the appellant Bank on 5th March, 2013, returnable on 6th March, 2013.

8. On 06th March, 2013, there was no appearance on behalf of the appellant bank. The learned Trial Court observed that the bank had been served through the guard and proceeded to hear the matter and directed the SHO to break open the lock of the mortgaged property and restrained the bank from stopping the plaintiff's ingress and egress.

9. On receiving an intimation of the filing of the abovementioned suit

from the SHO, the appellant bank filed a written statement alongwith an application under Order 39 Rule 4 of the Civil Procedure Code, 1908 on 28th March, 2013.

10. Vide order dated 01st April, 2013, the learned Trial Court appointed a Receiver. The receiver so appointed took over the possession by breaking the locks of the Receiver appointed by the Debt Recovery Tribunal.

11. The appellant bank filed an application under Order XXXIX Rule 4 of the Code of Civil Procedure for the vacation of the order dated 06th March, 2013 which was dismissed by the learned Trial Court on 08th April, 2013. The learned Trial Court further directed the keys of the suit property to be handed over to the respondents.

12. The appellant has challenged the impugned orders dated 06th March, 2013 as well 08th April, 2013 before this Court on various grounds inter-alia that the suit was clearly barred by Sections 13, 17, 18 and 34 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the principles laid down by the Apex Court in ***Mardia Chemicals v. Union of India,*** AIR 2004 SC 2371. That apart the learned Trial Court had no jurisdiction whatsoever to direct the breaking open the locks of the Receiver appointed by the Debt Recovery Tribunal. The appellant has also challenged the unusual manner in which the Trial Court had proceeded with the matter without even proper service of the appellant.

13. This Court is satisfied that the Trial Court had no jurisdiction whatsoever to entertain and try the suit. That apart the Trial Court had no jurisdiction to direct the breaking open the locks of the Receiver appointed by the Debt Recovery Tribunal. This Court is also satisfied that the Trial Court has proceeded in a very unusual manner, unusual haste and the order

dated 06th March, 2013 was passed without even service of the appellant. The impugned orders dated 06th March, 2013 as well as 8th April, 2013 are therefore set aside and the respondent's suit before the Trail Court is hereby dismissed.

14. Learned Senior Counsel for the respondent submits that during the pendency of this appeal, the respondent offered to pay Rs.85,00,000/- to the appellant in full and final settlement and pursuance to that offer, the respondent have paid Rs.85,00,000/- to appellant.

15. Learned counsel for the appellant submits that the appellant considered the respondent's offer but the same was not accepted. Learned counsel for the appellant further submits that the payment of Rs. 85,00,000/- was adjusted by the appellant bank against the outstanding and Rs.30,91,121/- is payable by the respondents as on 13th May, 2015 as per the break up given hereunder:

Amount due as per recovery certificate	7497053
Interest @12% simple(10.03.2000 to 13.05.2015)	12148915
Total dues	19645968
Liability of Mr. Rajat Sharma(@59% of dues)	11591121
Amount deposited by Mr. Rajat Sharma	8500000
Net liability of Mr. Rajat Sharma	3091121
Liability of Mr. G.S. Mander(@41% of dues)	8054847

16. Learned counsel for the respondent submits that the respondents are ready and willing to pay Rs.13,91,121/- to the appellant and a post dated cheque for Rs.30,91,121/- has been today handed over to the appellant in Court.

17. Learned counsel for the appellant submits that the appellant bank would place aforesaid offer of the respondents before the competent

authority and the decision of the Competent Authority shall be communicated to the respondents within three weeks.

18. Learned counsel for the appellant submits that the proceedings before the Debt Recovery Tribunal are still pending before the Recovery Officer.

19. Both the parties shall appear before the Recovery Officer on 06th July, 2015. The decision of the competent authority of the appellant bank shall be placed before the Recovery Officer. The Recovery Officer shall thereafter hear both the parties and pass an appropriate order with respect to balance outstanding amount payable by the respondents.

20. The Recovery Officer shall grant four weeks time to the respondents to pay the balance outstanding amount. However, if the payment is not made within period of four weeks, the Recovery Officer shall be at liberty to recover money in accordance with law including the right to appoint a Receiver to take over the subject property. The status quo as on today shall be maintained till the expiry of period of four weeks of the order of the Recovery Officer directing the respondents to pay balance outstanding amount, if any.

21. Copy of this order be given dasti to the counsels for the parties under signature of Court Master. Copy of this order be sent to the Debt Recovery Tribunal. Copy of this order be sent to the Presiding Officer of the Trial Court who is warned to be careful in future.

22. Pending applications are disposed of.

J.R. MIDHA, J.

MAY 25, 2015
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