IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 44 OF 2016

SMT. ROSHAN LUMA KAMAT AND 8 ORS., ... Appellants
Versus
PUNJAB NATIONAL BANK, THR. ITS GENERAL MANAGER AND 2 ORS., ... Respondents

Mr. R. G. Ramani, Advocate for the appellants.
Mr. Deepak Banage, Branch Manager of the respondent no.1.

Coram:- F. M. REIS, J.

Date:- 12th August, 2016

P.C.

Heard Mr. R. G. Ramani, learned counsel appearing for the appellants and Mr. Deepak Banage, Branch Manager of the respondent no.1 present in person.

2. The above appeal challenges the judgments passed by the Courts below whereby the suit filed by the appellants came to be rejected. It is the case of the appellants that the respondents without a legal subsisting mortgage of the suit property initiated proceedings under the SARFAESI Act without any right or interest therein. It is further their case that the respondent no.3 had fraudulently executed a mortgage in favour of the respondent nos. 1 and 2 on the basis of the power of attorney which had lapsed. It is further their contention that such power of attorney was misused by the respondent no.3 to create a mortgage in favour of the respondent nos. 1 and 2 to obtain a

business loan which had nothing to do with the appellants. The respondents disputed the said claim and pointed out that based on the power of attorney, the respondent no.3 had validly created an equitable mortgage. It is further their case that such mortgage was after clearing the dues of the Goa State Co-op. Bank obtained based on an equitable mortgage which was cancelled thereafter. It is further their case that the respondent nos. 1 and 2 are entitled to proceed to recover the loan amount under the said SARFAESI Act.

3. The learned Trial Judge after recording of evidence has come to the conclusion that the mortgage has been validly created in favour of the respondent nos. 1 and 2 based on the power of attorney. The learned Trial Judge after appreciating the evidence on record found that the contention of the appellants that such power of attorney was misused cannot be accepted and consequently, dismissed the suit filed by the appellants by judgment and decree dated 27.05.2014. Being aggrieved by the said judgment and decree, the appellants preferred an appeal before the learned Lower Appellate Court being Regular Civil Appeal No. 106/2014 which came to be disposed off by judgment dated 08.12.2015 thereby dismissing the appeal filed by the appellants. Being aggrieved by the judgments passed by the Courts below, the appellants have preferred the present Second Appeal.

4. The appellants were given liberty to serve the respondent nos.

1 and 2 by a private notice to examine whether the matter could be amicably settled. Mr. Deepak Banage, Branch Manager of the respondent no.1 has appeared and pointed out that though the respondent no.3 had approached the bank to work out a settlement, nothing could be finalized to that effect.

5. Upon hearing the learned counsel and on perusal of the records, both the Courts below have concurrently come to the conclusion that the equitable mortgage has been validly created in favour of the respondent nos. 1 and 2. It is the contention of the appellants that the power of attorney was misused and that a fraud was committed by the respondent no.3 which stand has been concurrently rejected. These findings of fact cannot be re-appreciated in Second Appeal unless there is perversity in the findings recorded by the fact finding Courts below. On perusal of the judgments passed by the Courts below, I find that the findings have been rendered based on the appreciation of evidence on record as well as documentary evidence including the power of attorney and earlier mortgage created by the respondent no.3 in respect of the subject property. These concurrent findings of fact to that effect cannot be said to be perverse and consequently, there is no case made out for any challenge to such findings in a Second Appeal under Section 100 of the Civil Procedure Code.

6. Apart from that, the learned Lower Appellate Court has also

found that the Civil Court has no jurisdiction to adjudicate the claim put forward by the appellants. Considering that proceedings have been initiated by the respondent nos. 1 and 2 under the SARFAESI Act, I find that there are no substantial questions of law which arise in the present Second Appeal for consideration. The appeal stands accordingly rejected.

F. M. REIS, J.

at*