IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 883 OF 2015

Shri Allen E. Valles,
Son of late Cyrano C. Valles,
Businessman,
Aged about 44 years,
Indian National
Residing at Sea Rock leisure Apts,
Machado's Cove,
Dona Paula …... Petitioner

V e r s u s

1. The Recovery Sales Officer,
Central Registrar of Coop. Societies,

2. Mr. Shrikant S. gowda,
Major of age,
Model Complex, Bldg. No. 5,
Taleigao, Goa.

3. Mrs. Maniha S. Gowda,
Major of age,
Model Complex, Bldg. No. 5,
Taleigao, Goa.

4. The Mapusa Urban Co-operative
Bank of Goa, Ltd.
"Nandadeep", Mapusa,
Goa, through its Manager. …... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. Preetam Talaulikar and Mr. Siomes Kher, Advocates for the Petitioner.

Mr. J. J. Mulgaonkar, Advocate for the Respondent no. 1.

Mr. Parag Rao, Advocate for the Respondent no. 4.

Coram :- C. V. BHADANG, J

Judgment reserved on : 12.04. 2016

Judgment Pronounced on : 4th May, 2016

JUDGMENT

Rule, made returnable forthwith. Learned Counsel for the Respondents waives service. Heard finally by consent of the parties.

2. By this Petition, the Petitioner has challenged the Order dated 30.09.2015 passed by the Recovery Officer, Central Registrar of Co-operative Societies, i.e. the Respondent no. 1, by which the objection raised by the Petitioner to the execution of the Award has been rejected.

3. The brief facts are that the Petitioner being the owner of property known as Lote B at Margao, situated at St. Inez, Panaji, had entered into an agreement dated 04.10.1994 with M/s. Models Real Estate Developers (Developers, for short), for development of the said property. On 23.07.1997, the Developers entered into an Agreement with the second Respondent under which the second Respondent had purchased shop no. 4 and 5 in building no. 1 and 2 in the project called Models Residency. The second Respondent had obtained a loan of Rs.75,00,000/- from Respondent no. 4-Bank for purchase of the said two shops. In pursuance thereof, a Deed of Mortgage was executed in favour of the fourth Respondent in which the second and the third Respondents were the mortgagers while the Petitioners were the first confirming parties. The Developers were the second confirming party. The Mortgage Deed was executed on 29.01.1998. Since the second Respondent defaulted in repayment of the loan, the first Respondent-

Bank had initiated Arbitration proceedings and obtained an Award on 24.09.1999. That Award has not been challenged and has attained finality. Thereafter, the fourth Respondent-Bank initiated proceedings in Disp.1/2003-2004 for execution of the Award before the Central Registrar of Co-operative Societies and the Recovery Officer, in which the Petitioners lodged the objection purportedly under Rule 20 (1) (a) of the Multi State Co-operative Societies (Privileges, Properties and Funds, Accounts, Audit, Winding Up and Execution of Decrees, Orders and Decision) Rules, 1985 (Rules, for short). It was contended that the Petitioner got the knowledge of the Award and the obtaining of the possession of the shop on the basis of the Mortgage Deed dated 29.01.1998. It was contended that the Petitioner is the owner the property and the ownership was never transferred to the mortgagee bank and/or the original borrower. It was contended that the purchasers of shop nos. 4 and 5 failed to make necessary payment towards purchase price which was fixed at Rs.41,28,000/- out of which a total sum of Rs.30,00,000/- was paid to the Developers, the balance Rs.11,28,000/- and other charges along with interest is outstanding. In short, it was contended that the mortgagee-bank cannot get a better title than what mortgagor was possessing. It is contended that at the highest, the second Respondent-Bank had a right to purchase and thus cannot claim ownership over the suit shops by virtue of the Mortgage.

4. It appears that before the impugned Order was passed, the matter had come twice to this Court.

5. The Petitioner had filed an application dated 11.04.2005 placing

reliance on the decision of this Court in the case of ***Shamrao Vithal Co-op. Bank Ltd., vs. Star Glass*** reported in ***2003 Vol. 105(3) Bom. L. R. 879*** contending that the first Respondent will have no jurisdiction as the Debt Recovery Tribunal, (DRT) which has jurisdiction to entertain such application for recovery. It was contended that the Award passed by the Registrar/Asst. Registrar was a nullity. On behalf of the Bank, reliance was placed on the Order dated 16.01.2004 passed by the Hon'ble Supreme Court in SLP (Civil) no. 886/04 by which the Judgment of this Court in ***Shamrao Vithal Co-op. Bank Ltd.,*** (supra) was stayed. The Respondent no. 1, therefore, was of the opinion that the Registrar/Asst. Registrar would have jurisdiction. As such, the application dated 11.11.2004-05 filed by the Petitioner, came to be rejected. This was challenged by the Petitioner before this Court in Writ Petition no. 134 of 2006 which was dismissed on 26.02.2013 taking note of the decision of the Hon'ble Supreme Court in the case of ***Greater Bombay Co-op. Bank Ltd. vs. M/s. United Yarn Tex. Pvt. Ltd., & Ors*** reported in ***2007(6) SCC 236*** .

6. Subsequently, by an Order dated 16.09.2014, the objection filed by the Petitioner on 23.01.2004 under Rule 20(1)(a) of the Rules, was rejected. That was challenged by the Petitioner before this Court in Writ Petition no. 677 of 2014, in which, by consent of the parties, the matter was remanded to the learned Central Registrar. After this, the Central Registrar has passed the impugned Order which is subject matter of challenge in this Petition.

7. I have heard Shri Kantak, learned Senior Counsel for the Petitioner

and Shri Rao, learned Counsel for the Respondent no. 4. I have also heard Shri Mulgaonkar, learned Counsel for the first Respondent.

8. On behalf of the Petitioner, two contentions are raised. Firstly, it is contended that there is delay of more than ten months in passing the impugned Order after the matter was heard, as a result of which the impugned Order will stand vitiated. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the cases of ***R. C. Sharma vs. Union of India*** reported in ***1976 (3) SCC 474, Anil Rai vs. State of Bihar*** reported in ***2001 (7) SCC 318*** and the decision of this Court in the case of ***Pradeep K. R. Sangodkar vs. State of Goa & anr.*** reported in ***CDJ 2006 BHC 2128*** in which certain directions were given to pronounce the Judgments/Orders within a period of three months from the date of conclusion of the arguments. He, therefore, submits that the impugned Order has to be set aside on this ground. It is next contended that the second Respondent/Borrower had only an equitable right to purchase the shops under the Agreement dated 23.07.1997. Thus, the borrower could not have transferred interest larger than what he possessed to the Bank by virtue of the Mortgage Deed. In short, it is contended that the Bank cannot claim to be the title holder by virtue of the Mortgage Deed so as to have the authority to attach and sell the shop premises. He, therefore, submitted that the impugned order be set aside.

9. On the contrary, it is submitted by the learned Counsel appearing for the fourth Respondent that the Petitioner was one of the consenting/confirming party and cannot now turn around and wriggle out of a situation where he had

consented for the borrower to mortgage the shops in favour of the Bank. The learned Counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Sita Ram Gupta vs. Punjab National Bank & Ors.*** reported in ***(2008) 5 SCC 711*** in support of his submission. He submits that the first Respondent has rightly concluded on the basis of the Mortgage Deed that the Petitioners cannot go back on a situation in which they had consented for.

10. I have given my anxious consideration to the rival circumstances and the submissions made. The first Respondent had framed following points for determination :

> (a) Whether the Applicant is entitled to have the attachment quashed and for a declaration that the Bank has no right to the said two Shops ?
>
> (b) Whether the Bank has right to attach and sell the said two Shops pursuant to the Arbitration Award dated 24.09.1999 ?

11. The first Respondent has noticed the undisputed facts including the execution of the Agreement in the year 1997 in favour of the purchasers and the Mortgage Deed of the year 1998 in which the Petitioner was one of the consenting/confirming party. The first Respondent has thereafter considered that in the year 1999, the fourth Respondent had obtained the Arbitration Award against the Borrowers i.e. Respondent nos. 2 and 3 herein. The first Respondent has noticed that the outstanding dues which at the relevant time were Rs.98,80,669/- have since swelled to Rs.9,22,48,953/- in which the interest of the Bank as a

custodian of public money is involved and if the Bank is not permitted to recover its dues pursuant to the Arbitration Award, it would be against public interest. The first Respondent has held that *“once a party has signed a Deed, it cannot wriggle out from the Deed or the contents of the same on one excuse or the other*.” It has been found that “*even if the Petitioner or the Developers have some dispute as to the outstanding amount recoverable from the second Respondent, the same cannot impair or effect the rights of a Mortgagee i.e. the Disputant Bank, provided a proper mortgage of the property involved has been made*.” The first Respondent has thereafter noted certain portions of the Mortgage Deed which clearly set out express consent by the Petitioner as consenting/confirming party and has finally held that "*it is too late in the day for the Applicant (Petitioner) to contend that the Mortgage Deed does not create any right or title in favour of the Disputant Bank when he himself has signed the Mortgage Deed*.” It has been further held that it would be “*highly equitable and unjust if the Applicant (Petitioner) is permitted to resile from the promise and assurance held out by him to the Disputant Bank as reflected in the Mortgage Deed*.” In that view of the matter, the objection has been rejected.

12. Let us now consider the contentions raised on behalf of the Petitioner. It is true that there is a certain amount of delay in passing the impugned Order. The question is whether merely on account of any such delay, the Order can stand vitiated. None of the Judgments including in the case of ***Anil Rai vs. State of Bihar*** (supra) state that on account of such delay, the Order would stand vitiated. In my humble view, the Petitioner will have to demonstrate that a certain ground

which was raised has not been considered or is left out of consideration which may be on account of the delay and the possible lapse in the memory after the matter was heard. The only contention which is raised, is that the second Respondent not being the owner, the Bank cannot claim a title to the subject shop premises, which has been considered by the first Respondent. For these reasons, I am not inclined to send the matter back once again, on the ground of delay in passing the impugned Order.

13. This takes me to the contentions raised on merits. It is true that under the Agreement of the year 2007, the second Respondent had agreed to purchase the two shop premises and strictly speaking, he may have an equitable right to purchase the suit shop in consequence of the Agreement. However, this may be insofar as the rights and liabilities, interse between the Petitioner and the Developer on one hand and the Respondent no. 2 on the other, are concerned. As regards the Bank which is a third party, all of them namely the owner, Developer and the prospective purchaser were party to the Mortgage Deed. It is now well settled that while interpreting the terms of any Agreement, the same has to be read as a whole so as to ascertain the intention of the parties. The nomenclature of the parties may not be decisive. If we read the Mortgage Deed (which is a registered document) as a whole, it is writ large that not only the Respondent no. 2 but the Developer, as well as the Petitioner (although described as confirming/consenting party) had mortgaged the suit shop in favour of the Bank. Else otherwise, there was no need for the Petitioner and the Developer being parties to the said Mortgage Deed, had it been the only intention to mortgage an equitable interest to purchase (held by the

second Respondent) in favour of the Bank. Thus, read as a whole, it is clear that all the parties concerned, including the owner, the Developer and the prospective purchaser had together mortgaged the property in favour of the Bank. As noticed earlier, a distinction will have to be made between the rights and liabilities interse between the Petitioner, the Developer and the prospective purchaser under the Agreement of the year 1997 and the rights of the parties under the Mortgage Deed of the year 1998. For the Bank, all the three of them will be considered to have executed the Mortgage Deed in favour of the Bank. If that be so, the Petitioner cannot be allowed to wriggle out of the same as has been rightly held by the first Respondent as it will be highly unjust and equitable.

14. Thus, in my considered view, no case for interference is made out. Petition is accordingly dismissed with no Order as to costs.

C. V. BHADANG, J.

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