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

% *Date of Decision : April 21, 2016*

+ **W.P.(C) 726/2015**

ISHWAR CHAND JAIN Petitioner

Represented by: Petitioner in person

versus

PUNJAB NATIONAL BANK & ANR. Respondents

Represented by: Mr.S.N.Relan, Advocate with
Mr.M.K.Kalra, Advocate for R-1
Mr.Narender Gautam, Advocate with
Mr.Abhinav Sharma, Advocate for
R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.26642/2015

Allowed.

Additional documents are taken on record.

W.P.(C) No.726/2015 & CM No.26643/2015

1. We have heard the petitioner who appears in person as also learned counsel for the respondents.
2. OA No.249/2001 filed by respondent No.1 against Kashmiri Lal Babbar, carrying on business as sole proprietor of M/s.Chinu Plast (the principal debtor) and Vilas Babbar, who was the guarantor and had created an equitable mortgage of the first floor of the property I-4 and 5, Laxmi

Nagar, Main Bazar, Delhi was allowed and to recover the dues the mortgaged property was put to auction.

3. The sale proclamation dated March 04, 2005 settled by the Recovery Officer DRT-I clearly indicated that the sale was on AS IS WHERE IS BASIS. Under the caption **SCHEDULE OF PROPERTY**, the property put up for auction was described as under:-

“Residential building (first floor) on a plot measuring 66½ square yards having a covered area of 598.50 square feet is available at I-4-5, Laxmi Nagar, Main Bazar, Delhi-110092.”

4. The auction was scheduled for April 28, 2005 but was adjourned to facilitate the prospective bidders to inspect the property. The auction was thereafter conducted and petitioner was declared the highest bidder and his bid was accepted.

5. The order confirming the sale, as per form No.ITCP-18 under Rule 63(i) of the Second Schedule of the Income Tax Act 1961, was issued recording that the bid amount in sum of ₹6 lacs has been received for sale of the property specified in the order of confirmation dated August 10, 2005, in exact language as that of the sale proclamation.

6. Vacant physical possession of the first floor was handed over to the petitioner and we note that the built-up area of the first floor handed over to him was on 44½ square yards land.

7. After two years and nine months the petitioner awoke from the slumber and filed an application before the Recovery Officer praying that he should be put into possession of remaining 22 square yards of the built-up area on the first floor. Respondent No.2 claimed title to said built-up portion on the first floor.

8. Vide order dated February 04, 2009 the Recovery Officer dismissed the application filed by the petitioner recording that on April 28, 2005 the auction had been postponed to facilitate the prospective bidders to inspect the property and the prospective bidders had inspected the property. The Recovery Officer opined that there was malice in the act of the petitioner to raise the issue after nearly three years. That when proceedings subsequent to the auction were finalized and it was recorded that the mortgaged property has been given possession of and the file could be consigned to the record room, the petitioner did not protest.

9. Appeal filed by the petitioner before the Debts Recovery Tribunal was dismissed on February 28, 2013, recording further fact that respondent No.2 had acquired title to 22 square yards of the property on August 22, 1993. Further appeal by the petitioner to the Debts Recovery Appellate Tribunal was dismissed vide impugned order dated December 11, 2014. Another additional reason has been recorded by the Debts Recovery Appellate Tribunal, being that the mortgaged property was not the entire first floor on the plot of land comprising 66½ square yards on the plot bearing Municipal No.I/4-5, Main Bazar, Laxmi Nagar, New Delhi.

10. Now, the admitted position is that the auction notice dated March 04, 2005 did describe the property put up for auction as : *Residential building (first floor) on a plot measuring 66½ square yards having a covered area of 598.50 square feet is available at I-4-5, Laxmi Nagar, Main Bazar, Delhi-110092*. But at the same time indicated to the prospective bidders that the sale was on AS IS WHERE IS BASIS. Further admitted position is that on April 28, 2005 the auction had been postponed to facilitate the prospective bidders to inspect the property and the prospective bidders had inspected the

property and by said period of time respondent No.2 was in actual physical possession of a part of the building on the northern side of the property having covered area on each floor of 22 square yards. The further admitted position is that vacant physical possession of the first floor given to the petitioner corresponded to only 2/3rd of the first floor built-up area and the petitioner took possession thereof without demur. Therefore, the auction proceedings were closed as satisfied. The further admitted position is that after two years and nine months the petitioner raked the issue of he not being put into possession of the entire first floor in respect of which the bids were invited.

11. Said facts disentitle the petitioner to any relief. Once a property is put up for sale on AS IS WHERE IS BASIS it becomes the duty of the buyer to inspect the property and satisfy himself of all liens, charges etc. on the property, which would also include the physical existence at site and the condition of the property.

12. At base is : what was the property mortgaged and put to sale?

13. Being an equitable mortgage, the document of title i.e. the sale-deed in favour of Vilas Babbar, by deposit of which the equitable mortgage was created, needs to be looked into.

14. It is an unhappily worded sale-deed, with an ambiguity, and therefore an obligation caste upon the petitioner to have got resolved the ambiguity and now to suffer the consequence of not having got the ambiguity resolved and proceeded to bid.

15. The registered sale-deed dated May 22, 1995 records, in its recital:-

“Whereas the Vendor is the absolute owner and in symbolic possession (physically already been in occupation of the vendor

herself since very long time) of fully built FIRST FLOOR, fitting with electricity and municipal tap water both in running condition, with separate meters, built on Southern portion of plot/property No.I/4, measuring 66½ sq.yds., part of Khasra No.59/21, area of Village Khureji Khas, situated in the abadi of “I” Block, Laxmi Nagar-Delhi-110092, consisting of whole of its structure whatsoever constructed there on with all of its fixtures and fittings in the same, with common stairs, which the same is bounded as under:-

*North :- Remaining portion of Plot No.4
South:- Road 15' wide
East:- Road 15' wide
West:- Main Road of main Bazar Laxmi Nagar.”*

16. Describing the property to be sold, the sale-deed records:-

“And whereas for his legal needs and requirements the vendor through his general Attorney Sh.Ram Murti Babbar, has agreed to sell/transfer the said First Floor (built-up) of said southern portion of Plot No.I/4, Laxmi Nagar- Delhi-92, built on plot area measuring 66½ sq-yds, for a consideration of ₹90,00,000/- (Rupees Ninety Thousand only) which the vendee has agreed to purchase the same.”

17. While reproducing the recital and relevant portion of the sale-deed, wherein property sold is described, we have underlined to highlight the fact that it is clearly recorded that the first floor being sold is on the southern portion of the plot. Now, if the entire first floor had to be sold there was no need to write ‘*the southern portion*’. By the time Vilas Babbar acquired title to the property under the sale-deed dated May 22, 1995, respondent No.2 had already acquired title to 22 square yards land and the building constructed thereon in plot No.I/4-5, Laxmi Nagar. Therefore, it is apparent that what was mortgaged with the bank was what was held as owner by

Vilas Babbar and concerning the first floor it was such portion of the first floor which was towards the southern side of the plot. Of course, the sale-deed did not delineate the area of the first floor sold and purchased by Vilas Babbar, but certainly indicated that it was not the entire first floor.

18. Therefore, we find no merit in the writ petition as also the prayer made in CM No.26643/2015 wherein direction is sought against the bank to produce its record showing the proposal given when the loan was advanced and valuation obtained by the bank concerning the mortgaged property, from which documents the petitioner intends to show that the bank treated the entire first floor being offered as security.

19. The writ petition as well as CM No.26643/2015 are dismissed.

20. No costs.

CM No.1295/2015

Since the writ petition has been dismissed instant application seeking restraint order against respondent No.2 is dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 21, 2016
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