

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

Judgment Reserved on: March 17, 2016
% *Judgment Delivered on: March 18, 2016*

+ **WP(C) 6126/2015**

ROHTASH YADAV Petitioner
Represented by: Mr.Mukesh M.Goel, Advocate

versus

PUNJAB AND SIND BANK & ORS. Respondents
Represented by: Mr.Rajinder Wali, Advocate for R-1
Mr.Manish Sharma, Advocate with
Ms.Chandni Mehra, Advocate for R-2
to 4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. M/s Morgan Tetronics Ltd. (respondent No.2) had availed a credit facility from Punjab & Sind Bank (respondent No.1). As per the parties, P.V.Khullar (respondent No.3) manages the company, and the loose expression we understand to mean that he is the Managing Director of the company. Nirmal Kanta (respondent No.4), had mortgaged her property D-49, Sector-7, Noida and 225 SBI Colony, Paschim Vihar to secure the debts payable. Two other companies named Pragya Overseas Pvt.Ltd. and M/s Shaloo Exports, stated to be the group companies of respondent No.2, are also stated to have availed credit facilities.

2. The dues became sticky. The respondent No.1 initiated proceedings under SARFAESI Act. The borrowers challenged the action taken, resulting in SA No.61/2012 being registered before the Debts Recovery Tribunal.
3. During the pendency of the proceedings the petitioner was approached by respondents No.3 and No.4 with a request to purchase property No.225, SBI Colony, Paschim Vihar, New Delhi and duly informed him that the property was mortgaged with the respondent No.1 bank. Petitioner met the officers of the bank. A consensus emerged between the bank, the petitioner as also respondent No.3 and No.4 that the property could be sold for ₹7 crores.
4. On January 08, 2012, the lawyer of the bank informed the petitioner as also respondents No.2 to No. 4 that a tripartite agreement with the bank, borrower and proposed buyer shall be executed to give effect to the agreement and sale consideration shall be directly deposited with the bank. Respondent No.4 took the trouble of drafting the tripartite agreement which was submitted to the bank by her under cover of a letter dated June 21, 2012. It was recorded in the draft of the tripartite agreement that the petitioner would directly deposit the amount with the bank.
5. The tripartite agreement could not be signed. All this was to the knowledge of Debts Recovery Tribunal where proceedings initiated by respondents No.2 to No.4 were pending. Various orders were passed by the Debts Recovery Tribunal, and we only highlight two such orders dated August 14, 2012 and October 01, 2012. The two orders record that pending execution of the tripartite agreement the petitioner may deposit some money with the bank, which the petitioner did. In all, petitioner deposited directly with the bank a sum of ₹2.01 crores. Some issue concerning the tripartite

agreement emerged and on December 27, 2012 the Debts Recovery Tribunal passed an order that the petitioner would deposit ₹2.25 crores with the Debts Recovery Tribunal.

6. Everything collapsed. The petitioner filed an application praying that ₹2.25 crores deposited with him with the DRT be returned to him and the bank should be directed to refund to him ₹2.01 crores.

7. The bank opposed the application pleading that it had received the money to the account of the debtor and it hardly mattered what was the source of the funds. Thus, as per the bank it had appropriated the money received towards the outstanding dues of respondent No.2.

8. Vide order dated March 07, 2012, the Debts Recovery Tribunal held in favour of the petitioner, and the order highlights that the petitioner never made any payment on behalf of the borrower. The petitioner made the payment under an independent right to which the bank had agreed i.e. property No. 225, SBI Colony, Paschim Vihar, New Delhi would be sold to him for ₹7 crores and since the property was mortgaged to the bank, the bank would receive the money in satisfaction of the charge. Relevant portion of the order reads as under:-

“The proposed buyer was under no legal obligation to make any payment to the bank as he was under no legal obligation to make any payment to the bank as he was not a debtor. He came to the picture with the knowledge and permission of the bank by way of the tripartite agreement for the purchase of the property. His intention was to purchase the property. The bank instructed that all payments towards consideration of the property shall be directly paid to the bank. When the S A was pending it was in view of the order of this Tribunal subsequent payments were made. On 14.08.12 this Tribunal directed to deposit ₹50 lacs by 04.09.12. On 08.11.12 this

Tribunal gave further directions by which payment was made. Thus it is clear the payments were made, during the course of the proceedings towards the sale consideration by the proposed buyer only on the bonafide belief that the sale would take place. But sale could not take place. Equity demands the seller has to return the money. Seller did not directly receive the money. The bank received the money on behalf of the seller. The bank has to return the money. The bank has no hesitation to say that the OTS has failed. The appropriation of the money is only an accounting procedure. The bank has to make the reverse entries. The bank is not in any way a loser. The property is intact with them. They are not losing interest. The bank cannot keep a third parties money to settle the account of the debtor. The issue involved is that much simple. When the OTS has failed, any money paid by a third party as consideration for purchase of the property and when the property sale could not take place the third party is entitled to get back his money. The applicant proposed buyer is entitled to the refund of ₹201 lacs from the respondent bank.”

9. Bank filed an appeal which has been allowed by the Debts Recovery Appellate Tribunal vide impugned order dated December 03, 2014. The reasoning is as under:-

“The applicant third party purchaser had entered into an agreement to sell the property which belonged to the respondent borrower. He could not have any concern with lis between the respondent and the Bank. Third party appellant was not concerned with any recovery of the amount which is due to the Bank by the borrower. The amount, which was paid, was in the account of the borrower. It was no concern of the Tribunal below as to from where the amount has come once the agreement between the borrower and the third party was an agreement which was not the issue before the Tribunal below. If the third party has entered into an agreement and pursuant to which had deposited the amount on behalf of the borrower, then it is not the concern

of the Tribunal below to take that into consideration as this amount would be towards the liability which the borrower owned to the Bank. It is not that the third party purchase, who has paid this amount, would not have other remedy to recover this amount. He may be having other remedies to recover this amount in accordance with law by moving appropriate proceedings for recovery of his amount on account of any failure on the part of the borrower on the basis of agreement which they have entered into. He may move any appropriate forum in this regard for recovery of the amount from the borrower or even may claim damages if so advised but he could not have validly approached the Debt recovery Tribunal for this purpose. In my view, the Tribunal below was not justified in considering the request of the third party purchaser who was not a party in the pending lis to entertain this application and then to pass the order for refund of the amount. It was no concern of the Tribunal to see from where the money had come once it was deposited in the accounts of the borrower. The bank, in view was justified in appropriating this amount in the accounts of the borrower. The impugned order, therefore, cannot be sustained and is set aside.”

10. The reasoning of the Debts Recovery Appellate Tribunal that the Debts Recovery Tribunal ought not to have concerned itself as to the source of the money which went to the coffers of the bank from those of the petitioner, to say the least is a perverse finding. It is not a case where the petitioner had entered into a private settlement with respondents No.2 to 4. The petitioner had approached the bank to know whether the bank would remove the lien on the property. The bank consented and it was only thereafter the petitioner paid the money to the bank and the bank appropriated the money by crediting the account of the borrower. The Debts Recovery Appellate Tribunal has returned a perverse finding that the

petitioner deposited the amount on behalf of the borrower.

11. The petitioner did not make any payment on behalf of the borrower. The petitioner made the payment on his own behalf and notwithstanding the tripartite agreement ultimately not being signed, the money was received by the bank with the clear knowledge that the petitioner was paying the money to purchase the property belonging to respondent No.4 who had mortgaged the property to respondent No.1 and that respondent No.1 would release the charge after receiving ₹7 crores and would simultaneously credit the sum to liquidate the dues of the borrowers. The Debts Recovery Appellate Tribunal has gravely erred in overlooking the orders dated August 14, 2012, October 01, 2012 and December 27, 2012 passed by the Debts Recovery Tribunal permitting the petitioner to pay money directly to the bank with the assurance that the bank would appropriate the money towards the dues of the borrower and simultaneously release the charge over the property.

12. To put it pithily, it is a case where the creditor agrees to receive money from a third party with the promise to the third party that on receipt of the money it would release the property charged in its favour by the debtor and would release the debtor of the debt. The tripartite understanding would have elements of inter-se mutuality; the mutuality between the bank and the purchaser would be the reciprocal promise of consideration flowing and in return the charge over the property to be sold being removed.

13. The petition is allowed. Impugned order dated December 03, 2014 passed by the Debts Recovery Appellate Tribunal is set aside and the order dated March 07, 2012 passed by the Debts Recovery Tribunal is restored.

14. The petitioner is entitle to costs in sum of ₹10,000/- (Rupees Ten Thousand only) payable by respondent No.1.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MARCH 18, 2016
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