

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7509 OF 2017

Patel Profiles Pvt.Ltd.

...Petitioner

Versus

Union of India & Ors.

...Respondents

Mr. Prasad D. Dani, Senior Counsel, i/by Mr. Amol L. Dhumal,
for the Petitioner.

Mr. G.R. Mishra, a/w Mr. D.P. Singh, for the Respondent No. 1-
Union of India.

Mr. V.M. Thorat, a/w Mr. A.A. Desai & Ms. Pooja V. Thorat, for
Respondent No. 2.

Mr. P.C. Kansara, i/by Kansara & Thanekar, for Respondent
No.3.

Mr. O.A. Das, for Respondent No. 4.

Mr. Jay Choksi, i/by AJC Legal, for Respondent No. 5.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**

DATE : 10 July 2017

ORDER :

1. The Petitioner by the present Petition is challenging the order dated 20 February 2015 passed by the Debts Recovery Appellate Tribunal (for short “**D.R.A.T.**”) in Misc.Appeal No. 193 of 2006.

2. The Petitioner has also sought directions from the Court, directing Respondent No. 5 to stop recovery proceedings against the Petitioner in connection with notice dated 25 October 2016. The Petitioner in the alternative has sought the refund of the amount of Rs. 8.19 Crores being the sale proceeds of the subject property and a direction, directing Respondents No. 3 and 5 to refund the said amount with interest by declaring that the Sale Deed dated 27 December 2011 in favour of the Petitioner by Respondent No. 5 Bank with consent of Respondent No. 3 is *void ab initio*.

3. Shri. Dani, the learned Senior Counsel for the

Petitioner has submitted that the Petitioner had purchased the subject property from Respondent No. 5 Bank with the consent of Respondent No. 3, to whom the subject property belonged on 27 December 2011. The Petitioner claims to be a *bona fide* purchaser for value without notice.

4. Shri. Thorat, the learned Counsel for Respondent No. 2, claimed that the matter has a chequered history dating back to the year 2005. The suit property was sold in auction by the Recovery Officer in favour of Respondent No. 3 who gave the highest offer of Rs. 75,00,000/-. Shri. Thorat has submitted that prior to this sale, Respondent No. 2 had mortgaged the subject property to the Respondent No. 4 Bank in order to secure credit facilities availed of by Respondent No. 2. Respondent No. 4 Bank had taken out appropriate proceedings for non-payment of debts and recovery certificate had been issued in favour of Respondent No. 4 as well as attachment warrants issued against the subject property. Respondent No. 4 had taken physical possession of the subject property. In the

year 2005, in recovery proceedings before the Recovery Officer, Debts Recovery Tribunal - III, at the instance of Respondent No. 4 Bank and without giving notice to Respondent No. 2 or his Advocate, the Respondent No. 4 had applied for sale of the property and the matter has been adjourned to 19 September 2005 for the purpose of sale. On 19 September 2005, Respondent No. 4 had presented its proposal which was finalised by S.S. Engineering and Consultants of which Respondent No. 3 is a proprietor and sold by private treaty for Rs. 75 Lakhs. Shri. Thorat has submitted that Respondent No. 2 was unaware of the private treaty entered into by Respondent No. 4 with S.S. Engineers and Consultants and became aware of the same on 20 October 2005 and had opposed the confirmation of sale. The Recovery Officer, however, confirmed the sale in favour of S.S. Engineering and Consultants and issued a certificates confirming the sale.

5. An Appeal had been filed by Respondent No. 2 against the confirmation of sale, which was rejected on the

ground that the objection raised before the Recovery Officer against confirmation of sale were not in prescribed format. Respondent No. 2 filed an appeal before the D.R.A.T., which granted an *ad-interim* stay to the recovery proceedings. Shri. Thorat has submitted that it is during pendency of appeal and subsistence of stay order that one Thane Janata Sahakari Bank (TJSB) was assigned the loan granted to S.S. Engineering and Consultants from the Respondent No.4 by Respondent No.3 mortgaging the very same property. Respondent No. 5 thereafter took over the liability of TJSB and paid further amount to Respondent No.3 against the subject property. Shri. Thorat has submitted that Respondent No. 5 declared the account of Respondent No. 3 as NPA and physical possession of the subject property was taken over by Respondent No. 5 from Respondent No. 3. Upon the request of Respondent No. 3, Respondent No. 5 located the Petitioner and provided him total finance for purchasing the subject property of Respondent No. 3. A sale agreement was entered into in favour of the Petitioner and the subject property was sold to the Petitioner for Rs.8.19

Crores on “As is Where is and As is What is basis”.

6. Shri. Thorat has submitted that no amount was paid by the Petitioner and it is only after Respondent No. 5 had financed the Petitioner for the entire purchase amount, that the Petitioner paid Respondent No. 5 and registered the Sale Deed. Shri. Thorat has submitted that D.R.A.T. had by the impugned order dated 20th February 2015 allowed Appeal No. 193 of 2006 filed by Respondent No. 2 and the entire private treaty sale in favour of Respondent No. 3 was set aside. Shri. Thorat submits that the Petitioner was well aware of the impugned order passed by the D.R.A.T. as Caveat had been filed before this Court and notice given to Respondent No. 3 as well as Petitioner, but no Writ Petition was filed by the Petitioner or by or Respondent No. 3. The recovery proceedings accordingly, resume before the Recovery Officer for taking physical possession of the property, which had been sold to Respondent No. 3. The Petitioner had filed an intervention application before Recovery Officer on 1 February 2016, which was rejected

by the Recovery Officer D.R.T. -III holding that it is no jurisdiction. The Petitioner has filed the present Petition only on 25 April 2017 challenging the order of the D.R.A.T. dated 20 February 2015. Shri. Thorat has after presenting a chart of the dates and events, contended that the Petitioner was well aware of the earlier proceedings and the impugned order dated 20 February 2015 passed by the D.R.A.T. setting aside the entire private treaty sale in favour of Respondent No. 3. The Petitioner, despite being well aware of the prior facts, has chosen to purchase the subject property and as late as on 25 April 2017 filed the present Petition challenging the order dated 20 February 2015.

7. Having heard the arguments, we are of the considered view that the Petitioner's cannot claim that it was unaware of the earlier proceedings as well as the mortgage of the subject property created by Respondent No. 2 in favour of Respondent No. 4 Bank. It was in an auction held in recovery proceedings for recovery of debts by Respondent No.4 that

Respondent No. 3, the proprietor of S.S. Engineering and Consultants, had purchased the subject property. It is in fact Respondent No. 4 Bank, who had financed S.S. Engineering and Consultants for the sale proceeds of the subject property. Respondent No.5 thereafter had taken over the loan of S.S. Engineering and Consultants. The subject property continued as security but in favour of Respondent No.5 the physical possession of the subject property was taken over by Respondent No.5 on non-payment of debts by Respondent No.3. The Petitioner's thereafter had purchased the subject property which was appears to have been financed by Respondent No.5 from Respondent No. 3 and on "As is Where is and As is What is basis". The Petitioner now cannot claim that they were unaware of the prior proceedings and/or the proceedings instituted by Respondent No.2 for challenging the sale of the subject property in favour of Respondent No.3 ad the subsequently recovery proceedings.

8. We are of the considered view that if the Petitioner

is at all aggrieved by non disclosure of material facts by Respondent No. 3, it is always open to them to file appropriate proceedings against Respondent No. 3 for claiming damages.

9. We are of the considered view that the present Petition involves disputed question of fact as to the knowledge of the Petitioner and hence, it would be inappropriate for this Court exercising jurisdiction under Article 226 of the Constitution of India to go into these disputed facts. We accordingly, dismiss the Petition.

10. There shall be no order as to costs.

[RIYAZ I. CHAGLA J.]

[B.R. GAVAI, J.]