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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 182 OF 2015

State Bank of India ...Appellant
Versus
Rikab Chand Mehta & Ors ...Respondents

Ms Jaishree Surti, *ib S Ashwinikumar & Co., for the Appellant.*
Mr Arsh Mishra, *i/b MV Kini & Co., for Respondent No. 4-Bank of Baroda.*

CORAM: G.S. PATEL, J
DATED: 13th June 2017

PC:-

1. The Appeal is directed against an order dated 17th September 2014. The application before the Bombay City Civil Court came to be made in the following circumstances.

2. The present Appellant, the State Bank of India ("**SBI**"), was the 4th Defendant in the Suit. That Suit was first filed in this Court on its Original Side as Suit No. 2185 of 2006; on a later increase in pecuniary jurisdiction it was transferred to the Bombay City Civil Court. The Plaintiff in the Suit claimed to be a *bona fide* purchaser of a flat. According to the SBI, the 1st Defendant, one Sanjay Singh had taken a loan of Rs. 16 lakhs from the SBI to purchase this flat. Sanjay Singh secured the loan with an equitable mortgage in favour of the SBI. He defaulted in repayment. SBI filed Original Application No. 12 of 2006 before the Debt Recovery Tribunal – II, Mumbai. This was decreed against Sanjay Singh and in favour of SBI in the amount of Rs. 16,94,190/- and interest. SBI moved in execution *inter alia* against the flat. The Recovery Officer issued a warrant of attachment for this flat.

3. In the meantime, while SBI's execution proceeding was pending, the Plaintiff, one Rikab Chand Mehta (**"Mehta"**) filed Miscellaneous Application No. 67 of 2008 before the Debt Recovery Tribunal – II, Mumbai *inter alia* seeking a declaration that he was a *bona fide* purchaser of the flat. He sought to set aside the *ex parte* decree that was passed not against him but against the original borrower, the present Defendant No. 1, Sanjay Singh. The Plaintiff's Miscellaneous Application was, inevitably, rejected. His appeal failed too.

4. In the meantime, Mehta filed Notice of Motion No. 1152 of 2011 in the present Suit. In that Notice of Motion there came to be passed an order of *status quo* directing Mehta, the so-called purchaser to deposit an amount of Rs. 13,60,000/- and Rs. 7,99,000/-. Mehta deposited this amount with the Prothonotary & Senior Master. This was said to be in satisfaction of the loan adjudicated due from Sanjay Singh.

5. It was at this stage that the SBI filed a Notice of Motion seeking to withdraw the amount deposited by the Plaintiff, Mehta. Mehta objected to the withdrawal. He said it was he who, as a flat purchaser, had made deposit, but he said that the flat has also been mortgaged to Defendant No. 3, Bank of Baroda, and unless the SBI furnished a no-dues certificate and agreed to bring back the amount if his suit was finally decreed, the SBI ought not to be permitted to withdraw the deposit made in this Court.

6. Annexed to the Affidavit in support of the SBI's Notice of Motion at Exhibit "B" was the copy of a common judgment delivered by the Debt Recovery Tribunal, Mumbai in Mehta's Miscellaneous Application. In paragraph 14 of this, and in the operative portion, the Debt Recovery Tribunal concluded that the so-called mortgages in favour of Bank of Baroda and Canara Bank were fraudulent and untenable, and the earlier declarations in favour of those banks were liable to recalled and withdrawn. This left SBI as the only mortgagee.

7. The learned Judge with respect seems to have entirely overlooked this. He observed that in the matter before him, i.e., SBI's withdrawal application, neither Mehta nor SBI had made it clear which mortgage executed by Sanjay Singh was prior in point of time, i.e., the mortgage in favour of SBI or the mortgage in favour of Bank of Baroda. The order of Debt Recovery Tribunal – II, Mumbai is clear. The only valid mortgage was the one that is created in favour of SBI.

8. In any case, I am unable to understand how the Plaintiff could be prejudiced if the application was allowed. After all the SBI was the original lender and mortgagee. It was the only creditor whose mortgage was held to be valid. It had obtained an order of attachment against the original borrower. It had moved in execution. The entire amount deposited by the Plaintiff was to cover the debt due to the 4th Defendant, SBI.

9. The learned Judge ought also to have had regard to the fact that the application was made by the SBI. and that recovering or recalling the amount could not possibly pose any kind of difficulty. At best, what was required was an undertaking from SBI, and which I am sure it would readily have given.

10. I will permit the SBI to withdraw the amount deposited with accrued interest. The amount is still lying in this Court. The withdrawal will be permitted upon the SBI giving a written undertaking of a duly authorized officer to the satisfaction of the Registrar-Judicial I or the Prothonotary & Senior Master as the case may be, to bring back into Court the entire amount withdrawn with further interest at such rate as may be prescribed, not less than the interest already accrued due on the deposit, should such an order be made at the final disposal of the pending suit. No further security could reasonably be required of the SBI.

11. The Appeal from Order is allowed and is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)