

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 3351 OF 2017

N.P. Bhavsar & Anr. ... Petitioners
V/s.
UCO Bank & Ors. ... Respondents

Mr. Karan Bhosale a/w Mr. Datta Mane and Mr. Naveen Kumar i/b
Mr. Naveen Kumar and Siraj Faruk Ghiwala for the Petitioners.
Mr. Pravin Patel a/w Mr. Sunil A. Humbre for Respondent No.1.

**CORAM : B.R. GAVAI AND
MANISH PITALE, JJ.**

DATE : 07th DECEMBER, 2017.

JUDGMENT [PER : MANISH PITALE, J.]

1 Rule. Rule made returnable forthwith. Heard finally
by consent of both the parties.

2 Mr. Patel waives service of Respondent No.1.

3 By consent of parties, Petition is taken up for final
hearing.

4 The Petitioners have filed this Writ Petition challenging
the order dated 07.11.2017 passed by the Debt Recovery Appellate
Tribunal (hereinafter referred to as 'the Appellate Tribunal'),

whereby the Appellate Tribunal has dismissed the Appeal of the Petitioners and confirmed the orders passed by the Debt Recovery Tribunal, Mumbai.

5 The facts leading to the filing of the present Petition are as follows :-

Respondent Nos.2 and 3 purchased flat No.204, in Monalisa Apartment, Kasturba Road, Malad (West), Mumbai, on 21.04.1999 by a registered agreement for sale from one M/s. Chirag Builders. On 24.04.2003, the Petitioners claimed to have entered into an agreement for sale with Respondent Nos.2 and 3 for purchase of the said flat. It was projected by Respondent Nos.2 and 3 that there were no encumbrances on the said flat, although Respondent No.1-Bank had granted loan to the said Respondents in respect of the said flat and the loan amount was yet to be repaid.

6 On 18.06.2003, Respondent No.1-Bank filed an application before the Debt Recovery Tribunal at Mumbai, for recovery of its dues against Respondent Nos.2 and 3, in respect of the said flat. Although Respondent Nos.2 and 3 were served in the said proceedings, they remained absent throughout, resulting in an

ex-parte judgment and order being passed against them by the Debt Recovery Tribunal and recovery certificate was issued.

7 It is claimed by the Petitioners that they were not aware of the said proceedings initiated by Respondent No.1-Bank culminating in the aforesaid judgment and order dated 20.11.2003 and that they came to know about the same for the first time on 10.06.2004, when they received a letter from Respondent No.1-Bank informing them about the orders passed by the Debt Recovery Tribunal. It is further claimed by the Petitioners that upon becoming aware of the said proceedings and the orders passed by the Debt Recovery Tribunal, they approached Respondent Nos. 2 and 3, who assured them that they would obtain necessary clarifications from Respondent No.1-Bank and that there was no cause for worry. Thereafter, on 08.08.2005, a public notice was issued by the Debt Recovery Officer, Mumbai, for auction sale of the said flat. Upon this, the Petitioners filed Intervention Application before the Debt Recovery Tribunal in Recovery Application No.48 of 2004, raising an objection to the said auction sale and attachment, claiming further consequential reliefs.

8 The said Intervention Application was dismissed by the Debt Recovery Tribunal on 31.07.2006, against which the Petitioners filed Miscellaneous Appeal. The said Appeal suffered from delay of 75 days and it was accompanied by an application for condonation of delay. This Appeal was dismissed in default on 02.08.2007. Thereafter, the auction sale of the flat was conducted by the Debt Recovery Officer on 27.09.2007, wherein Respondent No.4 purchased the said flat in auction. On 27.10.2007, the said auction sale was confirmed by the Debt Recovery Tribunal. The Petitioners then filed a Miscellaneous Application for modification of the said orders, which was rejected on 29.09.2008. The Petitioners filed further proceedings in the matter, which also stood rejected.

9 Aggrieved by the order of the Debt Recovery Tribunal dated 29.09.2008, the Petitioners filed Appeal before the Appellate Tribunal which remained pending for about nine years. On 07.11.2017, the Appellate Tribunal has dismissed the Appeal, mainly on the ground that the Petitioners failed to initiate any action or proceeding against Respondent Nos.2 and 3 from whom they had purchased the property and that they initiated proceeding only against Respondent No.1-Bank. The Appellate Tribunal took

the view that if the Petitioners had been bonafide purchasers, they would have immediately taken appropriate action against Respondent Nos.2 and 3 for having cheated them into buying a property which was already encumbered and it was subject matter of proceeding at the behest of Respondent No.1-Bank. The Petitioners have filed this Writ Petition challenging the said order dated 07.11.2017 passed by the Appellate Tribunal.

10 Mr. Bhosale, learned counsel appearing for the Petitioners submitted that the Appellate Tribunal had erred in dismissing the Appeal without appreciating that the Respondent No.1-Bank had been negligent inasmuch as it had failed to verify whether the original title documents of the flat were in its custody when it initiated proceedings against Respondent Nos.2 and 3 before the Debt Recovery Tribunal. It is submitted that Respondent No.1-Bank had in its custody only certified copies of the agreement for sale dated 21.04.1999 and not the original documents and that, therefore, the entire proceedings initiated by Respondent No.1-Bank stood vitiated.

11 We have considered the submissions made on behalf of the Petitioners and we have perused the documents on record. A

perusal of the same shows that according to the Petitioners, they became aware of the pendency of the proceedings before the Debt Recovery Tribunal in respect of the flat in question, on 10.06.2004, when they received a letter from Respondent No.1-Bank informing them that order dated 27.04.2004 had been passed by the Debt Recovery Tribunal. It is also on record that since 10.06.2004, the Petitioners did not initiate any civil or criminal proceedings against Respondent Nos.2 and 3, their vendors, who had clearly cheated them into buying a property which was encumbered and subject matter of proceedings before the Debt Recovery Tribunal. The Petitioners only filed an Intervention Application before the Debt Recovery Tribunal, out of which the impugned order passed by the Appellate Tribunal has arisen.

12 The record shows that Respondent Nos.2 and 3 are the next door neighbours of the Petitioners, as said Respondents are in flat No.203 of the said complex whereas the Petitioners are in flat No.204 of the same complex. The fact that the Petitioners failed to initiate any action against Respondent Nos.2 and 3, despite becoming aware in June 2004 itself that the said Respondents had cheated them into buying an encumbered property, shows that there

is collusion between the Petitioners and Respondent Nos.2 and 3. The Appellate Tribunal has correctly concluded that if the Petitioners were real bonafide purchasers, having realized that the very same flat which Respondent Nos.2 and 3 had sold to them, was subject matter of mortgage with Respondent No.1-Bank, they ought to have immediately initiated appropriate proceeding against Respondent Nos.2 and 3, apart from approaching the Debt Recovery Tribunal. It appears that the Petitioners and Respondent Nos.2 and 3 have colluded to prolong the litigation before the Debt Recovery Tribunal and Appellate Tribunal, so as to frustrate the attempts of Respondent No.1-Bank to take possession of the said flat, as Respondent Nos.2 and 3 had failed to repay the debt.

13 In this backdrop it is evident that the plea regarding Respondent No.1-Bank having been negligent as it had only certified copies of the agreement for sale dated 01.04.1999 instead of original documents, is without any substance. It is also apparent from the record that even the Petitioners do not have original documents in their custody as they were allegedly stolen from the custody of the Office Assistant of the Petitioner No.1. In any case, we do not propose to go into the said submission of the Petitioners

because it is an attempt to divert the Court from the main issue, which is, as to whether the impugned order passed by the Appellate Tribunal confirming the orders of the Debt Recovery Tribunal, was correct.

14 We find that there is no error committed by the Appellate Tribunal and that the Petitioners cannot any further be permitted to frustrate the proceedings initiated by Respondent No.1-Bank, way back in the year 2003, for recovery of its dues, pursuant to which the auction sale of the flat was undertaken and it was purchased in auction by Respondent No.4. Hence, we do not find any merit in the Writ Petition, which is dismissed. Rule is discharged with no order as to cost.

(MANISH PITALE, J.)

(B.R. GAVAI, J.)