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

\+ **W.P.(C)No.2983/2017 and CM No.12985/2017**

% **Date of decision : 10th April, 2017**

KANCHAN KUMAR ..... Petitioner
Through: Mr. Prashant Katara and Mr. Soin Khan, Advs.

versus

PUNJAB & SIND BANK AND ANR ... Respondents
Through: Mr. Rajive R. Raj, Adv. for R-1.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT (ORAL)

GITA MITTAL, J.

1. Issue notice to the respondents. Mr. Rajive R. Raj, Advocate accepts notice on behalf of respondent No.1.

Inasmuch as we do not propose to take a final view on the merits of the matter, on the request of ld. counsel for the parties to take up this matter for consideration based on the writ petition which encloses the necessary record of the case, we have heard ld. counsel for the petitioner and the respondent no.1.

2. The petitioner claims under a registered sale deed dated 22nd of April 2015 pursuant to an agreement to sell dated 3rd March, 2000 and related documents including a General Power of Attorney, Will etc. executed by the builder and the owner of the

property bearing No.50-D, Hauz Khas Village, New Delhi-110016 (*"the said building*" hereafter) in his favour. This position is admitted by Mr. Rajive R. Raj, Advocate who represents the Punjab and Sind Bank ("*the respondent no.1*" herein) as well as before the Debt Recovery Tribunal.

3. The writ petition has been necessitated inasmuch as the first and second floor of this property were purchased by one M/s Sanpa Builders Pvt. Ltd. (respondent no.2 herein) who executed an equitable mortgage qua this portion of the said building in favour of the respondent no.1 in order to secure financial facilities.

4. The undisputed position on the record is that with regard to the defaults committed by the respondent no.2, the respondent no.1 bank was constrained to initiate steps for recovery under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("*SARFAESI Act*" hereafter). In respect of these proceedings, the borrower respondent no.2 approached the Debt Recovery Tribunal-I, Delhi by way of S.A.No.47/07 in which a conditional order dated 25th September, 2007 was of stay passed which was subject to the deposit of an amount with the bank.

5. In these proceedings, an order dated 15th of April 2014 was passed interdicting the respondent bank from dealing with the "*property in question*" i.e. 50-D, Hauz Khas Village, New Delhi-110016 until further orders and that the property in question would be desealed within 48 hours.

6. On the 19th of May 2014, the respondent no.1 addressed a letter to the respondent no.2 with regard to desealing of the property clearly stating that only the first and second floor of the said building was mortgaged with it.

7. It appears that thereafter, on the 20th of May 2015, a registered sale deed came to be executed by the respondent no.2 with the Punjab and Sind Bank as the confirming party in favour of one M/s Amit Buildtech Pvt. Ltd. as the vendee. The ld. counsel for the petitioner has drawn our attention to the following recitals contained in the sale deed :

> *"4. AND WHEREAS said M/s Sanpa Builders (P) Ltd. raised a loan as on 11th March 2003 from* ***Punjab & Sind Bank*** *Nehru Place Branch New Delhi (hereinafter called as the conforming party) and* ***pledged/mortgaged First and Second Floor*** *with roof rights of this property as collateral security to the bank. That vendor subsequently constructed the third floor of the building.*
> *5. AND WHEREAS the principal officer of M/s Sanpa Builders (P) Ltd. Shri Pawandeep Sandhu passed away on 18.01.2005 resulting in the inability of M/s Sanpa Builders (P) Ltd. to pay back the said loan to the bank. That in order to recover its dues the bank took possession of the building under the SARFAESI Act and sealed the First Floor, Second Floor & Third Floor with terrace on 19/07/2007.*
> *6. AND WHEREAS said M/s Sanpa Builders (P) Ltd. being unable to pay the dues the purchaser offered to buy the first floor, Second Floor and Third Floor along with terrace rights along with proportionate rights in the land beneath for a sum of Rs.16 lakhs. (Sixteen Lakhs only). Purchaser/vendee agreed to pay*

the dues of the Bank. Purchaser/vendee asked Bank to become confirming party."

(Emphasis by us)

8. It is pointed out that the above recitals are factually incorrect inasmuch as roof rights of the second floor were never mortgaged with the bank.

The submission of the petitioner is that the respondent no.2 had no right, title or interest in the third floor of the property or its roof which lawfully belong to him and that no sale deed could have been registered by it in favour of the said vendee.

9. It appears that M/s Sanpa Builders Pvt. Ltd. (respondent no.2 herein) filed M.A.No.73/2016 before the Debt Recovery Tribunal complaining that the possession of the third floor of the property had not been handed over to it by the bank.

10. In support of the submission that the respondents are proceeding illegally in the matter, our attention has been drawn by ld. counsel for the petitioner to an order dated 9th June, 2016 recorded by the Debt Recovery Tribunal on M.A.No.73/2016 wherein a statement was made by ld. counsel for the respondent no.1 that possession of the third floor of the property stood handed over to the applicant.

11. This order was followed by an order dated 29th of June 2016 passed by the Debt Recovery Tribunal appointing a Local Commissioner to visit the property and to hand over the possession of the third floor of the said building to the respondent no.2. The

Local Commissioner made a spot visit and filed a report dated 12th of January 2017 reporting as follows :

> *"5. That the undersigned along with Shri Gupta and Shri Harjinder Singh entered the building premises from ground floor and* ***found that the grill gate of 3rd floor locked from inside and occupied by a person who identified himself as Shri Kanchan Kumar. He said that he is a rightful owner of said property i.e. 3rd floor.*** *He locked the property from inside and did not allow undersigned, Shri Gupta and Shri Harjinder Singh to enter the property. Two persons, namely Shri Niranjan Kumar and Shri Parth, who identified themselves as relatives of Shri Kanchan Kumar, argued with bank official and undersigned and obstructed entry to the premises. Undersigned explained them the purpose of his visit and that he has been directed by Hon'ble Tribunal to take possession of the property from the bank and to hand-over the same to M/S Sanpa Builders. During the process, someone telephoned PCR informing that there is some disturbance at property site. Police Officials visited the site and on enquiring from undersigned and bank official the reason for visit, undersigned explained the purpose of his visit to police official and showed DRTs order to him. At the time of police officials visit undersigned was recording spot proceedings. After seeing the order of Tribunal he advised occupants of said property let the undersigned record his report in the matter.*
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> *6. That the* ***said property i.e. 3rd floor did not have any lock/seal of the bank on the entry door or the notice affixed thereon indicating its possession by the bank. The bank official was not having any keys with him to open the lock put on the property by the bank, if any, on the entry gate of the property i.e. 3rd floor of the building.***
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> *7. That the possession of the property could not be taken over by undersigned as it was not handed over by*

the bank to the undersigned. Hence, the orders of Hon'ble Tribunal could not be executed."
(Emphasis supplied)

12. In the meantime, the respondent No.1 bank also filed an application dated 13th of July 2016 wherein it was admitted that the third floor was never mortgaged to it. For expediency, we extract hereunder the admissions in this application made by the bank in this regard :

> *"v. That the said SA bearing No.47/2007 was disposed off vide order dated 15.04.2014 whereby this Hon'ble Tribunal directed the borrower to make payment within and sale deed to be executed in favour of proposed buyer.*
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> *vi. That in terms of order dated 15.04.2014,* ***sale deed was executed*** *in favour of the purchaser M/s. Amit Buildtech Pvt. Ltd.* ***on 20.05.2015*** *however,* ***inadvertently and oversight in the said sale deed dated 20.05.2015, the description of the property was mentioned as; First Floor*** *except Unit No.3C admeasuring 190 Sq. Feet (which is already sold to other parties by way of Sale Deed which is registered as Document No.2084 in Additional Book No.1, Volume No.9097 on pages 56-57 dated 22.02.2009 in the office of sub-registrar, New Delhi), and Second Floor and* ***Third Floor alongwith terrace rights of property bearing municipal No.50-D,*** *being part of Khasra No.624/278 situated within abadi (old lal dora) of village Hauz Khas, Tehsil Mehrauli, New Delhi admeasuring 90 Sq. Yards.*
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> *xxx xxx xxx*
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> *xiv. That it is pertinent to mention that on 9.6.2016 no such contention/submission was made by the counsel for the respondent bank. And on 29.06.2016, this Hon'ble Tribunal appointed local commission for handing over*

possession of the third floor to the applicant.

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4. That the present Application may be allowed on any of the following reasons enumerated herein below :

i. That from the facts and circumstances mentioned herein above it is abundantly clear that only ***First floor with terrace rights of property bearing No.50-D, Hauz Khas Village, New Delhi admeasuring 90 Sq. Yards*** *was mortgaged with the bank.*

ii. That ***at the time of mortgage there was no third floor of the mortgaged property hence there is no question of third floor being mortgaged with the Respondent Bank as the third floor was constructed after the mortgaged****, for which the borrower took loan from the Respondent Bank.*

iii. That ***inadvertently and oversight, in the description of property in the said sale deed dated 20.05.20115, "third floor with terrace rights" has been mentioned and the same was confirmed by the respondent Bank****, which is patently wrong."*

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v. That the respondent bank is not the seller of the said property and the bank is merely a confirming party to the said sale deed dated 20.05.2016. Hence, the respondent bank cannot hand over the possession of the property which was not mortgaged with the bank.

5. That form the fact and circumstances stated hereinabove, it is clear that in the orders dated 9.6.2016 as well as 29.06.2016 there is an error apparent on the face of record which the Respondent Bank is being able to demonstrate and hence there is good and sufficient grounds for the review of order dated 09.06.2016 and 29.06.2016.

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PRAYER

In the peculiar fact and circumstance mentioned herein above, it is therefore most respectfully prayed that this

Hon'ble tribunal may graciously be pleased to :
a) review/recall/modify order dated 09.06.2016 and 29.06.2016 passed in the captioned matter;
xxx xxx xxx"

(Emphasis supplied)

13. It was clearly the submission of the bank that in the description of the property in the sale deed dated 20th of May 2015, the description of the property sold erroneously included the third floor of the property no.50-D, Hauz Khas Village, New Delhi-110016.

14. It appears that on learning about the attempt of respondent no.2 to dispossess him, the petitioner approached the Debt Recovery Tribunal by way of an application dated 19th December, 2016 seeking *inter alia* recall of the orders dated 9th June, 2016 and 29th June, 2016 which is also pending with the Debt Recovery Tribunal.

15. We are informed that on or around 6th of February 2017, the petitioner has separately filed an application under the SARFAESI Act (which has not been registered) seeking a prayer against the Punjab and Sind Bank from proceeding/taking recourse against the third floor and terrace of the property bearing No.50-D, Hauz Khas Village, New Delhi-110016.

The petitioner has placed on record an order dated 20th of February 2017 simply adjourning this application to the 11th of April 2017.

This application therefore, is also still pending.

16. The writ petition is necessitated inasmuch as, in the meantime, the respondent no.2 has filed an application dated 11th of February, 2017, seeking police assistance to the Local Commissioner to execute the orders with regard to taking and handing over possession of the third floor of the property in question. A copy of the application has been placed at page 176 of the present paper book. A bare perusal thereof shows that the applicant does not make any disclosure of the rights and claims of the present petitioner in the said application.

17. We are informed by Mr. Rajive R. Raj, ld. counsel for respondent no.1, that this application has been directed to be listed on 11th April, 2017.

18. In this writ petition, by an interim order dated 31st of March 2017, this court had directed that there would be *status quo* with regard to the property, for a period of two weeks.

19. We are also informed by ld. counsel for respondent no.1 that the bank's application dated 13th July, 2016 has also been directed to be listed on 11th April, 2017.

20. The above narration of facts and circumstances would show that the orders dated 9th of June 2016 and 29th of June 2016 have been passed as both the respondents have not disclosed to the Debt Recovery Tribunal the claim and rights of the petitioner on the third floor or his occupation.

21. In the report dated 12th of January 2017, the Local Commissioner has for the first time brought the presence of the petitioner to the notice of the tribunal and also disclosed that the

same was not in the possession of the respondents.

22. Before us, it is submitted by Mr. Rajive R. Raj, ld. counsel for respondent no.1 that as on date there are no dues at all owed by the respondent no.1 in respect of the financial facility granted to the respondent no.2 by the Punjab and Sind Bank and that no action under the SARFAESI Act is pending against the respondent no.2 or in respect of the property.

23. The petitioner has made a grievance that he was never impleaded as a party to the proceedings before the Debt Recovery Tribunal. A submission is made by the ld. counsel for respondent no.1 that given the stand of the respondent no.1 bank, the petitioner would not have been a necessary or proper party so far as those proceedings were concerned. Be that as it may, given the view we are taking it is not necessary for us to opine on this question.

24. It is trite that no orders can be passed against a party who is not a party to the *lis*. Certainly no orders would also be tenable against a property which is not the subject matter of a legal relationship between the financial institution (which in the present case is the Punjab and Sind Bank) and its borrower, the respondent no.2 before us. These are important aspects which we are sure that the Debt Recovery Tribunal would take into consideration at the time of consideration of the pending applications.

25. However, so far as the present writ petition is concerned, the same does not require any intervention by us except to the limited extent as is directed hereafter.

26. A direction is issued to the Debt Recovery Tribunal to

consider the bank's application dated 13th July, 2016; the petitioner's application dated 19th December, 2016; the respondent no.2 borrower's application dated 1st February, 2017 and the petitioner's application dated 6th February, 2017 which shall be taken up simultaneously for final consideration after completion of pleadings on such date as may be appointed by the Tribunal.

27. The Tribunal would also note the fact that the bank has claimed no rights at all *qua* the third floor and also examine the question as to whether it could derive any jurisdiction to pass orders in respect of a property which cannot be a subject matter of any proceedings under the SARFAESI Act or DRT Act.

28. It is further directed that *status quo* shall be maintained with regard to the third floor of the property bearing No.50-D, Hauz Khas Village, New Delhi-110016 till the passing of the final orders by the Debt Recovery Tribunal on the above four applications.

29. This writ petition is allowed in the above terms. The pending application is also disposed of.

30. Dasti under the signatures of Court Master.

GITA MITTAL, J

ANIL KUMAR CHAWLA, J

APRIL 10, 2017
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