IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7279 OF 2018

Bank of India .. Petitioner
Versus
Ram Sagar Gupta and ors .. Respondents

…

Ms. Shridevi Kotkar I/b O.A. Das for the petitioner.

CORAM: PRADEEP NANDRAJOG, C.J. AND BHARATI DANGRE, J.

DATED : 25th NOVEMBER, 2019

P.C:-

1 The appellants filed O.A. No.201/2003 impleading Ram Sagar Gupta, sole proprietor of M/s. Industrial Paints & Chemical Industries as defendant No.1, Rajendra Gupta and Suman Gupta as defendant Nos.2 and 3. It was pleaded that defendant no.1 had availed a credit from the Bank and defendant Nos.2 and 3 stood guarantors.

2 It was also claimed that Shed No.5 constructed at Sr.Nos. 30(1)(2)(3), 31(2B), 32(1) at Village Dhamini, District Raigad had been mortgaged. The mortgage was stated to be by deposit of title deeds.

3 Decreeing the claim and passing a joint and several decree against defendant Nos.1 and 2 in the absence of title documents being reduced, learned DRT held vide order dated 13th October 2008 that equitable mortgage not being proved, a decree for redeeming the mortgage could not be passed. The Tribunal held that if the defendants did not liquidate the debt, hypothecated goods could be sold to recover the debt.

4 The petitioner filed an Appeal limited to the grievance of equity of redemption not being foreclosed. The Appeal was dismissed on account of the fact that the petitioner could not establish having with it the original title deeds statedly deposited when the equitable mortgage was created.

5 The Writ Petition challenges the appellate order dated 18th July 2017. The contention in the petition is that the foras below failed to note that while sanctioning the credit that the first respondent agreed to create a mortgage.

6 Now, a promise to create a mortgage is different than creating a mortgage. It being a question of fact whether title deeds were handed over to the petitioner to create the equitable mortgage, the said fact had to be proved by producing the title deed. None being produced, we find no infirmity in the

impugned orders and are surprised at the fact that the Bank is not proceeding to execute the decree by attaching the assets of the three defendants who, as noted above, have been held jointly and severally liable. Irrespective of the properties of the respondents not being mortgaged, the same can be proceeded against for recovery of the dues by seeking attachment of the properties and sale thereof.

7 Writ Petition is dismissed.

SMT. BHARATI DANGRE, J **CHIEF JUSTICE**

Tilak