IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION

WRIT PETITION NO.207 OF 2015

M/s. Mohan Gandhi & Co. ..Petitioner
Versus
Punjab National Bank & Ors. ..Respondents

Mr. T. J. Pandian i/by Pandian & Associates, Advocate for the Petitioner.
Ms. Jinal Gogri i/by Negandhi Shah & Himaytullah, Advocate for Respondent No.1.

WITH
WRIT PETITION NO.210 OF 2015

G. Balasubramanian & Anr. ..Petitioners
Versus
Punjab National Bank & Ors. ..Respondents

Mr. Prasad Pathare, Advocate for the Petitioners.
Ms. Jinal Gogri i/by Negandhi Shah Himaytullah, Advocate for Respondent No.1.
Mr. T. J. Pandian i/by Pandian & Associates, Advocate for Respondent No.3.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 5th NOVEMBER, 2019

P.C.

1] Heard Learned counsel for the parties.

2] Punjab National Bank had advanced a credit to a company known as Argee Textiles Pvt. Ltd., which went into liquidation. Four directors of the company had stood as guarantors. A partnership firm M/s. Mohan Gandhi & Co. was impleaded as a Respondent by the Bank as a surety, having deposited title deed of a flat owned by the partnership firm bearing No.A-1, Cuffe Castle in Mumbai. A suit was filed by the Bank impleading the principal borrower as Defendant No.1, its four directors as Defendant Nos.2 to 5 and the partnership firm as Defendant No.6. Decree sought was in sum of ₹ 24,67,486.46 together with pendent-lite and future interest @ 19.5 per annum from date of filing of the suit till realization.

3] With the promulgation of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the suit was transferred to the Debts Recovery Tribunal, Mumbai.

4] During the pendency of the suit, hypothecated property of the principal borrower was sold in sum of ₹ 5,56,854.11. Claiming that Defendant No.6 had voluntarily agreed to sell the secured flat to the Bank in sum of ₹ 14 lakhs giving credit said sum of ₹ 14 lakhs plus sale price realized by sale of the hypothecated goods of the company in the village, claimed before the DRT was reduced to ₹ 5,10,632.25.

5] Vide order dated 14th July 2005, the Original Application was disposed of fastening no further liability on the partnership firm. The reason is obvious. As per the impugned order the secured asset furnished by the partnership firm was sold and the sale price was credited to the account of the principal borrower.

6] The order dated 14th July 2005 shows that Respondent Nos.2 to 6 questioned the sale of the hypothecated property on the plea that the value of the goods was under invoice. DRT has noted that the Bank had issued public notice inviting bids for the hypothecated property of the principal borrower and no objection thereto was raised by any of the Defendants. In paragraph 10 of the decision dated 14th July 2005 the Tribunal has noted the law declared by the Supreme Court in the judgment reported as (2004) 7 SCC 151 ***Gujraj Jain Vs. State of Bihar & Ors***. to highlight that at no point of time when the sale was effected was any such objection raised.

7] Pertaining to the sale of the flat of the partnership firm, the plea that the document of sale was a result of coercion has been also dealt with in paragraph 10 of the decision dated 14th July 2005. The date of sale document being 15.07.1982, the Tribunal held the plea to be an afterthought for the reason for 20 years no such grievance was made. The decree passed by the Tribunal is in sum of ₹ 1,93,552.48 together with interest @ 6% per annum from the date when the Original Application was filed till realization.

8] Two Appeals registered as Appeal Nos. 324 of 2005 and 378 of 2005 were filed before the Debts Recovery Appellate Tribunal which have been disposed of by a singular order dated 7th May 2014 which has been challenged in the two Appeals. As regards the grievance of the partnership firm impleaded as Defendant No.6, the Tribunal has noted that the indenture of sale for the flat in question pursuant whereto the Bank had credited ₹ 14 lakhs in the account of the principal borrower was subject matter of Suit No.2589/1988 filed by the firm seeking cancellation of the sale agreement dated 05.07.1982 and for mesne profits. The Appellate Tribunal has also noted that the Bank had filed suit No.423/1989 seeking specific performance of the sale agreement. Thus, the plea before the Appellate Tribunal that the flat in question be reverted to Respondent No.6 has been dealt with by the Appellate Tribunal and the reasoning is that the said issue would be determined in the suit filed by the partnership firm and so would be the issue of mesne profits. Meaning thereby, if the suit filed by the partnership firm succeeds, possession of the Bank being unauthorized would result in mesne profits being awarded.

9] Learned counsel for the Petitioners questions the said finding and urge that since the Debts Recovery Tribunal upheld the sale, the Appellate Tribunal ought to have given proper reasons.

10] As we read the impugned order passed by the Appellate Tribunal, it clearly records that the issue concerning sale of the flat would be dealt with in the suit filed by the partnership firm and thus obviously that the order of the Tribunal confirming the sale of the flat has been set aside; but made subject to final adjudication in the suit filed by the partnership firm as also the suit filed by the Bank seeking specific performance of the sale agreement.

11] Needless to state claim of the partnership firm for mesne profits has yet to be crystalized. In this view of the matter the final direction issued by the Debts Recovery Appellate Tribunal that the sum decreed would not be recovered from Defendant Nos.2 to 5 is also correct inasmuch as the said recovery has been postponed till the decision in the two suits; one filed by the partnership firm and the other filed by the Bank are decided. Meaning thereby, if the suit filed by the partnership firm is decreed, mesne profits would be awarded and the said mesne profits would be adjusted from the dues payable by the principal borrower to which the other defendants stood as guarantors. As regards the partnership firm, the issue would also be decided in the said suit.

12] Thus, we dispose of the two Writ Petitions affirming the impugned order dated 7th May 2014.

13] No costs.

Balaji G. Panchal

Digitally signed by Balaji G. Panchal
Date: 2019.11.06 15:50:56 +0530

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