$~10

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

Date of Decision: 01.04.2019

\+ **W.P.(C) 8819/2014 & C.M. No.52616/2018**

MANJU JAIN & ANR ..... Petitioners

Through Mr.Sanjiv Kakra, Adv. with Mr.Sumehar Bajaj, Adv. with petitioner no.2 in person.

versus

BANK OF BARODA & ORS ..... Respondents

Through Mr.Arun Aggarwal, Adv. for R-1 to 3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. Vide the present petition under Articles 226 and 227 of the Constitution of India, the petitioners assail the order dated 06.08.2014 passed by the Debt Recovery Appellate Tribunal, Delhi (DRAT) in Appeal No.16/2011, which was filed by the petitioners impugning the order dated 22.12.2010 passed by the Debt Recovery Tribunal-I (DRT) in Appeal Nos.32/2006 and 08/2008. By way of the aforesaid order dated 22.12.2010, the DRT had dismissed the petitioner's appeals challenging the rejection by the Recovery Officer of their objections to the attachment of the property purportedly owned by them.

2. The property in question, which is situated in Faridabad, was admittedly owned by M/s Jamuna Properties Pvt. Ltd., a company which has been arrayed as respondent no.2 in this writ petition. M/s Jamuna Properties Pvt. Ltd. mortgaged the said property on 21.02.1984 by a registered Mortgage Deed in favour of Traders Bank Limited, which subsequently merged with the respondent No.1 i.e. Bank of Baroda. The said mortgage was created in respect of loan advanced to M/s Maninder Construction.

3. On 01.07.1988, the owner of the property, i.e., M/s Jamuna Properties Pvt. Ltd., passed the following Resolution:-

> "EXCERPTS OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS HELD ON 01.07.1988 AT ITS REGISTERED OFFICE 7A, RAJPUR ROAD, DELHI -110 054.
>
> *******
>
> PURSUANT TO THE AMALGAMATION OF THE ERSTWHILE TRADERS BANK LTD. WITH BANK OF BARODA, IN CONNECTION WITH THE OUTSTANDING IN THE FOLLOWING ACCOUNTS and at the request of the said Company, we are to stand as guarantor and to create equitable mortgage in respect of our property 7.25 acres (58 kanals of rocky land) situated in Moza Mewala Maharajpur, Tehsil Ballabgarh), Distt.-Faridabad bearing khata No.379/572 of the Jamabandhi 73-74 and 6 bighas (58 kanals of rocky land) situated in Mosa Mewala Maharajpur, Tehsil Ballabgarh, Distt. Faridabad, bearing khata No.379/572 of the Jambandhi 73-74.

S.No.	Branch advance located	Name of the borrower	Nature of facility	Amount outstanding Rs.(lacs)
01.	Civil Lines Jallandhar	P.S. Jain Motor Co. (PB) Ltd.	C/C Limit	70.08

02.	-do-	V.K. Automobiles	-do-	43.97
03.	G' Block Con. Cir. N. Delhi	Manindra Construction Pvt. Ltd.	-do-	6.15
04.	-do-	Raja Ram Bhasin & Co.	-do-	4.96
05.	Rohtak (Haryana)	Balwant Kumar Jain	H.P.	0.65
06.	-do-	Pawan Kumar Jain	-do-	0.36
07.	-do-	Jaswant Rai Jain	-do-	0.55
08.	-do-	Basant Kumar Goyal	-do-	0.17
				126.89

to secure the outstanding of the said Bank.

The Board was also informed that the mortgage has already been created on 21.02.1984.

After noting the above it is unanimously resolved:

1. That the Company be and are hereby authorised to stand guarantor to secure the loans and advances of Bank of Baroda to the tune of Rs.126.39 with interest, costs, charges and expenses.

2. That the Board approved the General Form of guarantee and the Company be and are hereby authorized to execute the said documents under the common seal. Common seal of the Company shall be affixed in the presence of Mr.R.K. Jain and countersigned by Mr.Poonam Chand Jain.

3. That any one of the Director, namely Mr.R.K. Jain, Mr.R.C. Jain and Mr.N.C. Jain is hereby authorised to visit Bank of Baroda G, Block, Con. Circus, New Delhi formerly branch of Traders Bank Ltd. and to deposit the title deed in respect of the said property with an intent to create equitable mortgage. The said property is already mortgaged by way legal mortgage, to the said Bank.

4. That any of the aforesaid Directors is also singly authorised

to register the Bank's charge on our said property with the Registrar of Companies and a certificate issued in respect thereof by the office of Registrar of Companies shall be deposited with the Bank of Baroda."

4. After the passing of the said resolution and in a manner wholly contrary to it, the purported sale deed was executed in favour of the petitioner herein on 21.07.1988 by Shri S.C. Jain, who was one of the Directors of the Jamuna Properties Pvt. Ltd. and the husband of the petitioner. Vide the said sale deed, Shri S.C. Jain purported to sell the said property of the said company to the petitioner for an apparent consideration of Rs.57,000/-. Pertinently, the said property had earlier been offered as security to secure the loan in excess of Rs.10,50,000/-.

5. On 06.10.1988, the Bank recorded a memorandum with regard to deposit of title deeds of the said property for the purpose of creation of an equitable mortgage. The said equitable mortgage was created to secure the advances made to several entities, particulars whereof are mentioned in the Resolution dated 21.07.1988 taken note of hereinabove.

6. In respect of the loan advanced to M/s V.K. Automobiles, the respondent Bank filed Suit No.2263/1991, wherein M/s Jamuna Properties Pvt. Ltd was arrayed as a defendant. Upon coming into force of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, the aforesaid suit was transferred to the DRT as O.A.No.170/1996. The said OA was thereafter allowed by the Tribunal vide its order dated 14.01.1998. The relief *inter alia* granted was that in the event of failure on the part of the defendants to pay the

applicant Bank the decretal amount of Rs.35,34,131.65 together with pendente lite and future interest @19.5% per annum, from the date of filing of the suit till its realization in full alongwith the costs of the suit, the plaintiff Bank would be entitled to recover the amount by selling the mortgaged property admeasuring 7.25 acres stipulated in Mauza Mewala, Maharajpur, Tehsil Ballabhgarh, Dist. Faridabad bearing Khata No.379/572 of Jamabandi 73-74. Based on the order dated 14.01.1998, whereby the O.A. was allowed, the respondent Bank approached the Recovery Officer, who vide his order dated 22.05.2003 directed attachment of the mortgaged property in question.

7. The petitioner claims that upon learning about the proceedings before the Recovery Officer, she filed objections claiming to have purchased the property pursuant to the sale-deed executed in her favour on 21.07.1988, which objections were dismissed by the Recovery Officer vide order dated 25.04.2003. Aggrieved by the rejection of their objections, the petitioners approached the DRT by way of two appeals being Appeal No.32/2006 and Appeal No.08/2008, which were dismissed by observing as under:-

> *25. I have gone through the above documents very carefully. In my considered opinion, the property-in-question is duly mortgaged in favour of the respondent bank not only in the account of M/S Maninder Singh but several other accounts also including the account of M/s. V.K. Automobiles.* ***The contention of the appellants that the property was purchased by them from the company has no force. It is a sham transaction with a view to defraud the respondent bank to recover its legitimate dues. The appellant no.l is the wife of Managing Director of M/s. Jamuna. Properties from***

***whom the appellant no.l has purchased the property in question**. I have also failed to understand that in case it is assumed that property in question is not mortgaged in the account of M/s. V.K. Automobiles, why the defendant company and its directors who are the close relatives of the appellants have not filed any appeal against the said final order dated 14.1.98 wherein my Ld. Predecesor has clearly held that the property-in-question is a mortgaged property. The said order has already attained finality.*

*27. I have also not found any force in the contentions of the appellants that in the valuation report, the valuer has shown the appellants as to the owners of the property-in-question and the Ld.R.O has not issued any notice to them. The objections filed by the appellants before the Ld R.O. were duly dismissed before the auction of the property-in-question. The appellants who have stepped into the shoes of the original mortgagor failed to liquidate the dues of the respondent bank. Mutation of the property-in-question in the name of the appellants has also no force. The property-in-. question is already mortgaged with the respondent bank at the time of its purchase by the appellant no.l. **Even otherwise, the said transaction is a sham transaction in view of the discussion as held above.** The allegations that the Ld. RO has sold the property-in-question without following the rules and regulations as mandated in the Income Tax Act has also no force. I have gone through the auction proceedings as well as the record of the RC file. I have not found any substance in the allegations leveled by the present appellants. In my considered opinion the present appeal has been filed just to delay the recovery of legitimate dues of the respondent bank."(emphasis supplied)*

8. Aggrieved by the rejection of their appeal by the DRT, the petitioners then approached the DRAT, which also dismissed their appeal vide the impugned order by observing as under:-

" *The appellants primarily are frustratingly* *attempting to interfere in the sale of the property in order to save the property.* ***The action on the part of the appellants and the plea raised by them are found to be false and motivated.*** *The counsel for the respondent has emphasized the need to approach the Tribunal with clean hands by referring to the decision of the Hon'ble Supreme Gourt in the case of* ***S.P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. &Ors.****, JT 1993 (6) S.C. 331. It was expected from the appellants to make approach with clean hands and not to withhold any information. It is not clear whether this is a deliberate attempt on the part of the appellants to withhold a part of the auction report or it is an inadvertent error. Whatever be the case, this need not be delved any further. The fact remains that I have not been able to find any fault with the auction held in this case."(emphasis supplied)*

9. Learned counsel for the petitioner has contended that the petitioner was a bona fide purchaser for valuable consideration. The further submission is that the there is no equitable mortgage created on 06.10.1988, since the original title deeds of the property in favour of M/s Jamuna Properties Pvt. Ltd. were never deposited with the intention of creating an equitable mortgage to secure the advances made to M/s V.K. Automobiles etc. Learned counsel submits that the learned DRAT has proceeded on a wrong assumption that the petitioner could not raise a challenge to the decree passed during the recovery proceedings.

10. Having considered the submissions and the decisions relied upon by the learned counsel for the petitioner in ***Tax Recovery Officer II, Sadar, Nagpur Vs. Gangadhar Vishwanath Rande (1998) 6 SCC 658*** and ***Swaraj Kishore Arora Vs. Indian Bank & Ors.2016***

SCC OnLine Del 2870 : (2016) 230 DLT 269 (DB), we are not inclined to interfere with the impugned order in exercise of our power of judicial review under Article 226 of the Constitution of India. It is well settled that this Court, while sitting in judicial review, is not obliged to interfere with every order brought before it, even if there may be some infirmity in the order sought to be assailed and, particularly, in cases like the present where the petitioner is seeking to capitalize on its evident fraud as noticed by both the DRT and the DRAT. In the present case, the petitioners claim title to a property earlier owned by respondent no.2, M/s Jamuna Properties Pvt. Ltd. on the basis of a sale deed executed in their favour on 21.07.1988 by none other than the petitioner no.1's own husband and the petitioner no.2's father, who is one of the Directors of M/s Jamuna Properties Pvt. Ltd., for an apparent sale consideration of Rs.57,000/-. The said sale deed is clearly contrary to the Resolution dated 01.07.1988 passed by the said Company, wherein it was resolved that the mortgage be created in respect of the property of the company to secure the advances made to the entities named in the said resolution by the respondent Bank, and it authorised Mr.R.K. Jain, one of the authorised Director of the company to execute one of the necessary documents. Contrary to that, the other Director Shri S.C. Jain proceeded to execute the sale deed of the property in favour of his own wife at a ridiculous suppressed consideration of Rs.57,000/- when, pertinently, the property was found worthwhile to be accepted as a security initially to secure the loan advanced to M/s Maninder Construction to the tune of Rs.10.5 lakhs. It admeasures 7.25 Acres and is situated in Faridabad District. We agree with the consistent finding that the said transaction is a sham, and is vitiated by fraud. It is hit by Section 53 of the Transfer of property Act. The petitioners, therefore, have no *locus standi* to prefer this petition.

11. In these circumstances, we see no reason to interfere with the impugned order when it is evident that the petitioner is seeking to perpetuate and further advance the fraud played by them upon the Bank.

12. The writ petition is dismissed along with pending applications. The interim orders stand vacated.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 01, 2019/aa