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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4813 OF 2019

UCO Bank Ltd. .. Petitioner

Vs.

Krishna Sahakari Bank Ltd. & Ors. .. Respondents

None for the Petitioner.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

JANUARY 28, 2020

P.C.

1. The fight is between the Petitioner-Bank and the first Respondent – Bank.

2. Challenge in the Writ Petition is to the order dated 12th December, 2017 passed by the Debts Recovery Appellate Tribunal, Mumbai in Appeal No. 259 of 2013 filed by the first Respondent. The Appeal was allowed and the order dated 1st August, 2013 passed by the Debts Recovery Tribunal, Pune was set aside.

3. The impugned order shows that Shivdas Ramdas Kadam (Respondent No.2 in the Writ Petition) had availed of a credit from UCO Bank and the first Respondent-Bank. He had mortgaged Flat No. C-16, Shalini Residency Co-Op. Housing Society Ltd., Taluka-Haveli, District – Pune to both i.e. the Petitioner and the first Respondent.

4. The DRAT misdirected itself by posing the question whether a subsequent mortgage can merge with a prior mortgage. Needless to state no such concept exists. The real issue has not been highlighted in the impugned order dated 12th December, 2017.

5. Law recognizes priority of charges created by mortgaging the same property. Needless to state the right of the first mortgagee ranks above the second mortgagee. This means after the asset is monetized dues of the first mortgagee have to be cleared followed by that of the second. Of course, with the consent of the first mortgagee both can rank *pari passu*.

6. From the impugned order we can only gather that the registered mortgage created in favour of the 1st Respondent was on

26th February 2007. The loan was sanctioned by the Petitioner on 29th July 2006. Highlighting that after a loan is sanctioned, the same is disbursed and if a property is obtain as security and mortgage is created, the date of the mortgage becomes relevant. We find from the order passed by the DRT that the date of the mortgage in favour of the Petitioner is 21st August, 2006.

7. Thus, it has to be held that the Petitioner had the priority of interest. The mortgage in its favour was before the mortgage in favour of the first Respondent. Thus, the sale of the secured asset by the Petitioner was justified.

8. Needless to state if there is any surplus available with the Petitioner, the same has to be paid over to the Respondent.

9. The Petition is disposed of setting aside the impugned order dated 12th December, 2017. The order dated 1st August, 2013 passed by the DRT upholding the sale by the Petitioner is restored.

Pravin D. Pandit

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Date: 2020.01.28 17:24:49 +0530

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