IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7262 OF 2019

M/s.Alert Engineering Corporation ...Petitioner
V/s.
The Recovery Officer, Attached to
The Gr. Mumbai Co. Op. Bank
Mumbai & Ors. ...Respondents

Mr.Pankaj Thatte a/w Ms.Sucheta Y. Joshi for the Petitioner.
Mr.Anshul Anjarlekar i/b Mr.Raval Shah for Respondent Nos.1 and 2.
Mr.S.H. Kankal, AGP for Respondent No.4-State.

CORAM : C.V. BHADANG, J.

DATE : 12 OCTOBER 2022

P.C.

. Rule made returnable forthwith. The learned counsel for contesting Respondent Nos.1 and 2 waives service. The learned AGP waives service for Respondent No.4. Heard finally by consent of parties.

2. This Petition can be disposed of on a short count.

3. The Respondent No.2-Bank had advanced a loan to Respondent No.3 which had fallen due. The Respondent No.1 being the Recovery Officer and the Respondent No.2-Bank had

initiated action for recovery of the outstanding amount. The present Petition pertains to a property which is said to be Bungalow No.1. It appears that by virtue of an agreement between the parties the Bungalow No.1 was agreed to be purchased by the Petitioner for an amount of Rs.2,25,00,000/-. It further appears that on account of the subsequent negotiations the Petitioner agreed to pay further amount of Rs.15,00,000/- accordingly a Sale Deed for Rs.2,40,00,000/- came to be executed and registered in respect of the Bungalow No.1, in favour of the Petitioner on 15 June 2019.

4. The Respondent No.1 by virtue of an order dated 18 June 2019 has purportedly cancelled the transaction of sale in respect of the mortgaged Bungalow No.1 as being null and void *abinito.* It is this order which is subject matter of challenge in this Petition.

5. I have heard the learned counsel for the parties. Perused record.

6. The learned counsel for the Petitioner had submitted that the Recovery Officer has no authority or powers to declare the transaction/Sale Deed as null and void. It is submitted that the Petitioner has parted with the consideration amount of Rs.2,40,00,000/- and the Petitioner has been put in possession of the Bungalow No.1 after the execution of the Sale Deed. It is

submitted that the Petitioner is a *bona fide* purchaser of the said Bungalow No.1.

7. The learned counsel for Respondent Nos.1 and 2 has submitted that the amount of Rs.15,00,000/- which was paid over and above the amount of Rs.2,25,00,000/-, has been retained by the borrower, which is payable to the Bank. It is next submitted that according to the Bank the Petitioner is acting as a proxy on behalf of Respondent No.3. It is submitted that it is the Respondent No.3 who has obstensibly purchased the property, in order to retain the ownership and possession of the said Bungalow No.1.

8. It is submitted that when the representatives of the Respondent-Bank had visited the Bungalow No.1 the Petitioner was not found in possession of the same. It is submitted that an amount in excess of Rs.12,00,00,000/- is still outstanding in the loan account. Except these there are no contentions raised.

9. I have considered the submissions made.

10. In my considered view the learned counsel for the Petitioner is right that the Recovery Officer did not derive any power to declare the transaction of sale as being null and void, even assuming that the Petitioner was acting as a proxy on behalf of Respondent Nos.1 and 3.

11. Insofar as the outstanding loan amount is concerned, it is always open for the Respondent-Bank to proceed against the borrowers/gurantors. Even the order dated 1 July 2019, by which, interim relief was granted to the Petitioner, shows that liberty was reserved in favour of the Respondent/Recovery Certificate Holder, to proceed against the Defaulters in accordance with law.

12. In the circumstances, the Petition is allowed. The impugned order dated 18 June 2019 is hereby set aside. It would however, be open to the Respondent Nos.1 and 2 to take appropriate action for recovery of the balance amount due in the loan account against the principal borrowers and others in accordance with law.

13. The disposal of this Petition, shall not come in the way of the Respondents in taking recourse to legal remedy, if any, available in law, in respect of the Sale Deed dated 15 June 2019 and if so advised.

Rule is made absolute, in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.