IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.171 OF 2022
WITH
INTERIM APPLICATION NO.1143 OF 2022

Bank of India .. Appellant

Versus

Ravindra Pitambar Patil .. Respondent

...

Mr.O.A.Das for the Appellant.

CORAM: BHARATI DANGRE, J.
DATED : 2nd MAY 2022

P.C:-

1. The present Appeal from Order is filed by the Bank of India, being aggrieved by an order passed by the City Civil Court, Gr.Mumbai on 01/12/2021 in an Execution Application No.221 of 2018, arising out of Summary Suit No.1373 of 2017. The appellant-bank sought it's impleadment in the suit proceedings in the peculiar facts, evincing it's interest in the execution, but the learned Judge rejected the application on two counts; firstly it is open for the bank to follow the appropriate proceedings under the SARFAESI Act, which route the bank had in fact followed and in these circumstances, the

Civil Court cannot entertain it. Another ground being, that the execution is being carried out pursuant to a decree passed by the City Civil Court in Summary Suit No.1373 of 2017 between distinct parties i.e. Ravindra Pitambar Patil and one Mrs.Aditi Sawant, defendant No.4, who has no concern with the bank.

2. Heard the learned counsel Mr.Das for the appellant. Despite the notice being served and though on 16/03/2022, I have deemed it fit to await the presence of the respondents, none appears even today, which constrain me to hear the learned counsel for the appellant on merits and with his assistance, I have perused the compilation of documents placed on record.

3. As far as the bank is concerned, it had the borrowers, namely, Mr.Vivek Patil and his wife Snehal Patil, who had purchased Flat No.1A/103, First Floor, Wing 'A', Building No.1, Bhavani Enclave C.H.S. Ltd., Mulund (E) from one Mrs.Aditi Sawant vide a registered deed and had obtained housing loan for the said purpose from the bank. For securing the said loan, the husband and wife executed security documents and submitted original title deed to the appellant-bank and created mortgage of the very same flat in it's favour. The security documents and title deed are placed on record by the bank.

The bank even forwarded an intimation letter with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (**CERSAI**) about the equitable mortgage being created by Mr.Vivek Patil and his wife.

4. Since, there is a default on part of the borrowers and their account was declared as NPA, the bank issued notice under Section 13(2) of the SARFAESI Act, 2002 on 01/02/2019 and on 15/04/2019 i.e. on expiry of statutory period of 60 days to take symbolic possession of the property. Necessary orders were also obtained from the court of CMM for taking physical possession of the property under Section 14 of the SARFAESI Act and on 22/11/2019, the physical possession of the flat in question is also taken. The necessary documents to that effect are compiled in the paper-book, which consist of the 'possession notice' being issued by the officer of the bank on 15/04/2019 and the intention to take possession by following the procedure prescribed under Section 13(8) of the SARFAESI Act.

5. While the physical possession was being taken, it dawned upon the appellant-bank that there was an attachment over the suit flat by the City Civil Court, Mumbai and on further inquiry, it is revealed that in a Summary Suit No.1373 of 2017 filed by one Ravindra Patil and two others against Mrs.Aditi Sawant, a decree was granted in favour of the plaintiffs i.e. Ravindra Patil & Ors. against Mrs.Aditi Sawant, who was held liable for payment of Rs.23,50,000/- to the plaintiffs, within a period of three months alongwith simple interest at the rate of 9% p.a..

The judgment, being delivered on 12/03/2018, was put up for execution by filing Execution Application No.221 of 2018 and, since, the bank became aware of this development, it filed an application seeking impleadment in the said proceedings, on the ground that it has already obtained an order against the borrowers, Mr.Vivek Patil and Mrs.Snehal Patil, who had availed loan from the bank and who were in default and the subject matter of Summary Suit No.1373 of 2017 is same as the subject matter of the SARFAESI proceedings initiated by the bank, which has reached upto the stage 13(8) of the SARFAESI Act and the physical possession of the property is with the bank, is the statement of the learned counsel for the appellant.

In this contingency, if the possession remains with the bank, the execution proceedings cannot proceed as the bank as a creditor, has availed due procedure available to it under the

SARFAESI Act and taken possession of the suit property and this is bound to create obstacle in executing the decree granted by the City Civil Court, was projected as a ground for intervention.

6. In these circumstances, it was expedient on the part of the City Civil Court to allow the impleadment of the bank, since the subject matter of the execution proceeding pending before it and the interest of the bank are clashing, as the proceedings initiated by the bank reached upto the stage of the possession and, since, the bank was apparently interested in the suit flat, in order to resolve the conundrum and considering the rights and interest of the parties involved, it was imperative for the learned Judge to allow the impleadment of the bank and, thereupon after affording an opportunity of hearing, the learned Judge ought to have considered passing of further order, whether the attachment is to be raised or not, at the instance of the bank.

7. Unfortunately, the learned Judge has failed to recognize any right of the bank and refused it's intervention on the technical ground that the City Civil Court does not have jurisdiction to try the proceedings under the SARFAESI Act. Ultimately, the bank has already followed the procedure under the SARFAESI Act, but since the property involved in the civil proceeding and the SARFAESI proceeding is the same, it was more appropriate to permit the impleadment of the bank, who also has interest in the suit property.

8. In light of the above, the impugned order, rejecting the Notice of Motion filed by the bank deserves to be set aside. The bank shall be permitted to intervene in the execution proceedings and upon hearing the submissions of the bank, the Court will take a decision about raising the attachment, since a specific statement is made by the learned counsel for the appellant that the possession of the suit flat, as on date, is with the bank. The contention of the bank is to the effect that Mr.Vivek Patil and his wife are acting in collusion with Rajendra Patil and in order to defraud the amount due to the bank, a novel method has been adopted by them. The said contention can be tested by the learned Judge after hearing all the concerned parties, including the appellant-bank. Necessarily, the impugned order is quashed and set aside.

The Appeal from Order stands allowed in the aforesaid terms.

On allowing the intervention, the learned Judge is expected to take up the proceedings forthwith, since the property is in possession of the bank since 2019 and in case if the bank is permitted to sell the property, the dues payable to the bank as well as to the plaintiffs in the suit, can be adjusted. The proceedings shall be decided within one month from the date of impleadment.

(SMT. BHARATI DANGRE, J.)