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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.269 OF 2022

Vibhor Dileep Barla Son of Late Dileep Singh Barla ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Vibhor D. Barla for the applicant in person.
Mr. M.G. Patil, APP for the State.
Mr. Dhiraj Gavave, API, Satpur Police Station.

CORAM : AMIT BORKAR, J.

DATED : MARCH 27, 2023

P.C.:

1. The application arises out of rejection of second application for discharge mainly on the ground that first discharge order was based on forgery of registered mortgage deed. According to the petitioner, after the rejection of first discharge application it is revealed that there was additional equitable mortgage based on which loan was sanctioned and therefore the said fact amounts material change in circumstance.

2. The facts relevant for adjudication of the present application are as under.

The prosecution arise out of the loan transaction of Rs.19,00,000/- sanctioned in favour of M/s. Himanshu Print O Pack, Nashik, which was term loan of Rs.10,00,000/- and cash credit facility of Rs.4,00,000/-. Said loan was sanctioned based on colateral securities comprising four guarantees of Rs. 19,00,000/-.

3. The applicant, was a Panel advocate of the bank which sanctioned loan. He was asked to provide title search report of the plots and flat which was offered as colateral security for the loan. On 5th November, 2023 registered simple mortgage was executed in favour of the bank towards colateral security of the sanctioned loan. The borrower committed default in repayment of the sanctioned loan. At that time the bank got knowledge about the wrong identification of parties to the simple mortgage deed dated 5th November, 2003. It revealed that the property which was subject matter of simple mortgage was allegedly owned by one Ravindra Sali and not by Surekha Kendra. The bank therefore filed First Information Report No. I 87 of 2004. The investigating agency after completion of investigation filed the charge-sheet No. I 20 of 2005 on 15th April, 2005. The applicant thereafter, filed his discharge application which came to be rejected up to the Apex Court.

4. The applicant has filed present application (second application) for discharge. According to the applicant, after the rejection of first discharge application it was revealed that there was equitable mortgage executed in favour of the Bank. The loan has been sanctioned based on equitable mortgage. The applicant has been falsely implicated based on simple mortgage.

5. The Trial Court rejected the second application for discharge on the ground that the first discharge application was rejected on merits which has attained finality up to the Supreme Court. The fact of disciplinary inquiry by the bank has no relevance while considering discharge application in criminal proceedings.

6. The applicant who appears in person submitted that once the fact of equitable mortgage of the property based on which loan was sanctioned came to the knowledge, this fact by itself entitles applicant to claim discharge.

7. Having considered the reasons assigned by the Sessions Court for rejection of discharge, in my opinion, the reasons and findings recorded while deciding first discharge application, having attained finality, can't be reconsidered on merits. The finding recorded by co-ordinate bench of this Court in paragraph 8 of its order dated 14th March, 2013 binds this Court. The co-ordinate bench of this Court in the said order observed as under :-

> 8. …. The Applicant prepared Mortgage Deed and got registered the same by identifying the executor on behalf of the bank. The loan was therefore, disbursed on 13th November, 2003. Later on it is discovered that the original owner of flat no.2 in Ravindra Madhavrao Sali. Bogus documents were prepared to show that Surekha Jayantilal Shah is the owner of the said flat situate at Tilakwadi Co-operative Housing Society and even though Mangala Aher was the original owner of Plot Nos.58 and 59 of Survey No.244 of village Pathardi, some other lady was produced before the Sub-Registrar to execute Mortgage Deed and even though the Plot No.63 out of Survey No.244 of village Parthardi is owned by Kishor Gupte, a third person was produced before the Sub-Registrar to execute the Mortgage Deed. It is in these circumstances, that the Applicant has been attributed the specific role.

8. Therefore, in my opinion the factum of execution equitable mortgage based on which Bank had sanctioned loan, is not sufficient to discharge the applicant.

9. The Criminal Application has no merit the same shall be stands dismissed. No costs.

(AMIT BORKAR, J.)