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

% *Date of Decision: 18.08.2023*

\+ W.P.(C) 10118/2016

PUNJAB NATIONAL BANK & ANR. ..... Petitioners
Through: Mr Rajinder Wali, Advocate.

versus

HARMEET KAUR DHINGRA & ORS. ..... Respondents
Through: Mr Praveen Agrawal and Mr Dinkar Kumar, Advocates for R-1 & 2.
Mr Sanjeev Sagar, Standing counsel with Ms Nazia Parveen, Advocate for R-4/SCB.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. Punjab National Bank (petitioner no.1 – hereafter referred to as '**PNB**') has filed the present petition impugning an order dated 11.02.2016 passed by the learned Debts Recovery Appellate Tribunal (hereafter '**DRAT**') dismissing PNB's appeal being *Appeal No.261/2015* captioned *Punjab National Bank & Anr. v. Smt. Harmeet Kaur Dhingra & Ors.*

2. PNB had preferred the said appeal against a common judgment

dated 11.06.2015 passed by the learned Debts Recovery Tribunal-II (hereafter '**DRT**'), whereby two applications filed under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**SARFAESI Act**') were disposed of. The first being *TSA No.10/2013* captioned *Smt. Harmeet Kaur Dhingra & Anr. v. Punjab National Bank & Ors*., which was filed by respondent nos. 1 and 2 (the vendees), who claim to be the owners of the subject property described as Property No.13/64, Punjabi Bagh (West), New Delhi (hereafter '**the subject property**'). The second application being *TSA No.16/2013* captioned *Punjab National Bank v. Standard Chartered Bank & Anr.*

3. PNB claims that the subject property was mortgaged against a loan extended to respondent no. 3 (Sudarshan Lal Marwah) and respondent no. 6 (Mr Yogesh Chawla).

4. Admittedly, respondent no.3 is the original owner of the subject property. He is also the proprietor of one GBS Trading and had availed of a loan facility of ₹3,00,00,000/- from PNB. PNB also claims that respondent no.3 had guaranteed a loan extended to respondent no.6. Both the accounts – the loan extended to respondent no.3, and respondent no.6. – were declared as non-performing assets.

5. PNB initiated steps for enforcing the security interest in respect of the subject property but discovered that Standard Chartered Bank (respondent no.4) had already instituted proceedings under the SARFAESI Act for enforcement of the security interest in respect of the subject property. Respondent no. 4 also claimed that respondent

no.3 had mortgaged the subject property to it.

6. Respondent nos. 1 and 2 claim that they have purchased the subject property from respondent no.3. As stated above, PNB also claims that it has security interest in respect of the subject property.

7. In the aforesaid circumstances, the parties filed their respective applications under Section 17 of the SARFAESI Act (being TSA 10/2013 and TSA 16/2013).

8. In the said proceedings, the learned DRT framed two points for determination – Whether the PNB had a valid mortgage in its favour and whether it was entitled to take action in respect of the subject property under the provisions of the SARFAESI Act.

9. According to PNB, respondent no.3 had mortgaged the subject property in favour of PNB on 16.09.2011, which was confirmed on 17.09.2011. PNB also claimed that the mortgage was, thereafter, extended to cover the loan of ₹380 lacs extended to respondent no.6 on 11.11.2011, as well.

10. Respondent nos.1 and 2 had produced a registered sale deed dated 13.11.2009, which was executed by respondent no.3, whereby the subject property was conveyed to respondent nos.1 and 2. They also claimed that the possession of property was delivered to them on the same date, that is, on 13.11.2009.

11. The learned DRT concluded that since the mortgage was created after the sale deed was executed in favour of respondent nos.1 and 2, the same was invalid as the mortgager (respondent no.3) had no

right to deal with the property after 13.11.2009. The learned DRT also noted that the original title deeds were deposited with respondent no.4, and respondent nos.1 and 2 had settled the loan of respondent no. 4 and secured the release of the title documents of the subject property to them.

12. PNB sought to challenge the title of respondent nos.1 and 2 in respect of the subject property. PNB claimed that on inspection of the subject property at the material time – that is, at the time when the mortgage was created – it had found respondent no.3 in possession of the subject property. On the aforesaid basis PNB claims that the sale deed of the subject property as available with respondent nos.1 and 2 is fabricated.

13. The aforesaid contention was countered by respondent nos.1 and 2. They produced a registered rent agreement dated 18.11.2009, whereby the son of respondent no.3, one Shri Ajay Marwah, had taken the property on rent and, therefore, was occupying the subject property as a tenant of respondent no.1. The learned DRT also found that the property was mutated in favour of respondent nos.1 and 2 on 06.07.2010 and they had also paid house tax in respect of the subject property. In view of the aforesaid documents, the learned DRT did not accept PNB's claim that the documents produced by respondent nos. 1 and 2, on the basis of which they were claiming title to the subject property, were collusive and required to be rejected.

14. It is important to note that the learned DRT also took note of the inter se litigation between respondent no.3, and respondent nos.1 and

2. Respondent nos.1 and 2 had filed two suits being Suit No.177/2010 and Suit No.178/2010 before the learned District Court. Suit No.177/2010 was for permanent and mandatory injunction and Suit No.178/2010 was instituted for possession, recovery of arears of rent, damages and *mesne* profits.

15. In the said proceedings, respondent no.3 was restrained by an order dated 09.09.2010 from alienating or creating any charge over the subject property.

16. Whilst PNB disputes, the documents on the basis of which respondent nos.1 and 2 claim title in respect of the subject property; it was not disputed that the District Court had passed an order dated 09.09.2010 injuncting respondent no.3 from selling, transferring, alienating or creating any charge in respect of the subject property. Considering the aforesaid facts, the learned DRT had rejected PNB's claim that it held any security interest in respect of the subject property.

17. Aggrieved by the same, PNB had filed an appeal before the learned DRAT. The learned DRAT upheld the decision of the learned DRT and rejected the appeal.

18. Mr Wali, learned counsel appearing for PNB submits that the learned DRT and DRAT had failed to consider the PNB's claim that the original title deeds are with PNB. He submits that there were different sets of title deeds and the DRT could not be sure as to which of the title deeds are the original, and which are forged. He contends that if the mortgage created in favour of respondent no.4 is on the

basis of forged title deeds and if it is found that the sale deeds on the basis of which respondent nos. 1 and 2 are claiming title are forged, then the PNB's right to enforce its security interest cannot be frustrated.

19. The aforesaid contentions are unmerited.

20. It is not necessary for this Court to examine as to which set of title deeds are the original title deeds. Once it is accepted that the learned District Court had issued an order injuncting the original owner from transferring, alienating or creating any mortgage in respect of the subject property, any mortgage created in violation of the said order would be unenforceable. In ***Surjit Singh & Others v Harbans Singh & Others: (1995) 6 SCC 50***, the Supreme Court had in the context of alienation of property in defiance of the orders passed by the court, observed that ".. *when a court intends a particular state of affairs to exist while it is in sesin of a lis, that state of affairs is not only required to be maintained, but is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes..*"

21. Additionally, it is also relevant to note that the title documents as produced by respondent nos. 1 and 2 are registered documents and there is no material to establish that respondent no.3 had not executed or registered the same.

22. In view of the above, we find no flaw with the impugned orders

passed by the learned DRT or DRAT.

23. The petition is unmerited and accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 18, 2023
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