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28.02.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No.16696 of 2023

Mrs. Manju Jain
Vs.
The Chairman, Union Bank
of India & Ors.

Ms. Aditi Bhattacharya
...for the petitioner

Mr. Ranojit Chowdhury,
Mr. Sudipto Chowdhury,
Ms. Aparna Chakraborty
...for the respondent-Bank

1. The petitioner purchased a flat from the respondent-Bank by way of an auction sale. Sale certificate was also duly issued in favour of the petitioner. Learned counsel for the petitioner contends that however, when the petitioner went to take possession of the flat physically, she was resisted by the owners' association of the said Housing Complex where the flat is located. It was given out by the Association that there is no existence of Vijay Kumar, who was the alleged borrower, on the failure to repay debt of whom the property had been sold to the petitioner.

2. It is, thus, submitted that the entire story of Vijay Kumar having mortgaged the property to the respondent-Bank was false. In fact, it was also

given out to the petitioner by the Association that one Ambuj Kumar, who was the original owner and supposed to have transferred the property to Vijay, had retained its ownership and the sale deed between Ambuj and Vijay was itself denied on the ground of fraud.

3. It is submitted that the petitioner has been running from pillar to post to get possession of the premises. As such, the petitioner seeks refund of the entire consideration money, since it is argued that the respondent-Union Bank of India committed a fraud on the petitioner in selling the property to the petitioner without having any title therein.

4. Learned counsel for the Bank places reliance on the search reports and the photocopy of the certified copy of the transfer deed between Ambuj, the previous owner and Vijay, the borrower. It is submitted that the Bank, thus, in full discharge of its obligations as a Banker, ascertained that there was a valid transfer between the said original owner Ambuj and Vijay, the borrower and only being sure of the same by way of obtaining a certified copy of the transfer deed between Ambuj and Vijay and having a search report which also corroborates such transaction, put up the property for sale.

5. It is argued that the writ petitioner purchased the property with open eyes and having obtained

possession, is now seeking to resile from such position by making allegations against the respondent-Bank.

6. The conspectus of the present case is limited. The petitioner admits in paragraph no. 2 of the rejoinder to the supplementary affidavit used by the Bank that the equitable mortgage was created on the basis of the certified copy of the title deed but says that the same is unlawful. That apart, the Bank has, in its affidavit-in-opposition, annexed comprehensive search reports which go on to show that the name of Ambuj Kumar is recorded as a seller and Vijay as a buyer in the relevant registration records.

7. Moreover, a sale certificate was issued in favour of the petitioner, thereby finalizing the sale transaction. At such relevant juncture, the petitioner never took any objection as to Vijay not having any title.

8. It is even reflected in the transfer deed in favour of the petitioner that the Bank took physical possession through its Authorised Officer of the concerned flat under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and, thereafter, it transpires that possession was handed over to the petitioner.

9. In the e-mail communication dated March 21, 2023 annexed by the writ petitioner to her rejoinder at page 7 thereof, it is clearly admitted by the petitioner that the property was mortgaged to Union Bank of India by Vijay Jaiswal and the Bank has followed all legal process/procedure in taking physical possession of the said property when Mr. Vijay Jaiswal defaulted in repaying the loan. In fact, the petitioner wrote to the concerned Diamond City Residents' Association asserting her title to the flat and also stated that physical possession had been handed over by the Bank.

10. Thus, the purview of the petitioner's grievance is that her access to the said flat is being resisted by the owners' association of the said flat.

11. I do not find on record anything to substantiate that the original owner Ambuj Kumar has taken out any suit or has obtained any decree from a civil court declaring that the sale deed executed by Ambuj in favour of Vijay was fraudulent. In the absence of anything of such sort, there is nothing but conjecture to rely on for the court to come to a conclusion that the sale by Ambuj in favour of Vijay was fraudulent.

12. On the contrary, the search reports produced by the Bank and the certified copy of the sale deed, which was admittedly the basis of the mortgage in

respect of Vijay, go on to clinch beyond doubt that the transfer had been effected in respect of the flat by the said original owner Ambuj in favour of Vijay. Hence, I do not find any fault on the part of the Bank in selling the property to the petitioner.

13. Since the petitioner, after such purchase, has also asserted her ownership and asserted that physical possession was taken by the Bank, the petitioner cannot resile from such position and seek a cancellation of the sale certificate at this belated juncture and/or ask for a refund of the consideration money. The remedy of the petitioner now is to approach the appropriate civil court with a suit for eviction against the persons who have been resisting her entry into the flat-in-question and/or for other reliefs. However, the liability of the petitioner, after the sale certificate was finalized, cannot be now shifted back conveniently to the respondent Bank.

14. In such view of the matter, there is no scope of granting the reliefs sought in the writ petition.

15. Accordingly W.P.A. No.16696 of 2023 is disposed of with liberty to the petitioner to approach the competent civil court with the relief of eviction and/or other reliefs, if the petitioner so deems necessary, and ventilate her grievance

against the flat owners' association, the erstwhile owner Ambuj and/or others.

16. It is made clear that if such a suit is filed, the same will be decided on its own merits without being unduly influenced in any manner by any of the observations made herein.

17. There will be no order as to costs.

18. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

Sabyasachi Bhattacharyya, J.