IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.01.2024

+ **W.P.(C) 910/2016**

SANGEETA JESWANI & ORS. ..... Petitioners

versus

ORIENTAL BANK OF COMMERCE & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Dr. Sarbjit Sharma & Ms. Rudrakshi Gautam, Advocates.

For the Respondents : Mr. S.A. Khan, Advocate for R-1.

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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

INTRODUCTION

1. The petitioners have filed the present petition impugning an order dated 29.12.2015 (hereafter '**the impugned order**') passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereafter **'the DRAT'**) in Appeal No.400/2015 captioned *Sangeeta Jeswani & Ors. v. Oriental Bank of Commerce & Anr*. The petitioners had preferred the said appeal impugning a common order dated 07.12.2015 passed by the

learned Debts Recovery Tribunal-I, Delhi (hereafter **'the DRT'**) disposing of the appeal preferred by the petitioners (Appeal No.24/2014) as well as two other Miscellaneous Applications (**MAs** in short) filed by the petitioners in O.A. No.60/1996 captioned *Oriental Bank of Commerce v. M/s Vinod Kumar Ved Prakash & Ors.*

2. The petitioners had preferred the aforementioned appeal (Appeal No.24/2014) under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (now known as Recovery of Debts and Bankruptcy Act, 1993 and hereafter referred to as the '**the RDB Act'**) impugning an order dated 27.10.2014 passed by the Recovery Officer, DRT (hereafter **'RO'**) in R.C. No.59/2006 captioned ***OBC v. Vinod Kumar Ved Prakash & Ors.*** In terms of the said order, the learned RO had dismissed the objections preferred by the petitioners against recovery of debt by sale of a shop being Shop No.2152, Main Gali No.3, Tilak Bazar, Khari Baoli, Delhi (hereafter **'the subject property'**).

3. The petitioners had filed the Miscellaneous Applications seeking recall of the orders dated 16.05.2006 and 08.06.2006 passed by the learned DRT in OA No.60/1996. Essentially, the petitioners sought directions to the effect that certain document produced by respondent no.1, Oriental Bank of Commerce (hereafter **'OBC'**) marked as Exhibits AW-1/17, AW-1/24 and AW-1/25 be de-exhibited and the properties bearing Nos. 2148-2153, Main Gali No.3, Tilak Bazar, Delhi (hereafter referred to as '**mortgaged properties**') including the subject

property, be released from attachment and auction. These applications were also disposed of by the learned DRT by common order dated 07.12.2015.

4. The petitioners had neither borrowed any amount from OBC nor had guaranteed performance of any repayment obligations, in respect of any financial assistance lent by OBC, which was subject matter of the action instituted by OBC (O.A. No.60/1996) before the learned DRT. The petitioners claim to be the owners of the subject property and their grievance is limited to the steps taken for recovery of the amounts claimed by OBC by attachment and sale of the subject property.

FACTUAL BACKGROUND

5. This is the second round of litigation instituted by the petitioners in regard to the steps taken by the RO for sale of the subject property.

6. As noted above, the subject property was one of the shops in property bearing nos. 2148-2153, three-storied building, measuring approximately 100 sq. yds., situated at Tilak Bazar, Khari Baoli, area no.3, Delhi-110006 (the mortgaged properties). The mortgaged properties were acquired by Smt. Raj Rani, wife of Sh. Basant Kumar from Sh. Brij Mohan, son of Sh. Lakshman Das in terms of a registered Sale Deed dated 15.07.1982.

7. M/s Vinod Kumar Ved Prakash (hereafter **'the borrowers'**) had availed financial assistance from OBC. According to OBC, Smt. Raj Rani had created an equitable mortgage of the mortgaged properties in

favour of OBC by deposit of the Sale Deed of the mortgaged properties, on 27.05.1988.

8. The borrowers failed to discharge their repayment obligations. Accordingly, OBC instituted a suit (Suit No.436/1991) for recovery of an amount of ₹23,49,043.73 from the borrowers. Smt. Raj Rani was also impleaded in the said suit as a guarantor /defendant no.4. OBC claimed that Smt. Raj Rani stood as a guarantor for the financial assistance advanced to the borrowers and had also created a mortgage in respect of the mortgaged properties. On 25.09.1995, the said suit was transferred to the DRT and was registered as O.A. No.60/1996. Subsequently, by an order dated 16.05.2006, the learned DRT allowed the said O.A. No. 60/1996 and directed issuance of a Recovery Certificate. Consequently, the recovery proceedings commenced before the RO.

9. Sometime in the year 1993 – that is after the suit was instituted – one Sh. Shanker Lal Jeswani (since deceased) who was carrying on the business in the name of his sole proprietorship concern, M/s Poonam Dyes and Chemicals, took on lease the subject property at a monthly rent of ₹133.10 from Smt. Raj Rani. At the material time, Smt Raj Rani was the owner of the entire mortgaged properties.

10. It is stated that Smt. Raj Rani subsequently sold the mortgaged properties to one Sh. Suresh Mangla and executed a Sale Deed dated 27.09.2002. She also issued a notice dated 04.12.2002 informing Sh. Shanker Lal Jeswani that she had sold the subject property to Sh. Suresh

Mangla and rent for the same be thereafter paid to him. The petitioners state that Sh. Shanker Lal Jeswani (predecessor of the petitioners) purchased the subject property from Sh. Suresh Mangla in terms of a Sale Deed dated 17.11.2004.

11. The petitioners claim that Sh. Shanker Lal Jeswani died intestate on 30.10.2006. Petitioner no.1 is the widow and petitioner nos.2 and 3 are the sons of late Sh. Shanker Lal Jeswani. They claim title in respect of his estate as his natural legal heirs.

12. In the aforesaid factual background, it is the petitioners' case that late Sh. Shanker Lal Jeswani was a *bona fide* purchaser of the subject property without any notice of any prior encumbrances. He had acquired the subject property for a valuable consideration and therefore, OBC cannot proceed against the same.

13. The petitioners also claim that Smt. Raj Rani had not mortgaged the subject property and her signature on the letter allegedly executed by her, acknowledging that she had deposited the title deeds of the mortgaged properties with OBC, is forged. The petitioners' claim that Smt. Raj Rani had not delivered the sale deeds in respect of the mortgaged properties to OBC and therefore, its claim is based on forged documents.

14. The recovery proceedings were commenced by the RO pursuant to the Recovery Certificate issued by the learned DRT. The mortgaged properties, including the subject property, were put to auction and the

sale proclamation was issued on 04.11.2009. The auction of the subject property was conducted on 07.12.2009.

15. The petitioners preferred an appeal before the DRT, *inter alia,* impugning the sale proclamation dated 04.11.2009 and order dated 26.11.2009 passed by the RO as well as the auction of the subject property. The learned DRT dismissed the said appeal by an order dated 23.04.2012 consequent to the rejection of the petitioners' application seeking condonation of delay in filing the appeal.

16. In the meanwhile, the petitioners received a notice dated 26.05.2011 to vacate the subject property. The petitioners filed objections against the said notice, which were dismissed by the RO by an order dated 15.12.2011.

17. The petitioners appealed the order of the RO dated 15.12.2011 (Appeal No.3/2012) before the learned DRT. The learned DRT dismissed the said appeal (Appeal No.3/2012) by an order dated 11.05.2012.

18. The petitioners filed an appeal against the order dated 11.05.2012 passed by the learned DRT dismissing Appeal No.3/2012 before the learned DRAT (Appeal No.188/2012). Similarly, the petitioners also appealed the order dated 23.04.2012 (Appeal No.142/2013) passed by the learned DRT dismissing their appeal against the auction of the subject property on the ground of delay in filing the appeal. The said

appeals (Appeal No.188/2012 and Appeal No.142/2013) were dismissed by the DRAT by common order dated 16.07.2014.

19. Before the learned DRAT, it was contended that Sh. Shanker Lal Jeswani was in continuous possession of the subject property since 1993. He acquired the subject property from Sh. Suresh Mangla who, in turn, had acquired the same from Smt. Raj Rani by a Sale Deed dated 16.09.2002 executed by her. It was contended that the Sale Deed dated 16.09.2002 had noted that the subject property is free from encumbrances and therefore, OBC could not claim that the subject property was mortgaged by her. The said contentions, amongst others, were not accepted by the learned DRAT.

20. The petitioners, thereafter, preferred a writ petition [being W.P.(C) No.6465/2014], *inter alia*, assailing the order dated 16.07.2014 passed by the learned DRAT. The same was disposed of as withdrawn by an order dated 24.03.2015. The order disposing of the said petition records that the petitioner had preferred a Miscellaneous Application in effect seeking review of the DRT's order on the ground that the letter depositing the title deeds (for creation of equitable mortgage) with OBC was forged. The Court was of the view that such disputes ought not to be agitated before this Court and the petitioners ought to raise such contentions before the DRT. The order dated 24.03.2015 disposing of W.P.(C) No.6465/2014 reads as under:

> "1. The petitioner has preferred a Miscellaneous Application (M.A.) – in effect a review of the DRT's order

> before that forum on the ground that mortgage deed which culminated in the adverse final order, which in turn led to the action was a forged instruction.
>
> 2. This Court is of the view that in the given circumstances of the case, the disputes sought to be agitated in the present proceedings should not be gone into rather the petitioner urged all the contentions available to her before the DRT and in case any grievance thereafter in the light of its order may seek recourse of all legal remedies which are available.
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> 3. The writ petition is disposed of as withdrawn."

21. In the meantime, on 13.10.2014, the petitioners once again filed objections before the RO claiming to be tenants of the subject property. In addition, petitioners also filed an application, *inter alia,* praying that the orders passed by the learned DRT exhibiting the letter for deposit of Title Deeds (Exhibit AW-1/24) and the Deed of Guarantee (Exhibit AW-1/17) be recalled and the said documents in effect be "de-exhibited". In addition, the petitioners also filed an application under Section 340 of Cr.P.C. (MA No.96/2015) before the learned DRT praying that directions be issued for lodging of an FIR to investigate the documents (Exhibits AW-1/17, AW-1/24 and AW-1/25) and for referring the said documents to Central Forensic Science Laboratory. The RO dismissed the objections filed by the petitioners on 27.10.2014. As stated above, the petitioners appealed against the said order (Appeal No.24/2014) before the learned DRT.

22. As noted at the outset, the learned DRT dismissed the Miscellaneous Applications and the appeal by common order dated

07.12.2015. The appeal preferred against the said order was dismissed by the learned DRAT by the impugned order.

SUBMISSIONS

23. Dr. Sarbjit Sharma, learned counsel appearing for the petitioners contended that the issues involved in the present petition are covered by the common judgment dated 13.05.2016 of a Coordinate Bench of this Court in W.P.(C) No.4505/2015 captioned ***Swaraj Kishore Arora v. Indian Bank & Ors.*** **and other connected matters**. He contended that the rights of a *bona fide* purchaser of immovable property could not be questioned. He contended that in the aforesaid case, the property in question, which was conveyed by a Sale Deed dated 23.06.1986 was shown by the Sellers to the *bona fide* purchasers. The property in question in that case was mortgaged in the year 1990 which was prior to the petitioner acquiring any interest in the said property. He submitted that in the present case as well, the mortgaged properties were sold to Sh. Suresh Mangla and the prior Sale Deed was shown to the tenants of the mortgaged properties including Late Sh. Shanker Lal Jeswani. He contended that the Late Sh. Shanker Lal Jeswani had no notice of the mortgage and had purchased the said property for a valuable consideration, therefore, his title in respect of the subject property could not be questioned.

24. In addition, he submitted that the letter of deposit of Sale Deeds executed by Smt. Raj Rani, were forged. He submitted that the signatures on the covering letter furnishing the original property

documents to the respondent no.1 (OBC) were different from her signatures on the Sale Deed of the subject property in favour of Sh. Suresh Mangla and therefore, it is apparent that the same were forged. He submitted that Smt. Raj Rani did not mortgage the property with OBC as claimed by it.

REASONS AND CONCLUSION

25. The scope of examination in this petition is limited to whether the learned DRT and learned DRAT have erred in not accepting the petitioners' right, title and interest in the subject property and in permitting recovery of debts due to OBC by attachment and sale of the subject property.

26. The learned RO, DRT and DRAT had proceeded on the basis that the subject property was mortgaged to OBC and therefore, OBC had a right to insist upon sale of the subject property for recovery of its debts.

27. The principal contention that the petitioners' right and title to the subject property cannot be questioned because their predecessor-in interest, Sh. Shankar Lal Jeswani, was a *bona fide* purchaser, is unmerited. The premise that a *bona fide* purchaser for a valuable consideration acquires indefeasible rights in respect of an immovable property notwithstanding that the same is subject to a prior mortgage, is flawed.

28. Sh. Shankar Lal Jeswani is stated to have purchased the property from Sh. Suresh Mangla by a Sale Deed dated 17.11.2004. Sh. Suresh

Mangla is stated to have purchased the subject property in terms of a Sale Deed dated 27.09.2002 executed by Smt. Raj Rani. However, as on the said date, that is, on 27.09.2002, the subject property was already mortgaged to OBC. The equitable mortgage of the mortgaged properties (which includes the subject property) was created in favour of OBC by deposit of the original title deeds of the mortgaged properties on 27.05.1988. Smt. Raj Rani had acquired title to the mortgaged properties from one Sh. Brij Mohan in terms of a sale deed dated 15.07.1982. Sh. Brij Mohan had in turn acquired the mortgaged properties in terms of a registered Sale Deed dated 13.10.1954. The registered Sale Deed dated 15.07.1982 whereby the mortgaged properties were conveyed to Sh. Raj Rani was produced by the OBC before the learned DRT. It is not disputed that neither the petitioners are in possession of the chain of original title deeds nor their predecessor-in-interest was in possession of the same. Dr. Sharma had earnestly contended that the original title deeds were shown to the tenants occupying the mortgaged properties at the material time and Late Sh. Shankar Lal Jeswani had purchased the subject property on the aforesaid basis. However, there is no evidence on record to show that the original title deeds (that is, the Sale Deed of the mortgaged properties in favour of Smt. Raj Rani or the earlier Sale Deed conveying the mortgaged properties in favour of Sh. Brij Mohan) were in possession of Smt. Raj Rani or Sh Suresh Mangla after 27.05.1988. Clearly, Smt. Raj Rani could not have conveyed better rights than what she possessed as on 27.09.2002, to Sh. Suresh Mangla. Late Sh.

Shankar Lal Jeswani could not have acquired higher rights in respect of the subject property than those possessed by Sh. Suresh Mangla or Smt. Raj Rani at the material time.

29. It was also pointed out that the petitioners had filed a suit (suit no.1578/2011) captioned *Sangeeta Jeswani and Ors. v. Rajesh Kumar Aggarwal and Ors.*, *inter alia*, praying for a decree of declaration that the petitioners are absolute owners of the subject property in terms of the registered sale deed dated 17.11.2004. In addition, the petitioners had also prayed that other documents made in favour of OBC (which was arrayed as defendant no.3 in the said suit) be declared as null and void and a decree of declaration be passed declaring that the defendants in the suit had no right or concern with the subject property.

30. The learned Trial Court had found that tenancy in favour of the plaintiff's predecessor as well as the sale of the subject property in favour of Late Sh. Shankar Lal Jeswani were subsequent to the mortgage created in favour of OBC. It is important to note that the Court had called upon the petitioners to produce the prior chain of title documents, which would enable them to establish their right; however, the petitioners had failed to produce the same. The Trial Court noted that the petitioners were relying only on the Sale Deed executed by Sh. Suresh Mangla in favour of Late Sh. Shankar Lal Jeswani and therefore, concluded that, *prima facie*, the documents of title were pledged with OBC. The Trial Court had also noted that the legal proceedings were pending before the learned DRT and therefore, the suit was not

maintainable. Accordingly, the said suit was dismissed by an order dated 23.01.2012.

31. Dr. Sharma's reliance on the decision of the Coordinate Bench of this Court in ***Swaraj Kishore Arora v. Indian Bank and Ors. and Other Connected Matters*** (*supra*) is also misplaced. In that case, the court had found that the bank had not established that it had an equitable mortgage in respect of the property sought to be sold. The property involved in that case was leased to one Sh. Hari Ram in terms of a lease deed dated 30.03.1963. After the demise of Sh. Hari Ram, the property was inherited by his legal heirs who had, on 31.05.1983, executed a General Power of Attorney in favour of one Sh. Ashok Sirpaul. He had, on the strength of the said General Power of Attorney executed the registered sale deed dated 23.06.1986 in favour of his brother Sh. Anil Sirpaul. The equitable mortgage in respect of the property in question was stated to have been created in favour of the concerned bank in the year 1990. The Court found that the sale deed in favour of Sh. Anil Sirpaul, which was executed prior to the purported mortgage was not one of the documents available with the concerned bank. The Court also noted that the bank had, despite orders passed by the Recovery Officer, not produced the documents to establish that the relevant title deeds (sale deed) in favour of Sh. Anil Sirpaul were deposited and continued to remain deposited with the concerned bank. Paragraph no. 106 of the said decision is relevant and is set out below:

> "106. Now, there is a serious problem with respect to the charge created by way of an equitable mortgage. Concededly

Hari Ram was the perpetual lessee of the property under the perpetual lease-deed March 30, 1963 executed in his favour by the Land & Development Officer, which was registered by the Sub-Registrar New Delhi on April 16, 1963. On his death, 10 legal heirs were substituted as perpetual lease in the office of Land & Development Officer evinced by letter dated September 20, 1982 written by the Land & Development Officer. The 10 legal heirs executed a power of attorney on May 31, 1983 in favour of Ashok Sirpaul. In the letter dated October 12/19, 1990 written by Ashok Sirpaul to the bank in his capacity as Director of the company he offered to create a charge over the property after it was transferred in the name of the company i.e. wrote that the company would consent to the charge being created and would deposit the title deed in the name of the company. Ashok Sirpaul did not follow up this letter and neither the bank insisted on the follow up action. The letter written by Anil Sirpaul would be his consent and act of creating the charge by way of an equitable mortgage by deposit of the perpetual lease-deed dated March 30, 1963, for which he did not have the authority because there were ten legal heirs of the perpetual lessee whose names were entered in the record of Land & Development Office as the perpetual lessees. The bank remained totally negligent. Everything was done unofficially as if it was a family affair. Further, by the year 1990 dawning, as noted above, much prior thereto, on June 23, 1986, acting on the strength of general power of attorney dated May 31, 1983, Ashok Sirpaul had executed a sale deed in favour of Anil Sirpaul and had the bank bothered to inspect the record of the Sub-Registrar which the bank was obliged to do, it would have dawned on the bank that Ashok Sirpaul could not, acting under the power of attorney dated May 31, 1983 offered to create a charge over the property by depositing the perpetual lease-deed dated March 30, 1963. He had no authority to write to the bank that as the general power of attorney holder of the ten recorded perpetual lessees he would convey the property in the name of the company and secured a charge by depositing the said title deed. As regards Anil Sirpaul, if he was to create the charge over the property by deposit of title deed, it had to be the sale-deed dated June 23, 1986 which was duly registered with the Sub-Registrar, Delhi."

32. It is apparent that the facts in the present case are materially different. Thus, the decision in ***Swaraj Kishore Arora v. Indian Bank and Ors. and Other Connected Matters*** (*supra*) does not cover the present case.

33. We also find no merit in the contention that the documents exhibited as AW-1/17, AW-1/24 and AW-1/25 are fabricated or forged. This claim is not supported by any unimpeachable material. Exhibit AW-1/17 is the document of guarantee / indemnity dated 27.07.1988 whereby Smt. Raj Rani guaranteed financial assistance granted to M/s Vinod Kumar Ved Prakash. The said document bears the signature of Smt. Raj Rani on each page. Exhibit AW-1/24 is the letter regarding deposit of title deeds which records that Smt. Raj Rani had deposited the documents pertaining to the mortgaged properties with OBC as security for the facilities provided to the borrowers, M/s Vinod Kumar Ved Prakash. Exhibit AW-1/25 is the registered sale deed in respect of the mortgaged properties executed by one Mr. Brij Mohan in favour of Smt. Raj Rani. The said documents were produced in evidence by OBC's witness before the learned DRT. None of the said documents were challenged by Smt. Raj Rani who was a party to the said proceedings before the DRT. This Court is informed that Smt. Raj Rani did not appear before the learned DRT to contest the proceedings despite the service of notice.

34. The petitioners' contention that the signatures of Smt. Raj Rani on the said documents have been forged is premised on two grounds.

First, that the signatures of Smt. Raj Rani on these documents are different from her signatures on the Sale Deed dated 27.09.2002 executed by her in favour of Mr. Suresh Mangla. And second, that the Sale Deed dated 27.09.2002 executed by Smt. Raj Rani in favour of Mr. Suresh Mangla clearly mentions that the mortgaged properties were in occupation of tenants and were otherwise without any encumbrances.

35. Insofar as the contention that the signatures of Smt. Raj Rani are different in all documents is concerned, the same cannot be accepted. Although, there is some variance in the signatures appearing in various documents but it is difficult to accept that the same are totally different. The guarantee deed and the letter of deposit of titles were signed in July, 1988; the Sale Deed executed by Mr. Brij Mohan was executed in the year 1982; and, the Sale Deed executed by Smt. Raj Rani in favour of Mr. Suresh Mangla was executed in the year 2002. Considering the wide time gap, some variation in the signatures cannot be considered as abnormal. However, the documents produced by OBC cannot be rejected as forged and fabricated on the aforesaid basis. It is also important to note that OBC had produced original Sale Deed in favour of Smt. Raj Rani (Ex.AW-1/25). Although, the petitioners claimed that the signatures of Smt. Raj Rani are forged but they have not produced the original Sale Deed. In view of the above, the petitioners' contention that the documents are forged is only speculative. The contention that the sale deed executed by Smt. Raj Rani in favour of Mr. Suresh Mangla mentioned that the property is unencumbered also does not carry the petitioners' case any further.

36. The learned DRAT had considered the contentions advanced by the petitioners and rejected the same as the learned DRAT found no merit in the same. The learned DRAT noted that OBC had instituted the suit before this Court in the year 1991, which was prior to Late Sh. Shankar Lal Jeswani being inducted as a tenant in the subject property. The petitioners had also filed a civil suit, being Suit No.1578/2011, which was dismissed on 23.01.2012. The learned DRAT noted that the orders exhibiting the documents in question had attained finality. The petitioners in the earlier round preferred an appeal before the learned DRAT, however, the same was also dismissed with the observation that the rights of Late Sh. Shanker Lal Jeswani in respect of the subject property were subsequent to the creation of the mortgage of the mortgaged properties in favour of OBC. The learned DRAT did not accept the petitioners' contention that Smt. Raj Rani's signature on the documents produced by OBC were forged, as Smt. Raj Rani had not challenged the same.

37. We find no ground to interfere with the impugned order.

38. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY 08, 2024
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