



\$~60

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

+ **W.P.(C) 4535/2024 & CM APPL. 18600/2024**

ISHRAR AHMED

..... Petitioner

Through: **Mr. Manish Raghav, Mr. Jugnu Bhati
and Mr. Rohit Gaur, Advocates**

versus

ICICI BANK LIMITED AND ANR

..... Respondents

Through: **Mr. Satish Kumar, Advocate for R-1**
Date of Decision: 28th March, 2024

%

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL.18601/2024

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 4535/2024

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking quashing of the order dated 07th December, 2023 ('impugned order') passed by the Debts Recovery Tribunal-II, New Delhi ('DRT-II') in R.C. No. 136/2015 in O.A. No. 295/2013 titled as **ICICI Bank Limited v. Rakesh Kumar Singhal**, whereby the objections filed by the Petitioner herein have been dismissed.

2. In the objections, the Petitioner sought setting aside of the order dated



18th April, 2023, whereby the Court Receiver was directed to take physical possession of Flat no. F-2, 1st Floor, Plot No. B-1/99, DLF, Dilshad Extension-II, Ghaziabad, Uttar Pradesh ('subject property' or 'mortgage property').

3. It is stated that Respondent No. 2- the principal borrower, availed a loan amounting to Rs. 10,20,000/- from Respondent No.1- Bank against the mortgage of the subject property. Upon default in payment of the said loan amount, the Respondent No. 1- Bank initiated recovery proceedings under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('DRT Act') by filing O.A. No. 295/2013 before DRT-II. By an *ex-parte* judgment dated 16th March, 2015, the DRT-II held Respondent No. 1-Bank entitled to recover a sum of Rs. 29,60,184/- with simple interest @ 8.25% per annum from Respondent No.2 herein and his wife, namely, Mrs. Rachna Singhal, jointly and/or severally.

3.1. Subsequently, Respondent No. 1-Bank filed R.C. No. 136/2015 seeking execution of the aforementioned judgment dated 16th March, 2015. Thereafter, by order dated 11th September, 2018, DRT-II appointed a Court Receiver for taking over the possession of the subject property. It is at this stage of the proceedings before DRT-II, the Petitioner filed an objection application seeking a direction for restraining the Court Receiver from taking over the physical possession of the subject property.

4. By the impugned order dated 7th December, 2023, DRT-II has dismissed the objections filed by the Petitioner on the finding that :- (i) the said objections are barred by principle of res-judicata as identical objections filed by one Sh. Ishrar Ahmad i.e., the Petitioner herein have already been dismissed by DRT-II; (ii) the mortgage of the subject property stands proved



on the basis of the deposit of title documents i.e., sale deed dated 04th March, 2005 as well as affidavit filed by Respondent No. 1 Bank; (iii) since the subject property was transferred by the vendor (i.e., Mohd. Yunus) in favour of Respondent No. 2 *vide* sale deed dated 4th March, 2005 and thereafter, the said vendor was left with no right, title or interest in the subject property. The execution of the General Power of Attorney ('GPA') dated 17th April, 2005 by Mohd Yunus was invalid as he was left with no right, title or interest in the property; and (iv) even otherwise the GPA confers no right, title or interest in the subject property as a GPA is not a recognized mode of transfer of immovable property.

5. Aggrieved by the impugned order, the Petitioner has filed the present petition.

6. Learned counsel for the Petitioner states that as a matter of fact, the Plot No. B-1/99, DLF, Dilshad Extension-II, Ghaziabad, U.P. may have been mortgaged by Respondent No. 2 for the aforesaid loan facility. He states, however, on this plot nine independent flats have been constructed and the Petitioner herein is in possession of one flat, on the first floor, which is numbered as F-2 i.e., the subject property. He states that the said flat is distinct from the plot of land and the said flat has not been mortgaged.

6.1. He states that the Petitioner is in settled possession of this flat since 2004 along with his family, which is prior to the sale deed dated 04th March, 2005 executed by Mohd. Yunus in favour of Respondent No. 2. He states that the Petitioner herein does not admit to the genuineness of the said sale deed and to his knowledge the same was not filed in O.A. 295/2013.

7. We have heard the learned counsel for the Petitioner and perused the record.



8. The sale deed dated 04th March, 2005 executed by Mohd. Yunus in favour of Respondent No. 2, was filed before DRT-II on 29th January, 2016 as recorded¹ in the impugned order. The said sale deed has therefore been available on the record of DRT-II since 2016 and therefore, the ground in this petition expressing doubts on the genuineness of the sale deed is a vague and bald assertion. The Petitioner has not placed on record any document, which would raise any doubt on the existence of the said sale deed.

9. The impugned order is dated 07th December, 2023 and the present petition has been filed in March, 2024. The Petitioner had sufficient time to verify the genuineness of the sale deed dated 04th March, 2005 by inspecting the public record. There is no averment in the petition that the said sale deed is not available in the office of the concerned Sub-Registrar.

10. Thus, in view of the existence of the sale deed dated 04th March, 2005, admittedly, Mohd Yunus was left with no right, title or interest in the subject property after the execution of the said sale deed. The execution of the GPA dated 17th April, 2005 by the said Mohd. Yunus is therefore, invalid, without any authority and of no legal consequence; as Mohd. Yunus was not legally competent to execute the said GPA on the said date. In this regard, it would be relevant to refer to judgment of the Supreme Court of India in **Eureka Builders & Others v. Gulabchand & Others**².

11. Even otherwise, as rightly held by DRT-II, in law the GPA does not create or transfer any title in favour of an attorney. For creating title in an immovable property their must exist a sale deed as contemplated under Section 54 of the Transfer of Property Act, 1882. Thus, in law, there exists

¹ Paragraph 6

² (2018) 8 SCC 67 Paragraphs 40 to 42



no right, title or interest in favour of the Petitioner on the basis of said GPA and the receipt, both dated 17th April, 2005.

12. The practice of sale purchase of immovable properties by executing agreement to sell, GPA, Will, receipt etc. in the State of Delhi has been expressly deprecated by Supreme Court in **Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Another**³ and its subsequent judgments.

13. In the facts of this case, as a matter of record, the Petitioner herein has no right, title or interest in the subject property and therefore, the impugned order suffers from no infirmity.

14. Accordingly, the present writ petition along with pending application is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 28, 2024/hp/MG

³ (2009) 7 SCC 363