$~69

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

\+ W.P.(C) 6508/2014

O.P.SHARMA ..... Petitioner

Through: Mr. Saurabh Kansal, Ms. Pallavi Sharma Kansal, Mr. Manish Kumar and Mr. Raghav Vij, Advs

versus

PUNJAB NATIONAL BANK & ANR ..... Respondents

Through: Mr. Ashutosh Kumar, Mr. Swarnil Dey, Ms. Vrinda Bagaria, Advs. for R-1

% Date of Decision: 22nd May, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. The present writ petition has been filed under Article 226 of the Constitution of India to set aside the order dated 25th August, 2014 passed by the Debt Recovery Appellate Tribunal ('DRAT') in Appeal No. 434/2012, whereby the appeal was dismissed and the order dated 29th October, 2012 passed by Debt Recovery Tribunal – II, Delhi ('DRT') was upheld.

2. The DRT vide order dated 29th October, 2012 dismissed the objections filed by the Petitioner objecting to the sale of the mortgaged property.

3. The facts, in brief, giving rise to the present petition are as under:

4. The Petitioner herein received a Notice dated 16th July, 2009 from the Respondent No. 1, Bank for taking possession of property comprising of the

entire third floor (with terrace rights) built on property bearing no. 49-A, Khasra No.548/135, Village Sheikh Sarai, Savitri Nagar, New Delhi ('mortgaged property') under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act').

4.1. The Petitioner states that he is neither the co-borrower nor the guarantor for the loan advanced by Respondent No. 1 Bank to M/s Right Channel Resources ('borrower') and guaranteed by Respondent No. 2. The mortgage was admittedly created on 21st February, 2005

4.2. The Petitioner states that the third floor of property bearing no. 49-A comprises of two separate flats and one of the flats i.e., flat no. 301 was sold by Respondent No.2 to Petitioner herein ('flat no. 301') in the year 2002. The Petitioner claims to be a bona fide purchaser of the flat no. 301 from Respondent No. 2 and states that since the flat no. 301 stood sold to the Petitioner in the year 2002, therefore, no valid or binding mortgage could have been created by Respondent No. 2 in the year 2005. He further states on this defence he filed an application under Section 17(1) of the SARFAESI Act before the DRT to oppose the proceedings initiated by the Respondent No. 1 Bank.

4.3. Petitioner states that flat no. 301 was purchased on 12th June, 2002 and since then he has been in actual possession of the said flat as its owner. He claims ownership rights on the basis of, what he calls, the 'customary documents' i.e. unregistered Agreement to Sell ('ATS'), registered Will, Special Power of Attorney ('SPA'), registered General Power of Attorney ('GPA'), affidavit, cash receipt and possession letter executed by Respondent

No. 2 in favour of the Petitioner and all dated 12th June, 2002. He claims that the flat no. 301 was purchased by him for sale consideration of Rs. 1.50 lakhs, which was paid in cash to the Respondent No. 2.

4.4. The Petitioner states that on the basis of the aforesaid 'customary documents', the Petitioner has become the rightful owner of flat no. 301 and therefore, Respondent No. 2 was left with no right, title or interest in the said flat after 12th June, 2002. It is stated that the alleged mortgage in favour of Respondent No. 1 was created on 21st February, 2005 which is after the execution of the aforesaid customary documents dated 12th June, 2002 and therefore, he could not have created any valid mortgage for the flat no. 301 in favour of Respondent No. 1.

4.5. Petitioner states that he learnt about the alleged mortgage on 16th July 2009, when the Petitioner herein received a notice under Section 13(4) of the SARFAESI Act from Respondent No. 1 Bank to vacate the flat no. 301 within one week since the entire third floor with terrace was mortgaged, failing which Respondent No. 1 Bank shall seal flat no. 301.

5. It is stated that aggrieved by the said notice, the Petitioner challenged the action of the Respondent No. 1 Bank by filing an application under section 17(1) of the SARFAESI Act before the DRT which was numbered as SA No. 50/2009.

6. The DRT vide order dated 29th October 2012 dismissed the said application on the finding that Petitioner had not acquired any valid title with respect to flat no. 301 on the basis of the customary documents. The DRT held that for a valid transfer of title the conveyance deed has to be registered and stamped in accordance with law. The DRT rejected the

submission that the 'customary documents' had the effect of creating any right, title or interest in favour of the Petitioner herein.

7. Aggrieved by the said order of DRT dated 29th October, 2012, Petitioner filed an appeal before the DRAT. The DRAT as well vide impugned order dated 25th August, 2014 upheld the findings of the DRT and concluded that the Petitioner herein does not hold any right, title or interest with respect to the flat no. 301 on the basis of the unregistered ATS and the customary documents.

8. Learned counsel for the Petitioner reiterates his submissions as regards the acquisition of a valid title of flat no. 301 in favour of the Petitioner by Respondent No. 2 upon execution of the 'customary documents' referred to in para 4.3 above. He states that the DRT and DRAT erred in concluding that no valid title has been transferred in favour of the Petitioner on the basis of the customary documents. He states that the said documents confer equitable rights in favor of the Petitioner.

8.1. He states that Respondent No. 2, the guarantor, was the owner of the entire third floor with half terrace in property no. 49-A, which was purchased by Respondent No. 2 vide sale deed dated 24th April, 1996. He states that since Respondent No. 2 sold only a part of the third floor i.e., flat no. 301 to the Petitioner herein and retained the remaining portion, the original title deed dated 24th April, 1996 remained in the custody of Respondent No. 2.

8.2. He states that though Respondent No. 2 created the mortgage by deposit of title deed dated 24th April, 1996 with Respondent No. 1 on 21st February, 2005, however, no valid mortgage could not have been created with respect to flat no. 301, which stood sold to the Petitioner herein previously in the year 2002. He states that the bank officials willfully failed to verify the status of the flat no. 301, which was in the actual possession of the Petitioner herein. He states that therefore, Respondent No. 1 cannot enforce the mortgage against flat no. 301.

9. In reply, learned counsel for Respondent No. 1 states that the unregistered ATS relied upon by the Petitioner is inadmissible in evidence in view of Section 53-A of the Transfer of Property Act, 1882 ('TPA') and Section 17(1-A) of the Indian Registration Act, 1908 ('Registration Act'). He states that the ATS is both unregistered and deficiently stamped. He states that the said ATS and the allied documents (relied upon by the Petitioner) do not create any right, title or interest in flat no. 301 in favour of the Petitioner herein. He states that title in the flat no. 301 could have been created only with the execution of a duly registered conveyance deed and therefore, the Petitioner is not the owner of flat no. 301.

9.1. He states that both DRT and DRAT have held that the mortgage in relation to the entire third floor with the terrace of property no. 49-A has been validly created by Respondent No. 2 in favour of Respondent No. 1 Bank and therefore, Respondent No. 1 has legal rights to auction the mortgaged property inclusive of flat no. 301. He states that there is no dispute that Respondent No. 2 stood as a guarantor for the loan advanced by the Respondent No. 1 Bank to the borrower i.e., M/s Right Channel Resources.

9.2. He states that the Petitioner has failed to reasonably explain the reason for non-execution of a registered sale deed for flat no. 301 in furtherance of the alleged unregistered ATS dated 12th June, 2002. He states that the Clause 5 of the alleged ATS contemplated that the parties would execute a sale deed within one month. He states that the ATS records an abysmally low sale consideration of Rs. 1.50 lakhs whereas the circle rate of the property at the relevant time was Rs. 20 lakhs. He states that the Petitioner alleges that he made the payment of the alleged sale consideration of Rs. 1.50 lakhs in cash. He states that Petitioner after learning about the mortgage has, till date, not initiated any proceeding against Respondent No. 2 by invoking the indemnity clause of the ATS. He states that all these facts indicate that the entire transaction dated 12th June, 2002 is a sham created by Petitioner and Respondent No. 2 to obstruct the Respondent No. 1 Bank herein from enforcing the mortgage.

10. We have heard the learned counsel for the parties and perused the record.

11. There is no dispute that Respondent No. 2 is the absolute owner of the entire third floor in property no. 49-A Savitri Nagar, New Delhi along with half terrace rights by virtue of a registered sale deed dated 24th April, 1996. It is also admitted that Respondent No. 2 created a mortgage of this entire third floor (with terrace) by deposit of the said original title deed on 21st February, 2005 in favour of Respondent No. 1 herein. It is admitted that the said mortgage was created by Respondent No. 2 as a guarantor for the loan availed by M/s Right Channel Resources and the borrower has since defaulted in the repayment of the loan.

12. The Petitioner, however, alleges that the third floor of property no. 49-A comprises of two separate flats and one of the flats i.e., flat no. 301 was

sold by Respondent No.2 to Petitioner on 12th June, 2002 (i.e., before the creation of the mortgage in 2005). The Petitioner admits that he has no registered conveyance deed for flat no. 301 in his favour; he however, relies upon the execution of customary documents i.e., an unregistered ATS, SPA, receipt, affidavit, a registered Will and a registered GPA all dated 12th June, 2002 by Respondent No. 2 in his favour to claim ownership/title in flat no. 301. The Petitioner contends that he purchased flat no. 301 with the payment of Rs. 1.50 lakhs in cash and in the pleading does not dispute that this is below the then prevailing circle rate of Rs. 20 lakhs.

13. The customary documents on which the Petitioner herein relies upon to claim ownership over the flat no. 301 are colloquially referred to as the Power-of-Attorney sales. However, the Supreme Court has after taking note of this practice for Power-of-Attorney sales categorically held that such transactions are not a legal mode of transfer of title in an immovable property. The Supreme Court after examining the mandatory provisions of the Registration Act, TP Act and the Indian Stamp Act, 1899 held that these documents do not create any right, title or interest in favour of the intending purchaser. The law on this issue was recently reiterated by the Supreme Court in ***Shakeel Ahmed v. Syed Akhlaq Hussain***[1]**,** wherein the Court after referring to its earlier judgment held that the person relying upon the customary documents cannot claim to be the owner of the immovable property and consequently not maintain any claims against a third-party. The relevant paras read as under:

[1] (2023) SCC OnLine SC 1526

*"**10.** Having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of Suraj Lamps and Industries (supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.*

***11.** Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this Court in the case of Suraj Lamps & Industries (supra) lays down the same proposition. Reference may also be made to the following judgments of this Court:*

(i). Ameer Minhaj v. Deirdre Elizabeth (Wright) Issar[2]

(ii). Balram Singh v. Kelo Devi[3]

(iii). Paul Rubber Industries Private Limited v. Amit Chand Mitra[4]

***12.** The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.*

***13.** The argument advanced on behalf of the respondent that the judgment in Suraj Lamps & Industries (supra) would be prospective is also misplaced. The requirement of compulsory registration and effect on non-registration emanates from the statutes, in particular the Registration Act and the Transfer of Property Act. The ratio in Suraj Lamps & Industries (supra) only approves the provisions in the two enactments. Earlier judgments of this Court have taken the same view."*

14. We may note that the Petitioner has been unable to explain the reasons for the non-execution and non-registration of the sale deed in pursuance to

the unregistered ATS dated 12th June, 2002. The learned counsel for the Petitioner had feebly contended that there was a restriction on registration of the sale deed qua the property. The said restriction though unsubstantiated from the record even otherwise does not assist the claim of the Petitioner as identical pleas have been considered and rejected by the Supreme Court in ***Shakeel Ahmed v. Syed Akhlaq Hussain*** (supra) and ***Shiv Kumar And Anr. v. Union of India And Ors.***[2]***,*** wherein the Court held that the existence of restriction on registration of sale deeds in the area intended to restrict sales, cannot be a valid ground for recognizing unregistered documents as instrument of sale.

15. In view of the settled law, the defence of the Petitioner that he is the owner of flat no. 301 on the basis of the customary documents has been rightly rejected by DRAT and DRT. The said documents do not affect the validity of the mortgage created by Respondent No. 2 in favour of Respondent No. 1.

16. Accordingly, the present petition along with pending applications is dismissed. Interim orders stand vacated.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 22, 2024/hp/ms/msh

[2] (2019) 10 SCC 229 at para 29