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

Date of decision: 23.04.2025

\+ FAO(OS) 3/2023 & CM APPL. 2614/2023

CHARANJEET KAUR KHURANA .....Appellant

Through: Mr. Rajat Aneja & Ms. Chandrika Gupta, Advs.

versus

S MANMOHAN SINGH OBEROI & ORS. .....Respondents

Through: Mr.A.K.Matta, Sr. Adv. with Mr. Anirban Bhattarcharya, Mr.Rajeev Chowdhary & Mr.Karan Gaur, Advs.
Mr. Dileep Poolakkot, Adv. for Federal Bank Ltd.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed under Section 10 of the Delhi High Court Act, 1966, challenging the Order dated 21.11.2022 passed by the learned Single Judge of this Court in I.A. No. 4329/2019 in CS (OS) No. 2126/2013, titled ***Charanjeet Kaur Khurana v. S. Manmohan Singh Oberoi & Others***, dismissing the above application filed by the appellant under Order XXXIX Rule 2A read with Section 151 of the Civil Procedure Code, 1908 (in short, 'CPC').

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BRIEF FACTS

2. To give a brief background of the facts in which the present appeal arises, the appellant and the respondent nos.1 and 2 in the present appeal, are the legal heirs of late Shri S. Patwant Singh Oberoi, who unfortunately passed away on 22.01.1978, and late Smt Harbans Kaur, who unfortunately passed away on 27.01.1992.

3. The appellant filed the above Suit *inter alia* against respondent nos.1 and 2, and other surviving siblings of the appellant/legal representatives of the deceased siblings, seeking partition of the immovable properties allegedly left behind by late Shri S. Patwant Singh Oberoi. Along with the suit, the appellant filed an application under Order XXXIX Rules 1 and 2 of the CPC, being I.A. No. 17643/2013, praying for a restraint on the defendants in the Suit, including respondent nos.1 and 2 herein, from creating any third party interest in the Suit Properties, that is, property no. B-11, Jangpura Extension, New Delhi-110014, property no.B-15, Jungpura Extension, New Delhi-110014, and property no. C-45 and C-46, Okhla Industrial Area, Phase-II, New Delhi-110020. The prayer made by the appellant in the application, is reproduced hereinbelow:-

> *"It is, therefore, most respectfully prayed that in light of facts and circumstances of the case, this Hon'ble Court may graciously be please to pass exparte ad-interim injunction in favour of the Plaintiff and against the Defendants No.1, his agents, servants, employees, attorneys, successors etc. thereby restraining them in any manner from creating any third party interest in the suit property or parting with possession of the suit properties ie.*

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> *property no. B-11, Jangpura Ext, New Delhi-110014, property no. B-15, Jungpura Ext, New Delhi-110014 and property no. C-45 & C-46, Okhla Industrial Area II, as showed is Site Plans and stated in Schedule 'A' and 'B' of the plaint during the pendency of the above noted suit."*

4. The learned Single Judge of this Court, *vide* its order dated 01.11.2013, issued summons in the Suit, and as far as the above application is concerned, finding a *prima facie* case to be made out by the appellant, directed the parties to the Suit to maintain '*status quo regarding title of the property B-11, Jangpura Extension, New Delhi and C-46, Okhla Industrial Area, New Delhi, till further orders*'. We quote the operative part of the order as under:-

> *"In my view, the plaintiff has made out a prima facie case in her favour. Balance of convenience is also in favour of the plaintiff. In case an ad interim ex parte injunction is not granted in favour of the plaintiff it will cause irreparable harm and injury to the plaintiff. The parties to the suit are directed to maintain status quo regarding title of the property B/11, Jungpura Extension, New Delhi and C-46, Okhla Industrial Area, New Delhi till further orders."*

5. From the above it would be apparent that though the appellant had prayed for an *interim* order with respect to the four properties, the learned Single Judge granted such *interim* injunction only *qua* the two out of those four properties; and while the appellant prayed for the *interim* injunction restraining the defendants, including the respondent nos.1 and 2 herein, from '*creating any third party interest*', a limited

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injunction of directing the parties '*to maintain status quo regarding the title*' of these two properties, was passed.

6. As the Suit proceeded, on 12.10.2017, the counsel appearing for respondent no.1 herein/defendant no.1 in the Suit, made a statement that without prejudice to the rights and contentions of respondent no.1, the respondent no.1, till the next date of hearing, shall not '*sell or transfer the title of the property C-45, Okhla Industrial Area, Phase-II, New Delhi, without prior permission of this Court*'.

7. From the above it would be apparent that:-

a) The above order was passed on a statement made by the counsel for respondent no.1;

b) It was to operate till the next date of hearing;

c) The defendant no.1/respondent no.1 stated that he shall not sell or transfer the title of the property, that is, C-45, Okhla Industrial Area, New Delhi- 110020;

d) Till that date there was, in fact, no *interim* order with respect to the above-mentioned property and the statement/restraint, therefore, would begin to operate only from that date. This observation is, however, not to be read as effecting the principle of *lis pendens.*

8. The appellant then filed an application under Order XXXIX Rule 2A of the CPC, being I.A. No. 4329/2019, *inter alia*, alleging therein that in spite of the above *interim* order and statement dated 01.11.2013 and 12.10.2017, respectively, respondent no.1 herein has flouted the said order/statement by mortgaging properties no. C-45

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and C-46 situated at Okhla Industrial Area, New Delhi- 110020 to India Bulls Housing Finance Limited (in short, 'IBHFL'), by creating equitable mortgage in favour of IBHFL on 14.06.2016 against a sanctioned loan amount of Rs. 7,61,50,000/-, which was later revised to Rs.7,50,00,000/-, *vide* sanction letter dated 30.10.2017. Thereafter, the loan was transferred to the Federal Bank, and was sanctioned for an amount of Rs.8.30 crores on an equitable mortgage being created on the properties, that is, C-45 and C-46 situated at Okhla Industrial Area, Phase-II, New Delhi 110020. The appellant claimed that, therefore, respondent nos.1 and 2 have created third party interest in the above two properties, thereby, being in breach of the *interim* order passed on 01.11.2013, and the undertaking given to this Court by respondent no.1 and as recorded in the order dated 12.10.2017.

<u>IMPUGNED ORDER</u>

9. The learned Single Judge of this Court, by its Impugned Order, however, has been pleased to dismiss the above application, *inter alia*, observing therein that the *interim* order dated 01.11.2013, was confined only to a direction to the parties to maintain *status quo* regarding the title of the properties, which included property no.C-46 situated at Okhla Industrial Area, Phase-II, New Delhi- 110020. The creation of a mortgage does not result in the transfer of a title and, therefore, a violation of the order dated 01.11.2013, cannot be alleged against respondent nos.1 and 2.

10. The learned Single Judge further held that the statement of

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respondent no.1, as recorded on 12.10.2017, was only till the next date of hearing, that is, 15.01.2018. In any case, again, a mortgage of the property, that is, C-45 situated at Okhla Industrial Area, Phase-II, New Delhi- 110020, will not result in transfer of title and, therefore, no violation of the said undertaking can be alleged.

11. Being aggrieved of the above findings, the appellant has filed the present appeal.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

12. The learned counsel for the appellant submits that the learned Single Judge has failed to appreciate that by creating a mortgage over the property, the respondents have in fact created a third party interest in the property in dispute, thereby, violating the *interim* Order dated 01.11.2013 and their own undertaking recorded in the Order dated 12.10.2017.

13. He submits that the mortgage, given the provisions of the Transfer of Property Act, 1882 (in short, 'TPA'), would in fact, amount to a transfer of a title of the property, as the mortgager/financial institution can proceed to claim the title over the property without much ado under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'). In support of his plea, he places reliance on the Judgment of the High Court of Madras in ***N. Srinivas & Anr. v. Naresh Kumar & Ors.***, 2011 SCC OnLine Mad

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14. He further prays that, in any case, given the facts of the present case, a direction should be issued to the respondents to discharge the loan taken by them.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL FOR THE RESPONDENT NOS. 1 AND 2

15. The learned senior counsel for the respondent nos.1 and 2 submits that the Order dated 13.11.2013 and the undertaking dated 12.10.2017, were limited to the transfer of title of the properties. Placing reliance on the judgments of the Supreme Court in ***State Bank of Bikaner & Jaipur v. National Iron & Steel Rolling Corpn. & Ors.***, (1995) 2 SCC 19, ***Dattatreya Shanker Mote & Ors. v. Anand Chintaman Datar & Ors.***, (1974) 2 SCC 799, ***Syndicate Bank v. Estate Officer & Manager, APIIC Ltd. & Ors.***, (2007) 8 SCC 361, ***Central Bank of India v. State of Kerala & Ors.***, (2009) 4 SCC 94, he submits that creation of a mortgage does not amount to a transfer of the title of the property; it is at best a creation of an interest in the property.

16. He submits that, in fact, the appellant, in I.A. No. 4329/2019, had prayed for a restraint on the respondents from creating any third party interest in the Suit Properties, however, the learned Single Judge did not grant the said relief, and, instead, confined the relief only to a direction to the parties to maintain *status quo* with respect to the title of the properties. He submits that, therefore, no fault can be found in

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the order passed by the learned Single Judge.

17. He further submits that for holding the respondents guilty of contempt of the Order dated 01.11.2013 or the undertaking dated 12.10.2017, the Order ought to have been clear and explicit. He submit that the contempt jurisdiction is *quasi* criminal in nature and in case the interpretation placed by the respondents to the said orders is found to be reasonably possible, the respondents cannot be proceeded against for having committed Contempt of the Court. In support, he places reliance on decision in ***State of Bihar v. Sonabati Kumari***, 1960 SCC OnLine SC 20, ***Sushila Raje Holkar v. Anil Kak***, (2008) 14 SCC 392, ***Parents Assn. of Students v. M.A. Khan & Anr.***, (2009) 2 SCC 641, and ***Ram Kishan v. Tarun Bajaj & Ors.***, (2014) 16 SCC 204.

18. He submits that, in fact, in the present case, even the learned Single Judge has accepted the interpretation of the respondents to the order and the undertaking and, therefore, in exercise of its appellate powers, this Court ought not to hold the respondents to have wilfully disobeyed the order dated 01.11.2013 passed in the above Suit or the undertaking given in the said Suit, as recorded on 12.10.2017.

ANALYSIS AND FINDINGS

19. We have considered the submissions made by the learned counsels for the parties.

20. At the outset, we would reproduce Sub-Rule (1) of Rule 2A of Order XXXIX of the CPC as under:

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> *"Order XXXIX*
> *******
> ***2A. Consequence of disobedience or breach of injunction—***
> *(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release."*

21. For invoking the provision of Order XXXIX Rule 2A of the CPC, the appellant has to show that the respondents have disobeyed the injunction granted. The jurisdiction exercised is one of civil contempt, however, as finding a person guilty under the said provision may result in attachment of the property and also may extend to detention in civil imprisonment, the proceedings are *quasi criminal* in nature. Before finding a party guilty of having disobeyed an order, the degree of satisfaction that must be reached by the Court would be akin to a finding of a criminal charge, that is, proved beyond a reasonable doubt.

22. In exercise of the powers under Order XXXIX Rule 2A of the CPC, the Court cannot expand the ambit of the order of which disobedience has been alleged, nor it can by an interpretation process assign a meaning to the said order which does not flow from the

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natural meaning of the words used therein. The intent of the Court in passing the order of which disobedience is alleged, is not the guiding factor. It is the letter of the order that would govern the adjudication of the application under Order XXXIX Rule 2 A of the CPC. In this regard, we may quote from the judgment of the Supreme Court in ***T.C. Gupta, v. Bimal Kumar Dutta & Ors.***, (2014) 14 SCC 446:

> *"**10.** The terms of the order of the High Court dated 18-8-2011 the averments/statements made in the contempt petition and the reply thereto on behalf of the appellant as well as the subsequent facts placed before us have received our due and anxious consideration. The interim order of the High Court had directed status quo to be maintained in respect of allotments. Admittedly, no allotments had been made by the appellant or any other authority. A contempt action being in the nature of quasi-criminal proceeding the degree of satisfaction that must be reached by the court to hold a person guilty of commission of contempt would be akin to what is required to prove a criminal charge, namely, proof beyond reasonable doubt. The order of the court in respect of which violation is alleged must, therefore, be clear, unambiguous and unequivocal and defiance thereof must be apparent on the very face of the action with which a contemnor is charged.* ***<u>An interpretation of the terms of court's order in respect of which disobedience is alleged would not be appropriate while dealing with a charge of contempt. Such a charge cannot be brought home by unravelling the true meaning of the court's order by a subsequent order when there is an apparent ambiguity, lack of clarity or dichotomy in the initial order</u>****. In a situation like the present where the High Court had directed maintenance of status quo as to allotment when the interim prayer*

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> *was to stay the implementation of the final development plan "in view of contemplated grant of licence to the colonisers/developers/societies" it was not open for the High Court to hold the contemnor guilty of commission of contempt by understanding the order dated 18-8-2011 to mean status quo or a restraint in respect of grant of licences under the Haryana Act of 1975."*
>
> (emphasis supplied)

23. Having given the above preface to the jurisdiction of the Court under Order XXXIX Rule 2 A of the CPC, we now proceed to consider the case of the appellant on merits.

24. As has been highlighted hereinabove, the *interim* Order dated 01.11.2013 directed the respondent nos.1 and 2 to maintain status quo regarding the "title" of *inter alia* property bearing no.C-46, Okhla Industrial Area. Similarly, in the Order dated 12.10.2017, the learned counsel appearing for the respondent no.1 made a statement that the defendant no.1 therein shall not sell or transfer the title of the property no. C-45, Okhla Industrial Area, Phase-II, New Delhi, without prior permission of this Court. Therefore, the restraint was only *qua* the transfer of title. What is alleged against the respondent nos.1 and 2 is the creation of a mortgage. The question to be determined by the learned Single Judge and now by this Court is therefore, whether the creation of a mortgage amounts to a transfer of the title in the above mentioned properties.

25. "Transfer of property" is defined in Section 5 of the TPA as under:

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> *"**5. "Transfer of property" defined.—**
> In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act.
> In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."*

26. Section 8 of the TPA in turn states that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee "*all the interest which the transferor is then capable to transfer in the property and in the legal incidents thereof*". We quote Section 8 of the TPA as under:

> *"**8. Operation of transfer.—**
> Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.
> Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;
> and, where the property is machinery attached to the earth, the moveable parts thereof;
> and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;*

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> *and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer; and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."*

27. Therefore, with the transfer of property/title, the vendor is not left with any interest in the property.

28. Section 54 of the TPA defines the term "Sale" as a transfer of ownership in exchange for a price paid or promised or partly paid and partly promised.

29. Section 58 of the TPA defines a mortgage as a transfer of "an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability". Therefore, unlike sale, which is transfer of the ownership of the immovable property, that is, title and all interest in the immovable property, mortgage is a transfer of only a limited interest in the immovable property for the purpose of securing the payment of money. The mortgagor retains the right to redeem, while the mortgagee has a right to fore-closure or sale. The title of the property continues to vest with the mortgagor during the subsistence of the mortgage.

30. The above distinction was highlighted by the Supreme Court in ***Dattatreya Shanker Mote & Ors*** (supra), where it observed as under:

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*"**13.** In order to ascertain the true import of the terminology used in Section 100 of the Act, it is necessary to state clearly some of the basic concepts embodied in the Act which are beyond controversy. Section 5 defines "transfer of property" as meaning "an Act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons", and "to transfer property" is to perform such act. Section 6 says that property of any kind may be transferred, except as otherwise provided by the Act or by any other law for the time being in force other than those mentioned specifically in clauses (a) to (i) which cannot be transferred. Section 8 deals with the operation of transfer and says that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof. It then narrates all such incidents having regard to the land, debt, etc., etc. Chapter III of the Act deals specifically with sales of immovable property, the sale in Section 54 being defined as transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Mortgages are dealt with in Chapter IV where mortgage is defined in Section 58(a) as the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan. Different kinds of mortgages are also specified in that section of which clause (6) states what a simple mortgage is, namely,*

> *"where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees,*

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expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee".

14. *A charge on the other hand under Section 100 of the Act is neither a sale nor a mortgage because it creates no interest in or over a specific immovable property but is only a security for the payment of money.*

15. *Leases of immovable properties are dealt with in Chapter v. of the Act, of which Section 105 defines a lease as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, etc., etc. Chapter VI deals with exchanges of ownership in one property for another. It is provided by Section 118 that a transfer of property in completion of an exchange can be made only in the manner provided for the transfer of such property by sale, so that in that section the mutual transfer which is referred to is the transfer of ownership of one thing for the ownership of another and in relation thereto the manner in which the exchange is to be completed is specified as similar to the transfer of property as on a sale. In so specifying Section 118 of the Act equates the term "transfer of property" with the term "transfer of ownership". Chapters VII and VIII deal with gifts and actionable claims which do not necessarily appertain to immovable properties alone.*

16. ***<u>It will thus be seen that throughout the Act whenever a transfer of property is</u>***

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referred to without any qualification, it is to the transfer of all the interest in the property. As already referred to Section 8 says that "a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property". *Section 10 when it says "where property is transferred" refers to all the rights in the property. Section 11 makes it still more clear when it provides that "where, on transfer of property, an interest therein is created absolutely in favour of any person" and contrasts the transfer of property with the creation of an interest in the property. Section 12, which refers to the property transferred, refers to the whole of the interest in the property. Section 13 refers to a transfer of property and creation of an interest therein and brings out the distinction between the phrase "transfer of property" and "creation of interest in the property"; so do Sections 14 and 15. Section 16 refers to the creation of an interest. Section 17 very obviously refers to the transfer of the whole of the property when it refers to the transfer of property. So also Section 18. Sections 19, 20, 21, 22, 23, 24, 26, 27, 28, 31 and 33 are like Sections 11 and 13. Section 38 again clearly refers to the transfer of the whole of the interest in a property. So do Sections 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 53-A. Thus it is clear that the transfer of property referred to in Section 100 of the Act is the transfer of the whole property and not a mere interest in or over the property like a mortgage, lease, etc.*

17. A careful scrutiny of the conspectus of the sections of the Act indicates clearly that the Legislature has adopted certain phraseology to connote different concepts of transfer to which we have referred above. Property is the most comprehensive of all terms inasmuch as it is indicative and descriptive of every possible interest it can

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__have. The terms 'transfer of property', 'transfer of an interest in property', 'creation of an interest in or over property', 'transfer of a right to enjoy property', 'transfer of ownership' have been associated in the context of different sections with sale, gift, exchange, mortgage, lease, etc., etc. In the case of a sale, after the sale there is no interest left in the seller: in the case of a charge the transferor has a subsisting interest though limited to some extent by the charge-holder's right to recover the monies due from the specific immovable property. In a mortgage, the mortgagor has the equity of redemption of the mortgage left in him.__ In the case of a lease the lessor has the right of ownership in the property except the right of enjoyment which has been transferred to the lessee under the agreement. A gift like a sale is transfer of all the rights which a person can have in the property with this difference, namely, while the sale is for consideration, gift is voluntary and without consideration."

(emphasis supplied)

31. The above principle was reiterated by the Supreme Court in ***State Bank of Bikaner & Jaipur*** (supra), by observing as under:

*"**8.** .....Where a mortgage is created in respect of any property, undoubtedly, an interest in the property is carved out in favour of the mortgagee. The mortgagor is entitled to redeem his property on payment of the mortgage dues. __This does not, however, mean that the property ceases to be the property of the mortgagor. The title to the property remains with the mortgagor__...."*

(emphasis supplied)

32. In the present case, as the restraint on the respondents was only on the transfer of title of the immovable property, by creation of a

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mortgage, the title in the property has not been transferred by the respondents and therefore, they cannot be held to be in disobedience of the *interim* Order dated 01.11.2013 or the undertaking, as recorded in the Order dated 12.10.2017, given by them.

33. The submission of the learned counsel for the appellant that the Court never intended to restrict the scope of *interim* order to a transfer of the title of the property, may at first blush appear to be impressive, however, given the limited jurisdiction of Order XXXIX Rule 2A of the CPC as noted hereinabove, merely because of the intent of the Court in passing an order or through an interpretative process, the respondents cannot be held to be in disobedience of an order where it expressly does not prohibit the act complained of to be done.

34. In this regard, the reliance of the learned counsel for the appellant on the judgment of the Madras High Court in ***N. Srinivas & Anr.*** (supra) cannot come to the aid of the appellant, inasmuch as, by the order passed therein, unlike in the present case, the parties had been directed to maintain *status quo* on the property. The order was, therefore, not restricted to restraint on transfer of title alone. The Court, therefore, came to the conclusion that the said order would also include prohibition on creation of a mortgage. The said judgment, on its facts, is clearly distinguishable.

35. As far as the submission of the learned counsel for the appellant that under the SARFAESI Act, the financial institutions have an unfettered right to seek possession and title of the property in the event of default, also cannot come to the aid to the appellant. Merely

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because the financial institution may have such a right and may enforce it some day, cannot be a reason to hold the respondents guilty of disobedience at present.

36. As regards the submission of the learned counsel for the appellant that the respondents should be directed to repay the loan taken by them by mortgaging the properties in question, we are of the opinion, that this prayer would first have to be made by the appellant before the learned Single Judge by moving an appropriate application for the same. We, in exercise of our appellate jurisdiction against the Impugned Order, would not like to make any comments on the same.

37. Accordingly, we do not find any merit in the present appeal. The same is dismissed. Pending application is also dismissed being infructuous. There shall be no order as to costs.

NAVIN CHAWLA, J

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Click here to check corrigendum, if any

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