

(2011) 04 GUJ CK 0197

In the Gujarat High Court

Case No : Appeal From Order No. 74 of 2010 and Civil Application No. 2788 of 2010

Gruh Finance Ltd.

APPELLANT

Vs

Harshad Pravinbhai Thakkar and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Citation : (2011) 04 GUJ CK 0197

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Singhi and Co, for the Appellant; Dhaval M. Barot, for Respondents 1 and 3 and Prabhav A. Mehta, for Respondents 2 and 4-5, for the Respondent

Judgement

K.S. Jhaveri, J.—By way of present appeal from order, the Appellant has inter alia prayed to appoint a Court Receiver with direction to take into his custody all the immovable and movable properties of the Defendants, including the properties mortgaged by the Defendant Nos. 1 to 3 with the Plaintiff and described in Schedule-II at Annexure-C in part 1 and 2 thereto and sell or otherwise dispose of the same by private treaty or public auction or otherwise and to appropriate the net sale proceeds thereof towards the liquidation of the dues of the Plaintiff.

2. When present appeal from order along with Civil Application for stay came up for admission hearing before this Court (Coram: Ravi R. Tripathi, J), this Court has admitted the appeal and granted ad interim relief vide order dated 03rd May 2010. Thereafter, the parties entered into an amicable settlement out of the Court. The content terms arrived at between the parties on 29th March 2011 were produced on record and the same were ordered to be taken on record vide order dated 29th March 2011. Thereafter, in pursuance of the said consent terms, the parties arrived at settlement and the parties have executed 2nd consent terms on 29th April 2011.

3. The said 2nd consent terms are submitted to be Court today by the parties and the same are taken on record. The said 2nd content terms are taken on

record. It would be beneficial to reproduce the "2nd consent terms" dated 29th April 2011 arrived at between the parties as under:

1. In furtherance of the consent terms dated 29.3.11 put before the Hon''ble Court the Respondents have paid the amount of Rs. 1.31 Crore to GRUH Finance Limited (GRUH) i.e. the Appellant within the time limit put in the said consent terms and GRUH has accepted the said amount as full and final settlement of all of its dues from the Respondents and from third parties against whom GRUH has filed various proceedings in different courts. GRUH will issue No Due Certificate to the Respondents and concerned thrid parties..

2. The consent terms of 29th March 2011 contemplate, at paragraph 3 thereof, that in case the amount as contemplated in para 2 of the said consent terms is paid as per the schedule, the Receiver appointed by this Hon''ble Court be directed to sell the properties mortgaged with the Appellant, which are presently in the possession of the Receiver and are mentioned in the suit, to the buyers as chosen/ opted for by the Respondents, without any auction of the same and GRUH shall at that stage release the property from mortgage, and withdraw the Civil Suit No. 69 of 2005 at the cost of the Respondents. GRUH hereby agrees to handover the documents mentioned at Schedule-I to this consent terms, along with No Due Certificate, to the Receiver appointed pursuant to the order of this Hon''ble Court, on 3.5.2011. The Receiver shall issue proper receipt, detailing all the documents received by it from GRUH. Upon such handing over, GRUH shall be absolved from all responsibility concerning the security documents so handed over to the Receiver.

3. GRUH undertakes to file withdrawal applications/ purshis in respect to all civil proceedings filed by it against various parties- individual borrowers being suits listed at Schedule-II hereto, pending in various courts, by 25.5.2011. GRUH will keep ready at its Anand Office all security documents it may have received from the individual borrowers and No Due Certificate for handing the same over to them from 15.5.2011 till 25.5.2011. Civil Suit No. 69 of 2005 will be withdrawn after the sale of property, contemplated herein, provided such sale of the properties takes place within one month from the date of this consent terms. If such sale of the properties does not takes place within one month, GRUH will be entitled to no longer wait and may withdraw the suit at its discretion.

4. GRUH undertakes to withdraw all 16 criminal cases pending before the Trial Court at Anand in relation to negotiable instruments against the concerned parties.

5. GRUH has no objection if the Receiver is directed by this Hon''ble Court to execute registered sale deeds forthwith and on or before 06.05.2011 in favor of such persons as chosen by the Respondents, who have paid Rs. 1.31 Crore in respect of such properties as are mentioned in Schedule-III to this 2nd Consent Terms and if the Receiver simultaneously hands over possession of the said properties and documents to such buyers.. GRUH shall bear no costs or expenses

for such sale.

6. The subject appeal may be disposed of in terms of this 2nd Consent Terms.

4. In view of aforesaid consent terms and amicable settlement arrived at between the parties, the impugned order passed by the trial Court is substituted by the aforesaid consent terms, which is signed by both the parties, including respective advocate. The parties will be governed by the said consent terms and they are directed to act accordingly. The Receiver too is directed to act as per the aforesaid consent terms arrived at between the parties.

5. With aforesaid directions, present appeal from order stands disposed of. No order as to costs.

6. Consequently, the Civil Application stands disposed of. Rule is made absolute to the aforesaid extent.