(2015) 02 DEL CK 0402

In the Delhi High Court

Case No : Writ Petition (C) 1286/2015 and C.M. Nos. 2282 and 2283 of 2015

Krishan Kumar APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Land Reforms Act, 1954 — Section 19, 34
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20
Transfer of Property Act, 1882 — Section 58(f)

Citation : (2015) 5 AD 450 : (2015) 218 DLT 338

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Rajeeve Mehra, Senior Advocate, Alok K. Agarwal and S. Kaushik, for the Appellant; P. Gowtham, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

1. Issue notice. Sh. P. Gowtham, Advocate accepts notice. With consent of learned Counsel for the parties, the matter was heard finally. The petitioner is aggrieved by the order of the Debts Recovery Appellate Tribunal (DRAT) dismissing his appeal preferred against an order of the Debts Recovery Tribunal (DRT) dated 3.10.2007. The respondents (hereafter referred to as "the SBI") had preferred an application (O.A. No. 375/2000) under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereafter referred to as the "Recovery Act") against its borrowers, alleging default and claimed a decree for various amounts. The application encompassed mortgage claims in respect of several properties. Eventually, the impugned order was made on 3.10.2007, decreeing the application. The DRT directed that a Recovery Certificate be drawn in accordance with its final determination, including a direction to pay interest. Since the final order apprehended mortgage claims, the SBI sought to proceed against property No. 215, Extended Lal Dora, Village

Alipur, Delhi (hereafter referred to as "the suit property"). The Recovery Officer consequently issued notice and sought to proceed against the property.

2. The writ petitioner was served and became aware of the proceedings before the Recovery Officer. He, therefore, preferred objections and contended that he was a bona fide purchaser of the suit property, by virtue of registered sale deed dated 27.10.1997. The petitioner objected to the proceedings, contending that the decree was not binding and could not, therefore, include the suit property because firstly, being agricultural in nature, it was bound by the provisions of the Delhi Land Reforms Act. In this, the petitioner relied upon Section 34 which forbid the mortgage of lands covered by the Act except those by simple mortgage. The bank''s claim was founded upon equitable mortgage or interest created by deposit of title deed (Section 58(f) of the Transfer of Property Act). Consequently, it was contended that the petitioner had followed the procedure established by law and secured the "No Objection Certificate" of the concerned revenue official under provisions of the Delhi Land Reforms Act read with the concerned provisions of the Punjab Land Revenue Act, 1887. Lastly, it was contended that the bank''s mortgage by deposit of title deeds could not prevail because the combined operation of the Delhi Land Reforms Act and the Punjab Land Reforms Act was such that it was obliged to secure prior permission and have its lien over the land noted by the concerned revenue officer--a procedure which it did not follow.

3. The Presiding Officer of the DRT in recovery proceedings rejected the petitioner''s application--M.A. 124/2013--by a speaking order dated 6.8.2013. The Presiding Officer of the DRT was of the opinion and perhaps rightly, that these issues were substantive in nature and ought to have been raised before the appeal. Consequently, the petitioner preferred an appeal to the DRAT, being Inward No. 540/2013. The writ petitioner sought condonation of delay of its appeal and at the same time raised all the substantive contentions, including all the three objections noticed earlier in this judgment. The DRAT gave a swift blow to the application for condonation of delay and held that the appeal was highly belated and the delay ought not to be condoned.

4. It is submitted by the learned Senior Counsel for the petitioner that the fundamental grievance--before the DRAT--was lack of notice of the alleged prior mortgage and, besides, its invalidity given the binding nature of the provisions of the Delhi Land Reforms Act read with the Punjab Land Reforms Act. If these were taken in their proper perspective, the DRAT would not have, it was argued, rejected the condonation of delay application given that the petitioner had no notice of the original petition under Section 19.

5. The petitioner reiterates these submissions and contends that unless this Court intervenes under Article 226 of the Constitution, there would be significant miscarriage of justice. Learned Counsel for the bank submits that the DRAT''s order does not call for interference since the powers given to the DRAT to condone the delay cannot be stretched as widely as is being suggested in the

present proceedings. He also argues that there can be no dispute that the petitioner is a later transferee whose claims to the suit property have to yield to prior mortgage claims of the bank.

6. We have heard learned Counsel for the parties. It is evident from the above discussion that the petitioner was in the dark about the substantive proceedings initiated by the SBI for recovery of its dues from the original borrowers--the alleged mortgagors of the property. The petitioner became aware of these developments, immediately after the DRT order dated 3.10.2007 when the Recovery Certificate was sought to be enforced. At that stage, he intervened and sought for relief which was denied in 2013 on the ground that his appropriate recourse was to a substantive appeal against the order of DRT. There is no dispute that the petitioner did seek recourse to the remedy but only to be sent home on the ground that the appeal has been preferred highly belatedly.

7. This Court is of the opinion that in the given conspectus, and the circumstances that the petitioner was completely in the dark till 2012 when the recovery proceedings were first sought to be enforced, the DRAT ought to have been more circumspect and at least in the facts of this case, considered the appeal since serious questions of fact and law have been urged. We accordingly set aside the order of the DRAT and direct it to consider the petitioner''s appeal under Section 20 of the Recovery Act on its merits, without reference to the delay occasioned in the filing of the appeal. The parties shall be present before the DRAT for further directions for final hearing and disposal of the appeal on 25.2.2015.

8. All rights and contentions of the parties are reserved; nothing stated in this judgment shall be considered as an expression of this Court on the merits of the contentions. The writ petition is allowed in the above terms along with the pending applications.

