(2016) 02 DEL CK 0282

In the Delhi High Court

Case No : W.P. (C) 7098 of 2015

Loveleen Kaur and Others APPELLANT

Vs

ICICI Bank Ltd. and Others RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13

Citation : (2016) 227 DLT 590 : (2017) 1 DRTC 405

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Sagar Saxena, Advocate, for the Appellant; Punit K. Bhalla and Chetna Bhalla, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—1. ICICI Bank Ltd. took recourse to Section 13 of SARFAESI Act, 2002 and served a notice on Praveen Sethi. The notice related to property bearing Municipal No. 143, Khasra No. 219/2, Old Gupta Colony, Delhi. The colony came up unauthorisedly but has since been regularised. The admitted position between the parties is that the original owner of the property was one Smt. Shanti Devi who sold the same to one Smt. Shakuntla Devi on February 2, 1965. The writ petitioners claim that on April 20, 2009, Smt. Shankutla Devi sold the second floor of the property to them and thus they filed a petition before the Debts Recovery Tribunal concerning the action taken by the bank in which the issue as to whether the petitioners were bona fide purchasers for valuable consideration cropped up. It is apparent that the issue whether the writ petitioners were bona fide petitioners of the property required the bank to plead the date on which the entire property was mortgaged to it by deposits of title-deed or by a registered mortgaged-deed, and by whom.

2. As noted above, the petitioners had already disclosed that the second floor of the property was sold to them by Smt. Shakuntla Devi on April 20, 2009.

3. The reply filed by the bank is wishy-washy. It does not disclose the date when the property was mortgaged. It simply states that Praveen Sethi, the son of Smt. Shakuntla Devi and his wife Kiran borrowed money from the bank and mortgaged the property. The pleading is that the loan was advanced in April/May, 2006. It was pleaded that the original title deeds were deposited with the bank meaning thereby as per the bank the mortgage was equitable mortgage. But what were those property documents? Nothing has been stated.

4. Learned Counsel for the bank says that Smt. Shanti Devi had executed a gift deed which was registered in the name of her son somewhere in the year 2005 and that the document of title handed over to the bank to create the equitable mortgage was the said gift deed.

5. Regretfully, this has not been pleaded by the bank in response to the petition filed by the petitioners before the Debts Recovery Tribunal.

6. Pending consideration of the objection to the attachment by the petitioners the issue came up before the Debts Recovery Tribunal: Whether the attachment notice should be stayed unconditionally or upon a term.

7. Pulling a rabbit out of a hat and saying that Rs. 3 lacs should be deposited, the Debts Recovery Tribunal stayed the attachment on the condition that the petitioners deposit Rs. 3 lacs. Said order was partially modified by the Debts Recovery Appellate Tribunal vide impugned order dated March 19, 2015. The amount has been reduced to Rs. 2 lacs.

8. No reasons have been given as to why the condition of pre-deposit was imposed by either the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal. The reason is obvious. The Presiding Officers of the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal did not bother to ensure that ICICI Bank gave proper facts in its reply.

9. In a claim by a third party to a mortgaged asset, of being a bona fide purchaser for valuation consideration, it assumes importance that the adjudicatory authority has before it the facts concerning the title documents with clarity. If there is deficiency in pleadings by either party the authority must direct supplementary pleadings before him.

10. For example, in the instant case, if the gift deed by Smt. Shakuntla Devi in favour of her son precedes the sale-deed executed by her in favour of the petitioners, upon the fact that the gift deed is registered, would be proof of the fact that the petitioners cannot claim to be bona fide purchasers for valuable consideration of the second floor, for the reason they were negligent in not carrying out a title search in the records of the Sub-Registrar.

11. It is trite that interim orders must be based on application of principles of equity and prima facie case being established. With regret, we find that the Debts Recovery Appellate Tribunal has not bothered to apply the correct principles and has proceeded to pass the impugned order as if it was to pull a

rabbit out of the hat.

12. Since neither the Debts Recovery Tribunal nor the Debts Recovery Appellate Tribunal have given reasons which stand the scrutiny of law and directed the petitioners to make a deposit, we dispose of the writ petition quashing the impugned order dated March 19, 2015 and restore Appeal No. 88/2015 before the Debts Recovery Appellate Tribunal with a direction that the Debts Recovery Appellate Tribunal would ensure supplementary pleadings to be brought on record concerning the stand of the bank that much before Smt. Shakuntla Devi sold the second floor of the property to the petitioners she had executed a registered gift deed in favour of her son. If indeed, she had, it would have a bearing on the writ petitioners'' claim of being bona fide purchasers. If she did not or if the gift-deed is not a registered document it would weaken the case of the bank. The strength of the respective cases and the probable chances of success certainly impact any interim measure qua an attached property.

13. We are noting that nine out of ten decisions of the Debts Recovery Tribunal as well as Debts Recovery Appellate Tribunal which are reaching the Court are perfunctorily written. We remind the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal that as per law they are treated as final adjudicators of fact and this casts a greater burden on them to note all relevant facts and then pass orders. If pleadings before them, as in the instant case, are sketchy it is their duty to ensure that proper pleadings are made before decisions are arrived at.

14. We direct Appeal No. 88/2015 to be placed by the Registrar of the Debts Recovery Appellate Tribunal before the Debts Recovery Appellate Tribunal on February 22, 2016.

15. No costs. Copy of this order be sent to the Registrar of the Debts Recovery Appellate Tribunal by the Registry through Special Messenger within three days.

