(2016) 03 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition No. 2524 of 2015 (M/S).

Meetu Jain and another APPELLANT

Vs

Bank of Baroda and another RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 2(zc)

Citation : (2016) ACD 926 : (2016) 164 AIC 799 : (2016) AIR(Uttaranchal) 60 : (2016) 116 ALR 613 : (2016) 3 BankJ 346 : (2016) 3 BankJ 177 : (2016) 3 BC 675 : (2016) 3 DCR 260 : (2016) 2 DRTC 323 : (2016) 2 NIJ 789 : (2016) 132 RD 214

Hon'ble Judges : U.C. Dhyani, J.

Bench : Single Bench

Advocate : Piyush Garg, Advocate, for the Appellant; Siddhartha Sah, Advocate, for the Respondent

Final Decision : Allowed

Judgement

U.C. Dhyani, J.(Oral) - By means of present writ petition, the petitioners seek following relief, among others:-

"Issue a writ, order or direction in the nature of mandamus commanding the respondents to return the title deeds and other connected documents relating to Plot No.A-7 Industrial Estate, Kashipur, which are in possession of respondent no. 1 under mortgage for loan bearing No. 0850500000571."

2. It is the case of the petitioners that firm M/s Mahaveer Packaging Industries, of which the petitioner no. 1 is the proprietor, obtained loan facility from respondent no. 1-bank under three heads, viz., Cash Credit Limit, Term Loan-I and Term Loan-II. To secure the said loan obtained by the petitioners from the respondent no. 1, a mortgage was created over the land/plot situated at A-7, Industrial Estate, Kashipur having 2422 Sq. Yds area. The said property is in the

name of petitioner no. 2. However, there is a lease deed executed by petitioner no. 2 in favour of petitioner no.1 in respect of the said property. Further, a house measuring 142.27 sq.mts. situated at Mohalla Singhan, Kashipur in the name of one Mr. Amit Kumar Jain was also mortgaged. The original title deeds of both the aforesaid properties and other lease deeds were deposited with respondent no.1 at the time of obtaining loan facilities.

3. Subsequently, one of the collateral securities submitted for securing mortgage was revised in a way that the property situated at Plot No. A-7, Industrial Estate Kashipur remains as such. However, earlier mortgage property (i.e. house at Mohalla Singhan, Kashipur) belonging to Amit Kumar Jain was replaced with a property belonging to Rajat Kumar Jain as property situated in Mohalla Singhan measuring 972 sq.ft.

4. The details of the property mortgaged after such revised security are as follows:

(i) A house admeasuring area 972 sq. metres situated at Moh. Singhan, Kashipur in the name of Rajat Jain.

(ii) Industrial land and building situated at A-7, Industrial Area, Kashipur having area 2422 sq. yards (2025.84 sq. mt.) standing in the name of Pushpendra Jain leased out to Smt. Meetu Jain.

The description of title deeds/documents of the property mortgaged with the bank in respect of property belonging to Mr. Rajat Jain is as follows:

(i) Original Title deed dated 20.4.2012 registered on at bahi no. 1, page on 281/294, serial no.4889 in the office of Sub Registrar, Kashipur

(ii) Original Sale deed dated 21.09.2013 vide Bahi No. 1, Jild No. 546, pages No. 25, 26 and Sr. No. 2157, registered on 21.09.1983 in the office of Sub Registrar, Kashipur

(iii) Copy of demand and collector register dated 11.3.2010, 22.01.2010 and 07.05.2012

(iv) Copy of will dated 14.3.1995

(v) Mustehari fee receipt dated 07.05.2012

5. The description of title deeds/documents of the property deposited with the bank in respect of property belonging to Pushpendra Kr. Jain leased out to Smt. Meetu Jain is as follows:

(i) Original lease deed dated 11.09.1978 registered vide book no.1, Zild 411 page no.199 to 234 Sr. No. 7 at Sub Registrar, Kashipur registered on 09.01.1979 in favour of Pushpendra Kr. Jain.

(ii) Transfer agreement deed dated 19.04.1999 registered vide book no.1, zild 1036, page no. 475 to 486 Sr. No. 1227 at Sub Registrar, Kashipur registered on

20.4.1999

(iii) Copy of lease deed dated 14.11.2008 registered vide book no. 1, Zild No. 1641, page No. 53 to 62 Sr. No.7472 at Sub Registrar, Kashipur pertaining to 7000 sq. feet area rented out of plot no.A-7 to Smt. Meetu Jain.

6. The aforesaid loan was taken in respect of the firm M/s Mahaveer Packaging Industries and only the present petitioners were the borrowers/guarantors for the said loan. Aforementioned properties were mortgaged as collateral securities only for the purpose of securing the loan in question and none other. The charge over these properties was created only in respect of the aforesaid loan.

7. Apart from this, one loan was being obtained by M/s Teerath Pushpdant Private Limited Company, in which, petitioner no. 2, Amit Kumar Jain and Sushil Kumar Jain were the directors. The said loan was also being taken from respondent no. 1. However, a different property, i.e., Khasra No. 378 situated at Village Dhabori, Kashipur, was mortgaged to secure the loan in favour of M/s Teerath Pushpdant Private Ltd. Property belonging to Smt. Sushil Kumar Jain, Amit Kumar Jain and Pushpendra Kumar Jain bearing Khasra No.378 situated at village Dhabori, Kashipur was mortgaged for the said loan.

8. It is the submission of the learned counsel for the petitioners that the aforesaid two loans were separate and distinct in respect of two separate entities. Both the loans have no connection with each other and neither the property mortgaged in one of the loan was meant to secure the other loan nor the property mortgaged in one of the loan had any charge in respect of the other loan. The loan obtained by Teerath Pushpadant Private Limited was secured by hypothecation of plant and machinery, equitable mortgage of factory and building situated at Khasra no. 378M measuring 0.275 hectare situated at village Dhabora, Kashipur and the lease hold right of factory land and building situated at aforesaid khasra number.

9. In para-13 of writ petition, it has been stated that the loan, in question, obtained by M/s Mahaveer Packaging Industries, wherein the property in question was mortgaged, has been repaid in full and there are no outstanding dues against the petitioners in the aforesaid loans. The property belonging to Rajat Kumar Jain being mortgaged simultaneously with the property bearing Plot No. A-7, Industrial Estate was released by the respondent bank and an endorsement to that effect has been made on 19.08.2015.

10. The petitioner requested the respondent no.1 to release the documents relating to property No. A-7, Industrial Estate, Kashipur, which was mortgaged under the loan Account No. 0850500000571 as the entire dues of the said loan was paid and there remained no outstanding dues against him.

11. It is alleged that respondent no. 1, without any authority of law, refused to return those documents despite the fact that the entire loan has already been repaid. No other charge over the property, in question, was ever created and the

respondent-bank had no lien over such property and the documents.

12. Counter affidavit has been filed on behalf of the respondents/bank. In para-8 of the counter affidavit, it has been averred that Pushpinder Jain is the Director of M/s Teerath Pushpadant Paper Convertor Pvt. Ltd. and the property mortgaged to secure the loan of M/s Teerath Pushpadant Paper Convertor Pvt. Ltd. is in the name of Smt. Sushma Jain and Smt. Meetu Jain. In M/s Mahaveer Packaging Industries, Smt. Meetu Jain is the Proprietor and the property of Pushpinder Jain was mortgaged to secure the loan of M/s Mahaveer Packaging. Smt. Meetu Jain is the daughter-in-law of Pushpinder Jain and Smt. Sushma Jain. Thus, both the said loans have been secured by the same family within close blood relations. Amit Jain, who is the husband of Smt. Meetu Jain, is the son of Pushpinder Jain and Smt. Sushma Jain. The property of Amit Jain was mortgaged to secure the loan facility of M/s Mahaveer Packaging Industries. Later on, the said property was intentionally substituted by another property in the name of his brother Rajat Kumar Jain with intention to save his property and to somehow make the account of M/s Teerath Pushpadant N.P.A. Thus, the entire family is wilful defaulter. The entire game plan was to somehow get the high value property of Plot No.A-7, Industrial Area, Kashipur released so that the bank has no property of substantial value as the properties mortgaged for M/s Teerath Pushpadant have no proper market value, since, in spite of repeated auctions, no buyer is turning up. The loan account of M/s Mahaveer Packaging Industries was intentionally closed to save the property of Pushpinder Jain in order to cause loss to the bank. The property located in Plot No. A-7, Industrial Area, Kashipur, on the other hand, is marketable and having sufficient value to cover the bank dues in the name of M/s Teerath Pushpadant Paper Convertor Pvt. Ltd.

13. It is the submission of learned counsel for the respondents that the title deed and other connected documents have been legally retained by the bank. The other family members of the petitioners, while taking loan of Rs. 38,00,000/- for M/s Teerath Pushpadant Paper Convertor Security LDOC 7, have stated as follow:

"I/we undertake not to create any mortgage or lien of whatsoever kind of nature over the same not to sell or alienate any of my/our immovable properties or assets of a capital nature until all the debts due by me/us to Bank of Baroda are fully paid."

14. Learned counsel for the respondents, while relying upon the aforesaid undertaking, contended that since the borrowers/executants therein agreed that they will not create any charge over said property till all debts of the bank are repaid, hence, the same will extend the lien over the properties of the present case also.

15. Learned counsel for the petitioners, at this stage, drew attention of this Court towards an asterisk mark (*) shown in quoted version of para 13 of this judgment. The said document (Annexure-3 of the counter affidavit) corresponds to the note written at the bottom of the paragraph, which is as follows:

*Note : - If advance is secured, please delete this.

16. Learned counsel for the petitioners on the basis of the aforesaid note submitted that the stipulation relied upon by learned counsel for the respondent is not applicable as admittedly the advance of M/s Teerath Pushpadant Paper Convertor Pvt. Ltd. was secured.

17. It is the submission of learned counsel for the respondents/bank that the property, in question, is in the process of attachment. Learned counsel for the respondents/bank has submitted that the petitioners ought to have approached the Consumer Redressal Forum for redressal of their grievances, inasmuch as the factual dispute raised by the petitioner cannot be adjudicated by this Court.

18. Learned counsel for the petitioners has submitted that the objections to the maintainability of the present writ petition have not been taken by the respondents/bank in their counter affidavit and there is no factual dispute as the facts are admitted and the writ petition involves a pure question of law, wherein the arbitrariness of the respondents is challenged.

19. On perusal of the documents on record, this Court is of the considered opinion that both the loans are separate and distinct. Different properties have been mortgaged under the loan. The property in question was mortgaged under the present loan, which has admittedly been repaid. It is admitted fact that the property was not mortgaged in another loan. Although, the other loan remains to be payable, but different properties were mortgaged in that loan. Admittedly, one of the properties which was mortgaged in this loan has been released by the respondent-bank itself. This property does not fall within the definition of ''secured asset'' as defined under Section 2(zc) of the Securitisation and Reconstruction of Financial Assests and Enforcement of Security Interest Act, 2002, which means ''the property on which the secured interest is created''.

20. In view of above, the writ petition succeeds. A mandamus is issued directing the respondent-bank to return the title deeds and other documents relating to Plot no. A-7, Industrial Estate, Kashipur, which are in possession of respondent no. 1, under mortgage for loan bearing no. 0850500000571, to the petitioners.

21. No order as to costs.

