
(2007) 08 AHC CK 0138
In the Allahabad High Court
Case No : R.A. No. 584 of 2005

Mohd. Hussain

APPELLANT

Vs

Bank of India and others

RESPONDENT

Date of Decision : 28-08-2007

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 21

Citation : (2007) 08 AHC CK 0138

Hon'ble Judges : R.S.Tripathi, J

Final Decision : Dismissed

Judgement

R.S. Tripathi Chairperson.

1. This is an appeal filed by the appellant against an order and judgment dated 18th July, 2005 passed by D.R.T., Allahabad in Original Application No. 141/2001 allowing the application for issuance of the recovery certificate for Rs. 15,36,648 against the defendants alongwith interest etc. The appellant Mohd. Hussain claimed himself to be the purchaser of the property, which is said to have been mortgaged in connection with the loan in question advanced by Bank of India respondent No. 1 in favour of Majestic Engineering Corporation. Respondent Nos. 2/1 to 2/11 are said to be the legal heirs of Abdul Rasheed who was defendant No. 1 and has died. Respondent Nos. 3, 4 and 5 were said to be the guarantors for above loan. The case of the appellant is that he is neither borrower nor the guarantor and has purchased the House in question situated in Sarai Gate, Rampur for value and after due care. According to the appellant the property in question was not mortgaged with the respondent bank in connection with any loan and in response to a publication made by the seller Abdul Rasheed in the daily newspaper for the sale of above house, he after making an inquiry about the ownership and after obtaining nonencumbrance certificate and other things purchased the house in question, therefore, he is entitled for the relief in respect of above house.

2. The bank has filed objection to the memo of appeal and has pleaded that the

house in question was mortgaged with the bank in connection with loan advanced to Abdul Rasheed and the appellant purchased the same knowing well that the above house was mortgaged property. The bank has also pleaded that the original deed had been deposited by the borrower for the loan and the appellant without seeing original deed of seller and without verifying the fact has purchased the house in question, therefore, he is not entitled for any relief as prayed in this memo of appeal.

3. I have heard the Counsel for the respondent and appellant in the light of their above contentions and have also gone through the material available on record. In Civil Miscellaneous Writ Petition No. 74897/2005 filed by the appellants, Hon"ble High Court, Allahabad has observed that while passing an order under section 21 of the RDDBFI Act, 1993 establishment of prima facie case by the appellant, should have been considered while passing an order under section 21 of the aforesaid Act. In the light of above observations this Tribunal is passing this order. So far as the ground taken by the appellant is concerned it is important to mention here that in the instant case the property in question is said to have been mortgaged with the bank in connection with advancement of loan by the respondentbank and according to the bank original deed was deposited by the borrower. It is denied by appellant. The appellant in his written statement which is annexed as Annexure3 with the Memo of Appeal in its para 12 has denied the deposit of original deed by the borrower in the bank but he has not been able to produce any such original deed which is normally done at the time of the purchase by the purchaser. It is interesting to note that in para 3 of the above Annexure3, written statement, the appellant himself has stated "answering defendant is not purchaser of the mortgaged property" but in the same breath in his same written statement in para 26 he claims to be a bona fide purchaser of the said house. How the appellant has taken these two self contradictory pleadings could not be explained by the Counsel appearing; for the appellant. The fact of the matter is that in the photocopy of the sale deed Annexure A4 available on the file of memo of appeal and in that copy there is a mention that the amount of consideration had been received much before the execution of the sale deed itself and this itself makes it clear that the sale deed had been executed without payment of any consideration and appellant managed sale deed without payment. It has come from the side of the bank in an affidavit filed by borrower at the time of advancement of loan stating therein that the original deed was lost hence copy was being filed for loan by the borrower. Not only this, the loan in question is said to have been advanced to the deceased Abdul Rasheed in the month of March, 1997 creating mortgage by depositing the original deed but it is surprising that the appellant who resides in the same Mohalla where the borrower Abdul Rasheed resided and where the house in question situated, did not take any care about the advancement of loan against this house to purchase the same on the basis of so called a nonencumbrance certificate Exhibit A2 filed with the Memo of Appeal issued by SubRegistrar, Rampur. It is not acceptable that in a small town like Rampur a person who is of

the same community residing in the same Mohalla, could not know about the advancement of the loan by the bank to the borrower who was from the same Mohalla. The bank took the precaution and impleaded the present appellant as defendant No. 6 in the application moved before Tribunal for issuance of recovery certificate and notices were issued to the appellant as well as to borrower and guarantors before filing the case before D.R.T. but the appellant at that time did not think it proper to give any reply to such notice. This act of appellant also goes against them.

4. The pleadings which have been advanced in this appeal do not find place in the written statement filed by the appellant enclosed as A3 with the Memo of Appeal. As argued from the side of the respondent bank the appellant in collusion with the borrower came forward to contest the matter to protect the interest of the borrower in garb of his being a bona fide purchaser of the property without any notice of the mortgage. The other important fact in this case is that the appellant had himself filed civil miscellaneous Writ Petition No. 74897 of 2005 against an order of this Tribunal passed on 20th October, 2005 by which the appellant was directed to deposit a sum of Rs. 2.50 lacs under section 21 in the above writ petition. Hon"ble High Court issued direction to decide the matter afresh after considering as to whether the petitioner i.e. the appellant has made out any strong prima facie case for his success in the appeal on merits and also to see that no any undue hardship would be caused to the petitioner. This Tribunal has already dealt with prima facie case of the appellant in this appeal and has concluded that there is absolutely no case from the side of the appellant for his success in this appeal. Moreover, there is no substance in the argument advanced from his side that he is not liable to deposit any amount as per the provisions of section 21 of RDDBFI Act, 1993 because he is neither borrower nor guarantor and this contention is totally baseless as section 21 itself says that where there is a judgment against a person on application under section 19 of the Act, such person has to apply under section 21 of the Act for appropriate orders for deposit. As such, in view of all these materials this appeal cannot proceed unless there is a prima facie case and if the situation warrants the appellant has to deposit amount to the extent of 75% of the debts determined by the D.R.T. or any other amount determined by the Appellate Tribunal. When there is no prima facie case, this appeal has no force and is liable to be dismissed.

ORDER

5. The appeal is, hereby, dismissed with costs.