(2004) 03 DEL CK 0041

In the Delhi High Court

Case No : CM 1802 of 2004 in Writ Petition (C) . 1273 of 2004

O.P. Khanna APPELLANT

Vs

Union Bank of India and Another RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Citation : (2004) 2 BC 553 : (2005) 126 CompCas 142 : (2004) 110 DLT 763 : (2004) 74 DRJ 537 : (2005) 62 SCL 390

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : H.M. Singh, for the Appellant; Aditya Madan, for the Respondent

Judgement

Manmohan Sarin, J.—This writ petition had come up for admission on 28.1.2004. Vide interim order passed in CM.984/04, notice was issued for 24.3.2004 and it was directed that petitioner be not dis-possessed. Further, that petitioner shall not create any third party right or part with possession of the property. The present application CM.1802/2004 has been moved by the respondent/Bank, seeking modification of order dated 28.1.2004. Accordingly, with the consent of the parties, CM.Nos.1802/04 & 984/04 are taken up for disposal.

2. The facts as far as they are relevant for the purposes of disposal of the present application are being noted in brief:

(i) Petitioner and his son-in-law purchased property in question bearing No.10/1, DLF Industrial Area, Najafgarh Road, New Delhi, vide registered Sale Deed dated 29.5.2000 from Ms. Neeru Seem. The property is stated to have been purchased in two parts by the petitioner and his son-in-law. The Sale Deed in favor of son-in-law, it is stated, could not be registered, even though the stamp papers had been purchased. The Agreement to Sell and Sale Deed were executed by Mr. Shekhar Seem on behalf of his wife Ms. Neeru Seem. It now transpires that the property in question had been given as security and a mortgage created by deposit of title deeds in the year 1995 by the Guarantor-Neeru Seem under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for the borrower M/s. Neeru Graphics Pvt. Ltd.

(ii) Petitioner''s case before the Court was that the equitable mortgage created prior to the purchase of the property would not come within the ambit of the Act, as the same cannot be applied retrospectively. Petitioner claimed that he himself had been cheated inasmuch as representation was made to the petitioner at the time of purchase that the title deed was lost and FIR had been lodged in respect of the same. Petitioner, in fact, filed complaints u/s 420 read with Section 120B IPC. Based on the pleas raised in the writ petition, notice to show cause had been issued.

3. The question coming up before the Court is with regard to the continuance of interim order passed. Even in petitions, where the virus of the Act had been challenged before the Supreme Court, stay of dis-possession has not been granted. The order passed is that, the Bank may proceed to take possession but shall not create third party rights till the disposal of the challenge to the virus of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. In the present case, a petition had earlier been filed by the petitioner and his son-in-law, challenging the virus of the Act. In the said writ petition, notice had been issued by the Division Bench. In an application, filed along with the petition, petitioner sought, inter aila, stay against dis-possession. The specific prayer for stay of dis-possession had been declined by the Division Bench. While the petitioner had no doubt enclosed the order passed by the Division Bench, the fact of specific prayer having made in the application for stay of dis-possession was not brought to the attention of the Court. It is in the back ground of aforesaid facts that I have to consider whether petitioner is entitled to continue to enjoy the protection of dis-possession by the interim order.

5. The admitted position is that the mortgage was created by owner much prior to the purchase of the property by the petitioner. Petitioner while purchasing the property claims to have been cheated by the seller inasmuch as it was claimed that the original deeds were lost while they were in fact deposited with the bank, creating an equitable mortgage. In this situation, while the petitioner is claiming to have been cheated and has lodged FIR u/s 420 read with Section 120B IPC, prima facie, petitioner cannot defeat the rights of the bank. Accordingly, the interim order granted in favor of the petitioner is liable to be vacated, as far as, dis-possession is concerned.

6. At this stage, Mr. H.M. Singh, learned counsel for the petitioner, makes a prayer that the borrower himself had paid an amount of Rs.14 lacs or so to the Bank and the petitioner has been carrying on his business from the property in question. He submits that petitioner and borrower would like to make an endeavor for settlement with the bank. Let the petitioner and/or borrower approach the bank with their proposal. The protection against dis-possession

shall continue for a period of 15 days from today, within which period, petitioner and/or the borrower may negotiate a settlement. In case, no settlement is arrived at, the order against stay of dis-possession shall automatically stand vacated upon expiry of 15 days from today. Petitioner undertakes to the Court that he shall not create any third party right or part with possession of the premises to anyone else except the Bank.

CM Nos.1802/04 & 984/04 stand disposed of.

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