(2017) 01 DEL CK 0351

In the Delhi High Court

Case No : 373 of 2017

SANJAY GAUR & ANR APPELLANT

Vs

PUNJAB NATIONAL BANK & ANR RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Citation : (2017) 01 DEL CK 0351

Hon'ble Judges : Hima Kohli

Bench : SINGLE BENCH

Advocate : Sugriva Dubey, Harshmat Nabi

Judgement

1. This order is in continuation of the order dated 16.1.2017, on which date, counsel for the respondent No.1/PNB, who had appeared on advance notice, had submitted that the petitioners had approached the Court with unclean hands and failed to reveal that in the end of the year 2015, they had filed a Securitisation Application before DRT-III, registered as TSA No.2/2016, that was subsequently transferred to DRT-II, on which notice was issued on 02.11.2015. He had also stated that the three properties, subject matter of relief in the present petition, have been mentioned in the order dated 02.11.2015 passed by the DRT-III on the Securitization Application filed by the petitioners which fact has been deliberately concealed by them in this petition where only a passing reference has been made in para 45 to the effect that respondent No.2/M/s Pandit Realtors Pvt. Ltd., the principal borrower of the respondent No.1/PNB had filed a petition, that was listed before the DRT. In the said para, the petitioners had gone on to state that the respondent No.1/PNB did not contest the said petition seriously. Learned counsel for the respondent No.1/PNB had handed over a set of documents including the securitization application filed by the petitioner in October, 2015 and copies of the orders passed by the DRT-II on the said application, which were taken on record, with a copy furnished to the other side.

2. It was further recorded in the order dated 16.1.2017 that the substantive petition filed by the petitioners, initially registered as Securitization Application

354/2015 and subsequently, on being transferred from DRT III to DRT-II, was renumbered as TSA No.2/2016 is still pending adjudication and as per the order sheets relating to the said proceedings, the petitioners had failed to file their rejoinders and evidence despite repeated opportunities.

3. When confronted with the aforesaid position, learned counsel for the petitioners had first sought leave to withdraw the petition. The said request was however turned down and an explanation for withholding material information, was sought. At that, learned counsel had sought an adjournment to obtain instructions from his clients. At his request, the case was adjourned for today with direction to the petitioners to remain present. Pursuant thereto, the petitioner No.1 is present in court.

4. Today, Mr. Dubey, learned counsel for the petitioners starts his submissions by denying that any application asking for identical relief had been filed by the petitioners before the DRT and instead, claims that the pending application filed by the petitioners before the DRT is only for impleadment. To substantiate the said submission, he seeks to draw the attention of the court to the averments made in para 47 of the petition, wherein it has been stated as under : "47. That further the petitioners were not the parties in the proceedings of D.R.T. but petitioners could know that the properties mortgaged with respondent No.1 be alienated and the sale consideration be adjusted against the loan behind the back of the petitioners and immediately thereafter the petitioners filed application for becoming the party to the said proceedings of D.R.T. and placed before D.R.T. the correct facts and the matter is pending before the Hon''ble D.R.T."

5. The court has perused the application filed by the petitioners before the DRT, copy whereof has been filed by the other side, wherein the reliefs are as follows:- "6. Prayer In view of the facts and circumstances explained above and in the interest of justice, the Applicant prays for the following relief:-

a) To accept the application of the applicants.

b) It is, therefore respectfully prayed that the Hon''ble Court may kindly stop the e-auction to be held on 05.11.2015 in respect of property i.e. (1) House No. 16A/1102 on ground floor with covered area of 134.99 sq. mtr. with extra land admeasuring 225sq. yards leased out for garden use only situated in Sector 16A, Vasundhara, Ghaziabad, 201001 Uttar Pradesh in the ownership of Sh. Sanjay Gaur. (2) Flat No.27 at ground Floor with super area of 108.97 sq. mtr. at Plot No.27 bearing Khasra No. 21/1 situated in Golden Residency enclave, Village Chhajarasi, Tehsil & Distt. Gautam Budh Nagar in the ownership of Sh. Sanjay Gaur (3) Shop No.1 admeasuring 18.392 sq. mtr at Ground Floor on Plot No. K-14B, Village Ghondli, DLF colony, Krishna Nagar, Illaqa Shahdara, Delhi W.P.(C) 373/2017 till the final disposal of the objection/application of the petitioner, in the interest of justice.

(c) To pass an order quashing and setting aside Securitisation notice under

Section 13(2) and under Section 13(4) including sale issued by the Respondent Bank in respect of property i.e. (1) House NO. 16A/1102 on ground floor with covered area of 134.99 st. mtr with extra land admeasuring 225 sq. yards leased out for garden use only situated in sector-16A, Vasundhara, Ghaziabad, 201001 Uttar Pradesh in the ownership of Sh. Sanjay Gaur. (2) Flat No. 27 at Ground Floor with super area of 108.97 sq mtr at Plot No. 27 bearing Khasra No.21/1 situated in Golden Residency enclave, Village Chhajarasi, Tehsil & Distt. Gautam Budh Nagar in the ownership of Sh. Sanjay Gaur (3) Shop No.1 admeasuring 18.392 sq mtr at Ground Floor on Plot No. K-14B, Village Ghondli, DLF colony, Krishna Nagar, Illaqa Shahdara, Delhi and declare the same as null and void.

(d) To declare all steps taken by Respondent Bank qua the property in question under Securitization Act as null and void in view of the submissions made above.

(e) To direct the Respondent Bank to provide the full set of documents and Statement of Account relied by Respondent Bank to the Applicant and entire set of loan documents which are in the custody of Respondent Bank.

(f) Pass and order thereby directing the Respondent No.7 to 9 to pay the receivable dues of Respondent No.2 and 3 to the Respondent Bank in order to clear the alleged outstanding;

(g) Any other or further orders be also passed in the interest of justice as this Hon''ble Tribunal deems fit and proper in the facts and circumstances explained above.

(h) Costs of the application be also awarded to the Applicants."

6. The prayers made in the present petition are as follows: "It is, therefore, most respectfully prayed that this Hon''ble Court may kindly be pleased to grant the following relief:-

(a) It is prayed that the respondent No.1 be directed to release the properties No(i) Shop No.1, forming part of K-14-B, Krishna Nagar, Delhi-110051 in the name of petitioner No.2, (ii) 16A/1102, H.I.G. Flat, Ground Floor, Vasundhara, Ghaziabad, U.P. in the name of Sanjay Gaur & (iii) Flat No. 27, Ground Floor, Khasra No.21/1, Golden Residency Enclave, Village Chhajarsi, Distt. Gautam Budh Nagar in the name of Sanjay Gaur & Chhaya Gaur in the facts and circumstances of the case and in the interest of justice and sale deeds of the properties mentioned above be given back to the petitioners in the facts and circumstances of the case, in the interest of justice.

(b) Any other relief(s) which this Hon''ble Court deems fit and proper in the facts and circumstances of the case as explained in the foregoing paras of the petition, in the interest of justice."

7. Worded a little differently from the prayer made in TSA 2/2016, so as to camouflage the same relief as has been prayed for in the present petition, for all effects and purposes, the petitioners are seeking to restrain the respondent/Bank

from conducting the auction and to release all the three properties in question and hand back the sale deeds thereof to them. Clever drafting would not be of any assistance to the petitioners when the underlying relief is identical in both the proceedings. Admittedly, TSA No.2/2015 is still pending adjudication before DRT-II.

8. Counsel for the respondent/Bank hands over a copy of the latest order dated 10.1.2017 passed by the Presiding Officer, DRT-II, Delhi, in TSA 2/2016, wherein the presence of the counsel for the petitioners, Mr. Prashant Kumar, Advocate and that of the counsel for the respondent/Bank has been recorded and the matter directed to be posted before the Registrar on 13.2.2017 for purposes of filing of rejoinder and evidence by the petitioners.

9. In the light of the above, learned counsel for the petitioners has been requested to explain the averments made in para 47 of the present petition and also explain how the relief in this petition is any different from the prayers made in TSA No.2/2016, which are more expansive. First, he has repeated his request for withdrawal of the petition and when the said request was again turned down, a pass over was sought to enable him to obtain instructions from his client.

10. On pass over, learned counsel for the petitioner does not make any effort to distinguish the relief in this petition vis-a-vis the relief in the pending TSA 2/2016 and instead, submits that the omission, if any, has taken place due to his own oversight.

11. Given the position that has emerged above, for learned counsel for the petitioners to try and take the blame on himself at this belated stage and submit that it is on account of his own oversight that the correct position was not brought on record, is unacceptable. Quite apparently, it is the petitioners who have chosen to withhold material information from the Court. They are the signatories to the present petition, duly supported by their personal affidavits. It has to be presumed that before signing the said petition and swearing the affidavits, the petitioners have read them over. They cannot be permitted to wriggle out of the situation at this late stage by passing on the buck to their counsel, though with his consent. If what is being stated now is correct, then such a submission ought to have been made by learned counsel right in the beginning as ample time was given to him on the last date to obtain clear instructions from his clients. He had however started by insisting that the relief in the pending TSA is entirely different from what has been prayed for here and when confronted with the documents filed by the respondent, requested for permission to withdraw the petition.

12. In view of the fact that the petitioners have deliberately withheld material information from the court when they were fully aware of the fact that the Securitization Application filed by them before DRT III is still pending and they have proceeded to file the present petition asking for virtually the same relief, without making a mention herein as to the nature of the relief prayed for in the

captioned application and instead, stated half truths and deliberately made a misstatement to the effect that they had sought impleadment in a petition filed by the respondent/Bank before the DRT, which is not borne out from the documents on record, this court declines to exercise its discretion in their favour by entertaining the present petition. The present petition is clearly an attempt to indulge in forum hunting, which is absolutely impermissible, more so, when the relief in TSA No.2/2016, filed earlier in time, is more comprehensive and includes the relief sought here.

13. Accordingly, the writ petition is dismissed alongwith the pending application with costs quantified at Rs.25,000/- to be paid by each of the petitioners to the respondent No.1/Bank within two weeks from today. In the event the petitioners do not make the payment, the respondent No.1/Bank shall be at liberty to seek recovery, in accordance with law.