

(2015) 04 DEL CK 0180

In the Delhi High Court

Case No : Writ Petition (C) 5206/2014 and C.M. No. 10358 of 2014

Sharanjit Singh

APPELLANT

Vs

Indian Overseas Bank and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2015) 04 DEL CK 0180

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Rajiv Mehra, Senior Advocate and Arvind Shasan, for the Appellant;
Karan Khanna and Asmita Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

1. The petitioner is aggrieved by the order of the Debts Recovery Appellate Tribunal (DRAT) dated 30.05.2014 dismissing his appeal by confirming the order of DRT dated 19.09.2013 in T.M.A. No. 01/2006. The writ petitioner had sought the setting aside of a final order dated 03.03.1997 whereby the first respondent bank's (hereinafter called as "IOB") application and mortgage claim was decreed.

2. The facts necessary for the purpose of disputes of the petitioner are that the petitioner was owner of 50% share of S-455, GK-I (hereinafter called as "suit property") which was jointly purchased with one Sh. Jai Narain Seth. In terms of the registered sale deed dated 05.02.1966 the said Sh. Seth originally owned the entire property but by the said sale deed conveyed 50% share to the petitioner. On 21.01.1989 the petitioner entered into an agreement to sell the property to one Sh. Rajesh Khurana and sought permission of the competent authority and under Chapter XX(c), the registered sale deed was executed in favour of Sh. Rajesh Khurana vendee on 09.06.1989. In the meanwhile, a fact unbeknown to the petitioner, the suit property was ostensibly mortgaged by deposit of title

deed with IOB. Concurrently, in July 1989 certain guarantees were allegedly executed by the petitioner. The IOB contended that the petitioner was guarantor and secured the property in favour of the borrower - M/s. General Auto Springs and its partner Rupender Singh represented here as respondent Nos. 2 and 3 (hereinafter collectively referred as "borrowers"). The petitioner was served with the legal notice dated 15.02.1994, inter alia, when the IOB noticed the default in the repayment of dues by the borrowers. It is not in dispute that the petitioner denied having borrowed the amounts and responded accordingly by reply dated 07.04.1994. The IOB thereafter instituted proceedings in this Court claiming a decree for the outstanding amount. With the enactment of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 the suit filed before this Court stood transferred to DRT. The DRT apparently issued notice to the concerned parties and thereafter issued the final order/mortgage decree on 03.03.1997. Concededly, the said decree is ex-parte. When the bank attempted to execute the recovery certificate, notice was served upon the petitioner in March, 2001. He alleges that he became aware of the adverse order and filed an application on 04.04.2001 seeking for an order to set aside the ex parte decree in terms of Order 9 Rule 13 Code of Civil Procedure (CPC). This application remained pending before the DRT for a considerably long time and eventually on 19.09.2013 it was dismissed.

3. It is also necessary at this stage to notice that in respect of the suit property certain other borrowers had availed facilities which became the subject matter of three suits (CS(OS) 1405-1407/2011 Poonam Malhotra v. Union Bank of India) The plaintiffs in those proceedings also claimed that they were victims of a fraud played by third party who had deposited title deeds claiming to be the owner of the properties constructed upon the suit plot after its sale to Rajesh Khurana. After considering the materials on record, as well as the conduct of the bank - Union Bank of India, this Court decreed the suits in terms of a compromise whereby the bank agreed not to press its claims on certain agreed terms. The said judgement disposing the said proceedings - dated 06.02.2014 pertinently states as follows:

"Learned counsel appearing on behalf of defendant No. 3 on instructions has made a statement that he does not claim any right, title or interest in the suit properties and further he has instructions not to contest the suit. The effect of the statement made by learned counsel for defendant No. 3 would be that he does not challenge the documents of the plaintiffs. Defendant No. 3 has also cleared the loan of the Bank as per the statement made by counsel for the Bank. It is pointed out by learned counsel for the plaintiff that criminal proceedings are pending against defendant No. 3 for the alleged fraud committed by him. Based on the original documents produced together with the entire chain of documents and the statement made by counsel for the Bank and the admission of defendant No. 3, the present suits (CS(OS) 1405/2011, CS(OS) 1406/2011 and CS(OS) 1407/2011) are decreed in terms of prayer (i) of the suit. Let a decree sheet be drawn up accordingly. No costs."

4. The petitioner argues that DRAT and the DRT fell into error in not considering the totality of circumstances. It is pointed out that the comparison of the original sale deed, which is available with vendee Rajesh Khurana, with the so called title deed deposited with IOB, and especially a comparison of the signatures alleged to be that of the petitioner on the guarantee deed dated 23.07.1989, with his admitted signatures on the record facially demonstrated that the same are forged. It is submitted that having regard to these circumstances the DRAT and DRT fell into error for not setting aside the final order and recalling the decree.

5. It was urged by the petitioner that according to the information available the bank has in fact written off a substantial portion of its outstanding amount of the dues as against him and only a sum of Rs. 13.81 lakhs is outstanding and that in order to ensure that no further litigation goes on, he agrees to deposit Rs. 10 lakhs to the bank. Learned counsel for the IOB submitted that on merits, the DRT could not be faulted in rejecting the application seeking recall. He stated that he did not, however dispute the petitioner's contention with respect to the suspect nature of the documents especially the signature on the bank guarantee which did not appear to be without infirmity. It was also stated on behalf of the bank that the bank is prepared to accord satisfaction as far as the petitioner's dues are concerned, provided a sum of Rs. 13.81 lakhs is paid. Learned counsel relied upon a letter dated 26.03.2015 which has just been placed on the record along with the power of attorney of Assistant General Manager who addressed the said letter.

6. This Court has considered the submissions. Although the petitioner replied to the notice dated 15.02.1994, he did not appear to have taken steps diligently to contest the legal proceedings. At the same time, with the transfer of the suit from the file of this Court to the DRT, his claim of being kept in dark as to the date of hearing or the description of the proceedings cannot be completely rejected. More importantly, that the petitioner sold the property to Mr. Rajesh Khurana on 09.06.1989, through a registered sale deed also cannot be doubted, given the two decrees made by this Court in CS(OS) 1405-07/2011, dated 06.02.2014. The other important aspect is that the equitable mortgage on the basis of which the respondent bank claims its rights was an event that occurred after the property was sold by the petitioner. The mortgage by deposit of title deed and the guarantee in favour of the bank concededly took place on 23.07.1989. Additionally, the Court notices that the signatures which are on the guarantee deed do not appear to be that of the petitioner from a comparison with the admitted signatures. This is also borne out by comparison with his signature on Vakalatnama. Having regard to all the circumstances, this Court is of the opinion that since the petitioner has offered to pay Rs. 10 lakhs to the bank, there should be a quietus to the dispute. Accordingly, upon/the petitioner depositing Rs. 10 lakhs with the respondent within three months from today, IOB is directed to record full and final settlement and treat all its claims as having been satisfied as against the petitioner. The bank shall in such event also release the title deed to the suit "property. In these peculiar circumstances, the bank is

hereby directed in the event of receipt of Rs. 10 lakhs to handover all the papers in connection with the suit property to the petitioner to avoid further complications. However, this order would not in any way preclude IOB to pursue its remedy against the borrower i.e. Respondent Nos. 2 to 4.

7. The final order of the DRT in O.A. No. 474/1996 and the recovery certificate arising thereby shall deem to be satisfied upon deposit of the said amount with the respondent bank.

8. Consequently, the impugned order is hereby set aside.

9. The writ petition is allowed in the above terms.