(2025) 05 DRAT CK 0998

In the Debts Recovery Appellate Tribunal, Allahabad

Case No : Appeal Dy. No. 589 Of 2022

Vinod Khanna — APPELLANT

Vs

Bank Of Maharashtra — RESPONDENT

Date of Decision : 16-05-2025

Acts Referred:

Securitisation And Reconstruction Of Financial Assests And Enforcement Of Security Interest Act, 2002 — Section 17, 18

Citation : (2025) 05 DRAT CK 0998

Hon'ble Judges : R. D. Khare, Chairperson

Bench : Single Bench

Advocate : Maneesh Mehrotra, Shruti Malaviya

Final Decision : Allowed

Judgement

R. D. Khare, Chairperson

1. The present appeal has been preferred under section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "The SARFAESI Act") against the order dated 02.08.2022, whereby the DRT, Lucknow has dismissed the S.A. of the appellant.

2. The brief facts of the present case are that the appellant is neither borrower nor guarantor or the mortgager to the loan advanced by the respondents-Bank to Shakuntala Verma. Shakuntal Verma is the owner of the property in question and she had initially mortgaged the said property with the UCO Bank on 21.07.2004 in order to secure her loan by depositing the title deed of the property in question with the respondent-Bank. After deposit of entire outstanding dues with the UCO Bank, Shakuntal Verma got the property released from the UCO Bank on 02.09.2008. Thereafter, she sold the said property to the present appellant vide sale deed dated 03.09.2008 and on the basis of the same the name of the appellant was mutated in the revenue record.

3. It appears that in the meantime Shakuntala Verma had again taken loan from

the respondent-Bank and for securing the same, the property in question was again mortgaged with the respondent-Bank by depositing the copy of the sale deed of the said property .Since Shakuntala Verma did not maintained the loan account regularly, therefore, the account was declared as NPA and after issuance of demand notice and possession notice, the respondent-bank issued auction sale notice on 18.09.2008, which was published in the newspapers on 21.09.2009 scheduling the auction to the held on 21.02.2009.

4. The appellant challenged the entire proceedings of the Bank including the auction sale notice dated 18.09.2008 before the Tribunal below by filing the S.A. No. 41/2009. The Tribunal below vide order impugned dismissed the S.A. as not maintainable holding that no measures have been initiated against the appellant under the SARFAESI Act, 2002.

5. Learned counsel for the appellant submitted that the appellant is neither borrower nor guarantor or the mortgager, but is a subsequent purchaser of the property in question, which was owned by Shakuntala Verma, who had initially mortgaged the said property with the UCO Bank. The learned counsel further submitted that after deposit of entire amount with the UCO Bank, the property was got released on 02.09.2008 and thereafter, the appellant after scrutinizing and examining the title papers purchased the said property from Shakuntala Verma vide sale deed dated 03.09.2008. The learned counsel contented that by playing fraud Shakuntala Verma had again mortgaged the said property, which was sold to the appellant, with the Bank by depositing Photocopy of the sale deed, whereas the original sale deed is with the appellant. When the financial disciplined was not maintained, the respondent-Bank initiated the proceedings for recovery of the amount, in which the appellant also appeared and argued that the property is unencumbered property, which was purchased by him and thereafter fraud was played and the property was mortgaged although the original title deed was with him. In this regard the Tribunal below while passing the interim order dated 19.02.2009, which is at page No. 107 of the memo of the appeal has held "the title deeds produced by the appellant prima facie appears to be original and genuine. From the title deeds produced by the respondent Bank it is apparently clear that these are copies of the original title deeds. Hence, the mortgage created by depositing these title deeds in favour of the respondent Bank prima facie appears to be defective. It was contented that since the mortgage itself is defective, the entire proceedings are liable to the set-aside, but the same has not been considered by the Tribunal below.

6. It was also contended that when the property, which was mortgaged, was proceeded against the appellant by the Bank, then the S.A. No. 41/2009 was filed, which has been dismissed by the Tribunal below vide impugned order dated 02.08.2022 on the ground that no measures have been initiated under the SARFAESI Act and any fraud has been committed by Shakuntal Verma, the same ought to have been agitated in appropriate forum, but without appreciating the earlier order passed by the Tribunal below noting that the original title deed was

with the appellant and the title deed produced by the Shakuntala was forged, therefore, the order impugned cannot be sustained. The learned counsel lastely submitted that if the appellant is aggrieved by any measures taken by the Bank, he has right to move an application before the Tribunal below as per provisions of section 17 of the SARFAESI Act, thus the Tribunal below has erred in holding that no measures have been initiated by the Bank against the appellant because the appellant is an absolute owner of the property against which the respondent-Bank has proceeded under the SARFAESI Act, therefore, the order impugned is not sustainable. Thus, it was prayed that the appeal may be allowed and the order may be set aside.

7. Learned counsel for the respondent-Bank submitted that the property was mortgaged by the borrower prior to the sale deed executed in favour of the appellant, therefore the mortgaged which was executed by Shakuntala Verma in favour of the respondent-Bank is valid. It was, therefore, prayed that the Tribunal below has rightly dismissed the S.A. of the appellant.

8. Having heard the learned counsels for the parties and considering the material available on record, it is undisputed that the appellant is neither borrower nor guarantor or mortgager to the loan advanced by the respondent-Bank to the Shakuntala Verma. It is also admitted that initially the property in question was mortgaged with the UCO Bank till 02.09.2008 and the same was sold by Shakuntala Verma to the appellant on 03.09.2008 just after a day. It is averred that the property in question was again mortgaged with the respondent-Bank in the year 2006, meaning thereby the second mortgage was created during the currency of the first mortgage, hence it can be said that the second mortgage was created on a charged property. The property in question for the first time had become free from the charge when the entire outstanding dues were deposited by Shakuntala and obtained the original title deed from the UCO Bank. Any subsequent mortgage created over the charged property is a second charge, which does not confer any right over the property prior to the first charge holder. Actually fraud has been played by Shakuntala Verma with the respondent-Bank and not with the appellant because the mortgage was created over the property in question with the respondent-Bank during the currency of first charge with the UCO Bank.

9. While going through the order impugned, it is found that the Tribunal below has not considered the matter in its true prospective and has dismissed the S.A. only on the ground that no measures have been initiated by the Bank against the appellant. If the Tribunal below has considered the above facts, the result would have been otherwise, whereas the Tribunal below vide its interim order dated 19.02.2009, which is at page no. 107 of the memo of appeal, had held "the title deeds produced by the appellant prima facie appears to be original and genuine. From the title deeds produced by the respondent Bank, it is apparently clear that these are copies of the original title deeds. Hence, the mortgage created by depositing these title deeds in favour of the respondent Bank prima facie appears

to be defective", but while passing the order impugned has ignored the above observations. Thus, it is held that the respondent-Bank has second charge over the property in question, hence the respondent-Bank has no right to proceed against the said property being a second charge holder.

10. In view of the above, the order impugned is liable to be set aside, hence the same is set aside. Consequently, the appeal is allowed with no order as to costs.

11. A copy of this judgment be supplied to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.

