(2021) 09 DRT CK 0001

In the Debts Recovery Tribunal

Case No : Securitisation Transfer Application No. 148 Of 2015

Yogesh Madan APPELLANT

Vs

Regional Manager Federal Bank Ltd. And Ors. RESPONDENT

Date of Decision : 30-09-2021

Acts Referred:

Transfer of Property Act, 1882 — Section 48, 53
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 14
Code Of Civil Procedure, 1976 — Order 7 Rule 11
Arbitration and Conciliation Act, 1996 — Section 5

Citation : (2021) 09 DRT CK 0001

Hon'ble Judges : R. M. Kushawaha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The present securitization application has been filed by the S. applicant praying therein to restrain the respondent no.1 bank from taking any action under the SARFAESI Act, 2002 qua the property bearing no.43, second floor, land measuring 200.05 sq.yds. situated in the lay out plan of Bhirochi Cooperative Housing Society, presently known as Bhera Enclave, Paschim Vihar, New Delhi-110087 (hereinafter referred as the property in question).

Heard through video conferencing and considered the written statement and written arguments.

2. It is stated by the S. applicant that the securitization applicant i:e Yogesh Madan is aggrieved by the actions taken by the respondent No.1 Federal Bank under SARFAESI Act, 2002 against the property in question, which was purchased by S. applicant vide Agreement to sell dated 01.03.2011 executed favour of Shri Yogesh Madan by Smt. Anju Dhanjal and registered sale deed dated 28.04.2011 executed in favour of Shri Yogesh Madan by Smt. Anju Dhanjal being registered document No.1913. It is further stated that the S. Applicant is

neither borrower nor guarantor and lawful owner of the property in question by virtue of abovementioned original documents alongwith chain as to the title of the property from the very beginning and the same stands deposited with the Deutsche Bank in the year 2011 itself. It is stated that the certified copy of the following title documents has been filed and proved by way of evidence before this Hon`ble Tribunal which includes -:

(i). Registered conveyance deed dated 06.02.2003 being registered document no.1969 book no.1 vol.no.10988 page 8 and 9.

(ii). Registered GPA dated 18.02.2003 vide no. 7464 additional book no. 4 volume no.8868 pages 37 to 39 alongwith affidavit, will dated 18.02.2003 registered no. 5173, book no.3 volume no. 5807, pages 105, receipt and possession letter in favour of shri M.L. Bansal.

(iii). Registered sale deed dated 15.01.2004 by virtue of which Shri M.L. Bansal sold the property in question in favour of shri Tarun Khanna.

(iv). Registered Sale deed dated 16.06.2004 executed by Shri Tarun Khanna in favour of Smt. Anju Dhanjal.

3. It is further stated that the S. Applicant has handed over all the above mentioned documents in original to Deutsche Bank from where he took a loan of Rs.83,00,000/- by keeping the property in question as security/mortgage. It is further stated that S. Applicant has been in peaceful possession of the property in question since 2011 and no notice under SARFAESI Act has been issued to the S. applicant herein till date. It is stated that the respondent no.1 bank has illegally initiated actions under the SARFAESI Act qua the property in question including the possession notice dated 17.04.2012 as issued by the Ld. Receiver alleging that Smt. Anju Dhanjal mortgaged the property in question on 07.07.2008 with the bank and handed over the following documents which are apparently and evidently forged and fabricated-:

(i). Registered conveyance deed dated 06.02.2003.

(ii) Registered GPA dated 18.02.2003 alongwith affidavit, will dated 18.02.2003, agreement to sell dated 18.02.2003, receipt and possession letter in favour of Shri M.L. Barisal,

(iii). GPA and special power of attorney dated 17.02.2004 by Shri M.L. Bansal in favor of Shri Tarunkhanna alongwith afidavit, money receipt and will dated 17.02.2004.

(iv). Registered sale deed dated 21.04.2005 by Shri Tarunkhanna in favour of Smt. Anju Dhanjal. Mutation Letter dated 22.06.2006 in favor of Smt. Anju hanjal.

4. It is further stated by the Ld. Counsel for the S. applicant that Shri Tarun Khanna executed a registered sale deed dated 16.06.2004 in favour of Smt. Anju Dhanjal, which is prior to the alleged registered sale deed dated 21.04.2005

alleged to have been executed by Shri Tarun Khanna and on the basis of which the respondent no.1 Federal Bank claimed to have its charge on the property in question same being kept as security by Shri Manjeet Singh and Smt. Anju Dhanjal with the said bank. It is further stated that Shri Tarun Khanna upon execution of the sale deed dated 16.06.2004 ceased to be the owner of the said property and lost all rights for any further disposition of the said property. It is stated that the respondent no.1 bank has also relied upon a General Power of Attorney and special power of attorney dated 17.02.2004 executed by Shri M.L. Bansal in favor of Shri Tarun Khanna alongwith affidavit, money receipt and will dated 17.02.2004, but when the property has become freehold then the transfer can only take place through the execution of the sale deed which has been duly done on 15.012004 and any subsequent transfer done on 17.02.2004, that too, by way of GPA is in any event not valid documents and further raises eyebrow on the conduct of the Bank on verifying the title documents before accepting the alleged mortgage of the property in question.

5. Ld. Counsel for the S. applicant has relied upon the provisions of Section 54 of the Transfer of Property Act, 1882 define sale as ".....?a transfer of ownership in exchange for a price paid or promised or part paid or part promised' and the said Section further mandates that an immovable property of a value more than one hundred rupees and upwards can be made only by a registered instrument. Therefore, upon the receipt of the consideration and the execution of registered sale deed as aforesaid on 16.06.2004 in favor of Anju Dhanjal, the transfer of property stood concluded and Shri Tarun Khanna ceased to have any right or power to make any further disposition.

6. Ld. Counsel for the S. applicant has also relied upon the Section 48 of the Transfer of Property Act, 1882 deals with the priority of rights created by the transferor in a situation where a person purports to create by transfer at different times rights in or over the same immoveable property. The said Section categorically mandates that the later created right shall be subject to the rights previously created. It is further stated in the instant case, once the Sale Deed had been executed by Shri Tarun Khanna on 16.06.2004 in favor of Smt. Anju Dhanjal, any subsequent Sale Deed purporting to be executed by him would be on the face of it and per se fraudulent and it would in fact be a case which would be even higher than the provision of Section 48 and such subsequent Sale Deeds cannot be of any value whatsoever. It is stated that the respondent no.1 bank itself produced before learned District Magistrate along with application filed under Section 14 of the Act, two sale deeds dated 21.04.2005 and 16.06.2004 respectively both executed by Shri Tarun Khanna in favour of Smt. Anju Dhanjal. Further, the respondent no.1 bank, who is relying on a document of title dated 21 042005 was, thus, expressly aware of the existence of the said earlier sale deed dated 16.06.2004 and this is without prejudice to the contention that in any event the banks are deemed to be in knowledge of earlier sale deed both by presumption raised in law as also by virtue of the requirement of title search to be carried out by them.

7. It is further stated that the alleged sale deed dated 21.04.2005 was executed by Shri Tarun Khanna, being GPA holder of Shri M.L. Bansal, whereas Mr. ML. Bansal himself already executed a registered sale deed dated 15.01.2004 in favour of Shri Tarun Khanna. It is stated that since Shri ML. Barisal has already sold the property in question to Shri Tarun Khanna vide Registered Sale Deed dated 15.01.2004, therefore, any subsequent document i.e. General Power of Attorney dated 17.02.2004 executed by M.L. Bansal in favor of Tarun Khanna transferring the title of the property in question is invalid and void ab initio. It is also stated that an affidavit dated January, 2016 filed by M.L. Bansal before this Honible Tribunal categorically states on Oath that he has executed only one Sale Deed dated 15.01.2004 and all the other documents especially dated 17.02.2004 are forged one and do not carry his signatures. It is further stated that the S. applicant came to know that some other Banks/Financial Institutions have also been claiming their alleged charge rights upon the said property for the alleged loan/financial assistance provided by those Banks/FI to said Mr. Manjeet Singh and Mrs. Anju Dhanjal and thereafter, the S. applicant immediately filed Application for impleadment of ICICI Bank (erstwhile Bank of Rajasthan) as one of the necessary party in the present. The S. applicant also came to know that two other banks also claiming to have alleged charge over the property in question. Thereafter, the S. applicant lodged an. FIR being FIR NO. 192/12 in the Police Station Mianwali Nagar, Main Rohtak Road, Behind Petrol Pump, Delhi against Mr. Manjeet Singh (Respondent No.3), Mrs. Anju Dhanjal (Respondent No.3), Mr. Tarun Khanna, Mr. Prem Narayan Mishra (the then Branch Manager of Respondent nod), Mr. Raman Chawla and Citi Financial Consumer Finance/KMB (Respondent No.4) and the criminal case being CC No. 63529/2016, pursuant to said FIR is presently pending adjudication before the Hon'bie Court of learned Metropolitan Magistrate, Tis Hazari Courts, Delhi. The police investigation has also found that the banks while accepting the said fraudulent sale deeds as documents of title have failed to carry out any due diligence as a simple title search would have revealed the existence of the sale deed dated 16.06.2004.

8. It is further stated that as the case of Federal Bank, Shri Tarun Khanna executed a registered sale deed dated 16.06.2004 in favour of Smt. Anju Dhanjal, which is prior to the alleged registered sale deeds dated 13.12.2005 and 04.01.2005 allegedly executed by Shri Tarun Khanna and on the basis of which ICICI Bank (erstwhile Bank of Rajasthan Ltd.) and Kotak Mahindra Bank (erstwhile Citi Financial Ltd.) respectively claimed to having charge on the property in question same being kept as security by Shri Manjeet Singh and Smt. Anju Dhanjal with the said banks. Thus, in view of the above made submissions, Security interest as alleged to be created in favor of Federal Bank and other banks allegedly by Sh. Manjeet Singh and Smt. Anju Dhanjal is not only defective but also illegal and void ab initio. Once a registered Sale Deed dated 16.06.2004 had been executed by Sh. Tarun Khanna in favor of Smt. Anju Dhanjal, any subsequent sale deed by Sh. Tarun Khanna in any capacity of the property in question is nothing but fraud and forgery. Further, any alleged

mortgage created on the basis of any subsequent sale deed by Smt. Anju Dhanjal cannot be said to be valid mortgage and any action taken and/or sought to be taken against the property in question by recourse of provisions of SARFAESI ACT, 2002 on the basis of such invalid mortgage wilt not only be in contradiction of the scheme of the Act, but also against the well established principles of law in this regard. Accordingly, it has been prayed for setting aside the entire actions of the respondent banks initiated under the SARFAESI Act, 2002 qua the property in question.

9. On the other hand, the respondent no.1 bank has also filed its reply stating that the present securitization application filed by the appellant is time barred as from perusal of records filed by the appellant himself it is clear that after service of notice dated 20- 07-2011 under Section-13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the appellant issued a legal notice dated 16-08- 2011 through his Advocate Shri P.K Khurana Punjab and Haryana High Court Chamber No.108 District Courts Hissar to the answering respondent no.1 as well as respondent no.2 & 3 also. This legal notice was duly replied by the answering respondent through its Advocate vide reply dated. 15-11-2011 and in the said reply it has been clarified on the last page of the reply that the legal action of answering respondent bank under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is correct and answering respondent bank shall continue to proceed in this matter. It is further stated that since then the applicant has not taken any step for filing any securitization application or petition before any Hon'ble Court/Tribunal as per knowledge of the answering respondent bank and now filing securitization application before this Hon'ble Tribunal on 24 04-2012 is hopelessly time bared whereas the objections raised by applicant have been duly replied by the answering respondent bank as discussed above. Hence the securitization application of the applicant deserves to be dismissed prime facie. That it is a case where the applicant has simply been twisting the true facts of this case. The dues of Allahabad Bank has been cleared and hence there is no point involved for dragging/impleading Allahabad Bank as a necessary party. It is further stated that having full knowledge and explained in the petition also that the previous owner of the property was Smt. Anju Dhanjal only and the applicant has purchased the impugned property from Smt. Anju Dhanjal vide Sale Deed dated 27-04-2011 duly registered as document no.1913/28-04 2011. at Sub-Registrar New Delhi. It is further stated that the case of respondent no.1 bank is crystal clear that Smt. Anju Dhanjal mortgaged the impugned property by virtue of depositing original Sale Deed, registered as document no.705/21- 04-2005 duly registered at Sub-Registrar New Delhi and hence Smt. Anju Dhanjal created equitable mortgage in respect of impugned property with answering respondent no.1 bank on 07-07 2008. It is further stated that the letter dated 08-07-2008 executed by Smt. Anju Dhanjal favouring answering respondent no.1 bank for confirmation of deposit of title deeds on 07-07-2008 is filed along with the reply, which clarifies that the impugned

property has already been mortgaged by the registered owner Smt. Anju Dhanjal, whereas on the other hand, the applicant also admits the ownership of Smt. Anju Dhanjal and purchased the property from Anju Dhanjal vide Sale Deed no.1913/28-04-2011 executed by Smt. Anju Dhanjal in his favour. It is further stated that it is a clear cut case of connivance among the applicant and Smt. Anju Dhanjal and Shri Manjeet Singh who have without caring the earlier mortgage by Smt. Anju Dhanjal with answering respondent bank on 07-07-2008 by depositing original Sale Deed dated 21-04-2005 executed in favour of Smt. Anju Dhanjal. It is further stated that original Sale Deed dated 21-04-2005 favouring Smt, Anju Dhanjal, in respect of property in question deposited with the answering respondent bank is genuine one and the respondent no.1 bank has also obtained certified copy of the Sale Deed dated 21-04-2005 in favour of Smt. Anju Dhanjal from Sub-Registrar office New Delhi and the same was stated for kind perusal of this Hon'ble Tribunal.

10. It is further stated that as per the securitization application of the applicant due diligence was obtained by the applicant at the time of obtaining alleged loan from respondent no.5 - Deutsche Bank then how the applicant did not care the registered Sale Deed no.705/21-04-2005 favouring Smt. Anju Dhanjal for acquiring the property in question and the said fact again shows connivance among applicant, respondent no.2 Smt. Anju Dhanjal and respondent no.3 Shri Manjeet Singh Dhanjal. it is further stated that when the process for taking over actual physical possession in accordance with law was to be completed on 03 05-2012 in terms of order dated 25-02-2012 passed by Hon'ble Court of Shri G.N Pandey ACMM Delhi the applicant simply approached this Hon'ble Tribunal only for the purpose of deferment of recovery process initiated by the answering respondent bank legally. It is further stated that even assuming to go with the facts of the applicant, which he has stated in the para 2 of the S.A. that the applicant had entered into an agreement to sell with respondent no-2 Smt. Anju Dhanjal and respondent no.3 Shri Manjeet Singh Dhanjal, whereas it is clear from the facts and records that Smt. Anju Dhanjal was the only absolute owner of the impugned property then why and how the applicant has entered into an agreement to sell with two respondents. This again shows connivance of applicant with respondent no.2 & 3. Even, the applicant further stated in para 2 of the S.A. that he had paid Rs.9.00 lakh to respondents no.2 & 3 through alleged cheque dated. 01-03-2011 and the alleged transaction between applicant and respondent no.2 & 3 is questionable.

11. It is further stated that since the present S.A. is time barred hence the para related to cause of action as well as explanation and satisfaction to this Hon'ble Tribunal with regard to limitation period compliance for filing the present S.A. has not been explained by the applicant in the present securitization application intentionally. It is further stated that the mortgage/charge favouring answering respondent bank is quite prior to the charge / mortgage stated by the applicant as 27-05-2011 at the time of obtaining alleged loan by the applicant from respondent no.5 and the answering respondent no.1 Federal Bank has filed the

evidence before this Hon'ble Tribunal and also proved its case and exhibited the documents filed by the answering respondent no.1 bank. That the present S.A. has not been verified in accordance with law and the affidavit filed by the applicant Shri Yogesh Madan is wrong and false. It is further stated that in view of facts and circumstances of this case, it is dear that the applicant is not entitled for any relief and hence the present S.A. of the S.A. may kindly be dismissed with special compensatory costs favouring answering respondent no.1 bank.

12. It is stated by the respondent no,4 that the present securitization application is not maintainable and is liable to be dismissed under Order 7 Rule 11 of Code of Civil Procedure as respondent No 2 and 3 had duly signed the loan agreement which contained an arbitration clause under 10.7(h) of the loan agreement. It is further stated that the present securitization application is not maintainable and is liable to be dismissed as the answering defendant has initiated arbitration proceedings and have appointed Rajiv Shukla as the sole arbitrator to adjudicate the dispute and defendant no 2 and 3 have filed independent application before the said arbitrator and therefore principle of res-judicata applies, therefore, the present SA is not maintainable and is liable to be dismissed as being barred by Section 5 of the Arbitration and Conciliation Act, 1996. It is further stated that respondents no.2 and 3 as borrower and co-borrower approached respondent no.4 (erstwhile known as Citi Financial Consumer Finance India Ltd.) for loan of Rs 70/00,000 in 2010 and mortgaged property bearing house no 43, 11nd Floor, Behra enclave, Paschim Vihar, Delhi-87. It is stated that Citi Financial Consumer Finance India Limited predecessor in interest of respondent No.4 sanctioned a loan of Rs 70,00,000 to respondent Nos. 2 and 3 and they mortgaged property being House No.43, IInd Floor, Behra enclave, Paschim Vihar for repayment of the said loan. It is also stated that Respondent Nos. 2 and 3 mortgaged the said property by depositing registered sale deed dated 04/01/2005. It is further stated that the respondent no.4 is valid mortgagee of the property in question, accordingly, it has been prayed for dismissal of the present securitization application.

13. It is stated by the respondent no.5 that the original of the Agreement to Sell in question between the applicant and respondent no.2 & 3 are in possession of the respondent no.5. It is further stated that the original certificate issued by the office of the Sub Registrar Delhi for the transfer of the property in question in favour of the applicant is also in possession of the respondent no.5. It is further stated that the entire complete chain of the relevant documents were handed over to the answering respondent no.5 by the applicant and said complete chain of the documents relating to the property in question were duly verified by the answering respondent no.5 as per the applicable banking parameters before providing financial assistance / loan to any customer. It is further to mention here that respondent no.5 had asked M/s KP Menon & Co; Advocates & Solicitors for Legal Verification of documents with respect to the property in question i.e. Entire Second Floor and Top Mezzanine Room (with roof rights) of Property bearing no. 43 (measuring 167.63 sq.mtrs.), Behra Enclave, Paschim Vihar, New

Delhi. It is further stated that entire set of documents have been verified at the office of the concerned Sub Registrar and the applicant herein has a valid marketable title to the said property and can create an equitable mortgage in favor of the respondent no.5 i.e. Deutsche Bank. It is further stated that all the relevant documents pertaining to the said property as per the above mentioned verification report were duly deposited by the applicant with the answering respondent and after taking possession of the said documents the loan was disbursed to him. The following relevant documents are in custody of the answering respondent no.5:

a) Photocopy of GPA dated 18.02.2003 executed by Mrs. Phoolan Sethi in favour of Mr M L Bansal Prop. Of Hitech Construction Co. and registered as Document no. 7464 on 18.02.2003;

b) Photocopy of Agreement to Sell dated 18.02.2003 between Mrs. Phoolan Sethi on the one hand and Mr. M L Bansal Prop. of Hitech Construction Co. on the other;

c) Original Sale Deed dated 15.01.2004 executed by Mr M L Bansal Prop. Hitech Construction Co. in favour of Mr. -Farm Khanna and registered as Document no. 763 on 15.01.2004;

d) Original Sale Deed dated 15.06.2004 executed by Mr. Tarun Khanna in favour of Mrs. Anju Dhanjal and registered as Document no 11155 on 16.06.2004;

e) Original Sale Deed dated 27.04.2011 executed by Mr Anju Dhanjal in favour of Mr Yogesh Kumar Madan and registered as Document no.1913 on 28.04.2011.

f) Original receipt dated 08.06.11 for Rs. 82.62,627/- issued by Mr. Dheeraj Dua against pay order no. 205086 dated 31.05.2011;

g) Original Authority letter dated 06.06.11 (2 in nos.) issued by Borrower(s) in favour of Mr. Dheeraj Dua,

14. It is further stated that thereafter valuation of the said property was also asked to be done by the answering respondent by two different persons which were duly done after inspecting the said property and taking photographs of the same. Both the said valuation reports dated 12.05.2011 by M/s D K Nagpal & Associates and dated 19.05.2011 by M/s Aegis. Group are filed herewith as Annexure 3 & Annexure K respectively. It is further stated that the applicant has send hand written letter to the answering respondent no.5 i.e. Deutsche Bank and said property is now mortgaged to the answering respondent no.5. Accordingly, it has been prayed that the respondent no.5 may be declared as valid mortgagee of the property in question.

15. It is stated by the respondent no.6 that the respondent no.2 & 3 borrowed a loan in account bearing no.5009476137 from the answering respondent no.6 vide section letter bearing no.VAS/OD/ADMS/09/02 dated 07.02.2009 and to secure the said loan they have mortgaged the property bearing no.43, land

measuring 200.05 Sq Yds. In layout plan of Bhirochl Co-operative Housing Society, presently known as Bhera Enclave Pashchim Vihar, New Delhi-110087 stand in the name of Anju Dhanjal, W/o Shri Manjeet Singh. It is further stated that the respondent no.2 & 3 repaid the entire loan amount to the answering respondent no.6 on 08.04.2011 and the answering respondent bank released the property mortgaged with it. Thereafter, the answering respondent no.6 bank also issued an NOC to this effect to the borrowers/ the respondent no.2 & 3. It is also stated that the answering respondent no.6 is nothing to do with the present securitization application and the applicant unnecessarily made the answering respondent no.6 as the respondent/ party in the present matter. Accordingly, it has been prayed that the name of the answering respondent no.6 may kindly be struck out from the array of parties.

16. It is stated by the respondent no.7 that applicant has concealed the material facts from this Hon'ble Tribunal and has not come with the clean hands, hence the securitization application/application requires dismissal merely on this ground alone. It is stated that the father of the applicant namely Shri Hukam Chand Madan entered into an Agreement on 27.1.11 with Smt. Anju Dhanjal W/ Shri Manjeet Singh for purchase of the entire second floor of property built on residential plot of land bearing no. 43, ad measuring 200.05 Sq. yds., situated in the layout plan of Bhirochi Co-operative Housing Society, commonly known as Bhera Enclave, Paschim Vihar, New Delhi-110087 for a total sale consideration of Rs.2.83 Crores and has also paid a sum of Rs. 30 lacs towards earnest money vide a separate payment receipt and in the said Agreement to sell, it has been categorically mentioned that "...Bank loans of Allahabad Bank/ CITI financial federal Bank and Rajasthan Bank are in well knowledge of Second Party (Shri Hukam Chand S/o late Shri Nihal Chand) and all bank dues shall be cleared by Second Party...".

17. It is further stated that it is apparently clear that Shri Hukarn Chand Madan, who is the father of the applicant herein namely Shri Yogesh Madan, was required to clear the Bank's Loan of Allahabad Bank, Citi Financial, Federal Bank and Bank of Rajasthan now ICICI Bank and the said factum was well within the knowledge of Shri Hukam Chand Madan, hencem at this such belated stage, the applicant, Yogesh Madan, who is residing with his father cannot take the plea that he was not aware about the loan of the Bank of Rajasthan Ltd. or respondent no. 2 & 3, have cheated inter-alia ICICI Bank Ltd. (Bank of Rajasthan Ltd.). It is stated that in fact it is a clear cut case of connivance between respondent no. 2 & 3 and the applicant just to play a fraud upon this Hon'ble Tribunal and to cheat the Banks to siphon off the public money, the copy of the said Agreement and Receipt are annexed as Annexure-A (Colly.). It is further stated that subsequent to the Agreement mentioned above, Smt. Anju Dhanjal, i.e. respondent no. 2 has again in connivance with Shri Hukam Chand Madan and Yogesh Madan (the applicant herein) entered into a fresh Agreement to sell on 1.3.11 for the sale of the said property for a total sale consideration of Rs. 35 lacs and has also acknowledged the receipt of a sum of Rs.9 lacs, therefore, it

can be possible when the earlier Agreement was for a sum of Rs 2.83 Crores and subsequently for the same property, an Agreement was entered into for a sum of Rs. 35 lacs which clearly shows that a conspiracy between respondent no.2, 3, Hukam Chand Madan and applicant herein. Hence the present S.A. requires dismissal on this ground also. It is further stated that the respondent no.7 has not taken any action under SARFEASI AC I, hence, the securitization application / application against the respondent no.7 is premature and without any cause of action, which requires dismissed on this ground alone.

18. It is further stated by the respondent no.7 that at the request of respondent no.1 & 2 herein, the respondent No.7 bank (erstwhile Bank of Rajasthan Ltd.) sanctioned and disbursed Housing loan for a sum of Rs. 19.50 lacs (Rs.12.75 lacs for the purpose of purchase of Flat and Rs.6.75 lacs for renovation) for purchasing the property being second floor portion without roof rights of property bearing no.43, ad measuring total area 200.5 sq. yds., situated in the layout plan of Bhirochi Cooperative House Building Society Ltd., now known as Behra Enclave, Delhi to be purchased out of the loan sanctioned by personal the respondent No.7 bank, guarantee of Shri Raman Chawla. That the said loan amount for purchase of the said property was required to be repaid in 240 monthly installments of Rs.11,268/- each. It is further stated that the respondent no.3 has also created equitable mortgage by deposit of title deeds in favour of the respondent No.7 bank with regard to the property in question. It is further stated that after availment of the said loan facilities, the respondent No.2 & 3 have failed to maintain financial discipline in the account, accordingly, the account was declared as NPA on 31.12.2010 and the entire loan amount was recalled by the respondent No.7 bank through legal notice dated 21.4.2011 as well. It is stated that the property in question was validly mortgaged with the respondent no.7, accordingly, it has been prayed for dismissal of the present securitization application.

19. In this securitization application, the respondents no.2 and 3 are exparte and the S. applicant has not made any relief against the respondents no.5 and 6.

20. Considered the rival contentions of the parties and perused the records.

21. The S. applicant has filed this SARFAESI application on 24/2 5.04.2012, challenging the entire SARFAESI actions including possession notice dated 16.04.2012 and if the limitation is counted from the date of possession notice i.e. 16.04.2012, the SARFAESI application is within time.

22. In the present matter, the property in question was originally belong to Smt. Phoolan Sethi by virtue of registered conveyance deed dated 18.12.1978 (registered as document no.1969) and thereafter the then owner Smt. Phoolan Sethi sold the property in question to Mr. M.L. Bansal vide registered General Power of Attorney (no.7464), affidavit, Will, Receipt and Possession letter dated 18.02.2003. Thereafter, Mr. M.L. Bansal sold the property in question to Mr. Tarun Khanna vide sale deed dated 15.01.2004 and in turn Mr. Tarun Khanna sold the

said property to Smt. Anju Dhanjal on 16.06.2004 and Smt. Anju Dhanjal further sold the property in question to the S. applicant i.e. Yogesh Madan vide registered sale deed 28.04.2011. In the present matter, the respondents no.1 bank (Federal Bank), respondent no.4 bank (Citi Financial Consumer now Kotak Mahindra Bank), and respondent no.7 (ICICI Bank) are also claiming their respective charge over the property in question. However, the averment made on behalf of respondent no.5 bank (Deutsche Bank) is supporting the case of the S. applicant.

23. The respondents no.1, 4 and 7 bank are claiming that Smt. Phoolan Sethi was the owner of the property in question by virtue of registered conveyance deed dated 18.12.1978 (registered as document no.1969) and thereafter the then owner Smt. Phoolan Sethi sold the property in question to Mr. M.L. Bansal vide registered General Power of Attorney (no.7464), affidavit, Will, Receipt and Possession letter dated 18.02.2003. Thereafter, Mr. M.L. Bansal sold the property in question to Mr. Tarun Khanna vide General Power of Attorney, Affidavit, Receipt and Will dated 17.02.2004 and he further sold the said property to Smt. Anju Dhanjal vide three separate sale deeds dated 21.042005 (respondent no.1 Federal Bank), 04.01.2005 (respondent no.4 Citi Financial now Kotak Mahindra Banka) and 13.12.2005 (respondent no.7 ICICI Bank) and Smt. Anju Dhanjal is claiming to be their mortgagor.

24. In the present matter, there is no dispute upto the chain of title documents of Mr. M.L. Bansal and as per S. applicant he sold the said property to Mr. Tarun Khanna vide registered sale deed dated 15.01.2004, who further sold the said property to Smt. Anju Dhanjal vide sale deed dated 16.06.2004 from whom the S. applicant has purchased the property in question vide registered sale deed dated 28.04.2011. The respondents no.1, 4 and 7 bank are claiming that Mr. M.L. Bansal sold the property in question to Mr. Tarun Khanna vide General Power of Attorney, Affidavit, Receipt and Will dated 17.02.2004 and Mr. Tarun Khanna further sold the said property to Smt. Anju Dhanjal vide three separate sale deeds dated 21.04.2005 (respondent no.1 Federal Bank), 04.01.2005 (respondent no.4 Citi Financial now Kotak Mahindra Banka) and 13.12.2005 (respondent no,7 ICICI Bank).

25. Apparently, after execution of sale deed dated 15.01.2004 Shri M.L. Bansal was left with no rights, title and interest in the property in question, but he again sold the said property to Mr. Tarun Khanna vide General Power of Attorney, Affidavit, Receipt and Will dated 17.02.2004 and Mr. Tarun Khanna further sold the said property to Smt. Anju Dhanjal vide three separate sale deeds dated 21.04.2005 (respondent no.1 Federal Bank), 04.01.2005 (respondent no.4 Citi Financial now Kotak Mahindra Bank) and 13.12.2005 (respondent no.7 ICICI Bank) and on the basis of these sale deeds, these respondents no.1, 4 and 7 are claiming their respective charge over the property in question.

26. Apparently, the respondent no.1 bank as well as other respondents 4 and 7 bank did not adopt due diligence while granting the loan facilities and accepting

the property in question as security. The present S. applicant is having better title over the property in question on the basis of the registered sale deed dated 28.04.2011 and Agreement to sell dated 01.03.2011, whereas the respondents no.1, 4 and 7 are claiming their charges on the basis of three separate sale deeds dated 21.04.2005 (respondent no.1 Federal Bank), 04.01.2005 (respondent no.4 Citi Financial now Kotak Mahindra Bank) and 13.12.2005 (respondent no.7 ICICI Bank) executed in favour of Smt. Anju Dhanjal by Shri Tarun Khanna, who was claiming to be the owner of the property in question vide General Power of Attorney, Affidavit, Receipt and Will dated 17.02.2004. That after executing the sale deed dated 15.01.2004 in favour of Mr. Tarun Khanna, Mr. M.L. Bansal did not have any legal, valid and marketable rights in the property in question. Thus, the Section 48 of the Transfer of Property Act, comes into play, which is as under:

"...Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exit or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created...

27. In view of the above facts & circumstances, this Tribunal is of the view that the security interest created in favor of Federal Bank and other banks i.e. respondents no.1, 4 and 7 by Sh. Manjeet Singh and Smt. Anju Dhanjal is not only defective but also illegal and void ab initio and once a registered Sale Deed dated 16.06.2004 had been executed by Sh. Tarun Khanna in favor of Smt. Anju Dhanjal, any subsequent sale deeds by Sh. Tarun Khanna in any capacity of the property in question is nothing but fraud and sham. Further, any alleged mortgage created on the basis of any subsequent sale deed by Smt. Anju Dhanjal cannot be said to be valid mortgage and any action taken against the property in question by recourse of provisions of SARFAESI ACT, 2002 on the basis of such invalid mortgage will not only be in contradiction of the scheme of the Act, but also against the well established principles of law in this regard.

28. The Section 48 of Transfer of Property Act is based on maxim, qui prior est tempore potior est, jure, which means that one which is first in time is better in law. The transferor cannot prejudice the rights of the transferee by any subsequent dealing with the property. Hence, it is held that respondent no.1, 4 and 7 were not "secured creditor" qua the property in question and the present securitization applicant i.e. Yogesh Madan was a "bonafide purchaser" of the property in question.

29. In sequel of the above discussion, this Tribunal is of the affirmed view that the securitization applicant herein i.e. Mr. Yogesh Madan succeeded in proving his case that he is the bonafide purchaser of property in question i.e. property bearing no.43, second floor, land measuring 200.05 sq.yds. situated in the lay out plan of Bhirochi Cooperative Housing Society, presently known as Bhera Enclave, Paschim Vihar, New Delhi-110087. Accordingly, all the actions /

measures taken by the respondent bank no.1 under the SARFAESI Act, 2002 qua the property in question are null & void and the other respondents, except respondent no.5 Deutsche Bank, have not valid mortgage of the property in question. Therefore, the measures/actions including notices under Section 13(2) of the Act, Order dated 25.02.2012 of Ld. ACMM and possession notice dated 16 04.2012 deserve to be set aside. Accordingly, the SARFAESI Application, is liable to be allowed.

ORDER

The SARFAESI Application, filed by the S. applicant, is allowed and the entire SARFAESI actions/measures initiated by the respondents no.1 (Federal Bank) under the SARFAESI Act, qua the property in question are hereby set aside.

A copy of this order be given to the parties.

Judgment signed, sealed, dated and pronounced through video conferencing on this 30th day of September, 2021.

Dictated & Corrected by me.

