Ram Kumar and anr. Vs. Ravinder Kumar Gulati and anr.

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SooperKanoon Citation : sooperkanoon.com/713312

Court : Delhi

Decided On : Jan-17-2007

Reported in : AIR2007Delhi213; 2007(94)DRJ475

Judge : J.M. Malik, J.

Acts : Securitisation and Reconstruction of Financial Assets and Enforcement of Interest Act, 2002 - Sections 13, 17, and 34; Recovery of Debts Due to Banks and Financial Institutions Act, 1993

Appeal No. : RSA 377-78 of 2006

Appellant : Ram Kumar and anr.

Respondent : Ravinder Kumar Gulati and anr.

Advocate for Def. : None

Advocate for Pet/Ap. : S. Nanda Kumar,; Bipin Kumar and; S. Muthu Krishnan, Ad

Disposition : Appeal dismissed

Judgement :

J.M. Malik, J.

1. The delay in filing the present appeal is condoned and the application stands disposed of.

FAO 377-78/2006

Both the Trial Court and the first Appellate Court have handed down a verdict that Civil Court has no jurisdiction to entertain this suit. adumbrated in brief, the case of the appellants is this. Appellants purchased a property comprising ground floor measuring 87 square yards approximately, bearing No. 11/4-A(1) Tilak Nagar, for a consideration of Rs. 2,80,000/- from respondent No. 1 after appellant was assured that the property is free from all encumbrances or charges, etc. The agreement was also executed in this regard. In the meantime, it transpired on 19.4.2005 that respondent No. 1 had taken loan from Citi Bank, respondent No. 2 against the hypothecation of suit property. In their written statement the bank, respondent No. 2 made the following averments. The respondent No. 1 entered into a loan agreement with the respondent No. 2 bank in the month of March 2002 and took loan in the sum of Rs. 29,00,000/- against the entire property No. 1 l/4-A(l) Tilak Nagar, Delhi. The said borrower undertook to repay the said loan in 84 MMRS of Rs. 56778/- each and handed over the title deed of the said property to the bank. The respondent No. 1 did not adhere to the financial discipline towards the repayment of the said loan and hence the legal action was initiated against him.

2. It is averred that the plaintiffs/appellants are bona fide purchasers of the suit property and have sought the relief of permanent injunction against respondent No. 2, restraining respondent No. 2 or their officials from attaching the suit property of the appellants or from dispossessing them from the suit property.

3. I have heard Counsel for the appellants. He did not pick up a conflict with the fact that the suit property was mortgaged with Citi Bank, respondent No. 2 for the loan granted to respondent No. 1. The argument raised by the learned Counsel for the appellants has three prongs. Firstly, the appellants are a third party and cannot approach the D.R.T. because they are neither the borrowers nor have concern with the bank. Again, they are not privy to contract with the bank. Secondly, they are bona fide purchasers. Lastly they did not receive the loan and loan was

received by respondent No. 1. The learned Counsel for the appellant could not draw the attention of the Court to any provision which may come to the rescue of the appellants.

4. I clap no significance to these arguments. Section 13 of Securitisation and of Financial Assets and Enforcement of Interest Act (to be called as Act henceforth) lays down a special mechanism for the enforcement of security interest. The Act envisages that in case borrower makes any default in repayment, it entitles the creditor to take over the possession of the mortgaged property. Learned Counsel for the appellant did not dispute this legal position.

5. Again, Section 17 of the above said Act provides a remedy for 'any person' including the borrower. It has wide connotation. There lies no legal impediment for the person who claims to be bona fide purchaser to approach the D.R.T. and ventilate his grievance.

6. However, there lies a rub in filing the suit before a Civil Court as provided in Section 34 of the above said Act which is reproduced as under:

No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

7. The facts of this case speak for themselves. Respondent No. 1 entered into agreement with the Bank prior to his agreement with the appellants. Respondent No. 1 had already deposited his documents with the Bank. The startling factor in this case is as to how did the appellants enter into agreement with the respondent No. 1 without verifying their ownership deed. It is clear that the appellants did not make inquiries to find out that respondent No. 1 owns the disputed property free and clear. However, the appellants can redress their grievance by filing a suit for recovery of their amount against respondent No. 1 and by initiating criminal proceedings. Succinctly stated, the Civil Court cannot poach into the jurisdiction of

the D.R.T. as it is not armed with that power. The second appeal is without merit and is dismissed in liming.

CM 16123/2006

8. In view of the dismissal of the Appeal, no further orders are required to be passed in the application and the same is dismissed.