

Regular Appeal No. 255/2018

Saurabh Garg Vs. Bank of Baroda

Present: Shri V.K. Shukla, counsel for the appellant,
Shri Maneesh Mehrotra, counsel for the respondent-Bank,

ORDER

Date of Pronouncement: 03.07.2026

The present case was heard and reserved for orders by this Tribunal vide order dated 23.04.2026.

Learned counsel for the appellant submitted that Shri Rajesh Gupta and Smt. Praveena Gupta executed a registered agreement to sale in favour of the appellant on 08.03.2014 in respect of their house No. 1970, sector D, Sudama Nagar, Indore with a condition that the appellant would pay Rs.12.50 lacs to the owners of the said property for repaying the outstanding dues of Bank of India and to get the original title deeds returned back from the Bank's possession. It was further contended that thereafter, Shri Rajesh Gupta and Smt. Praveen Gupta had sold the said property to Shri Harshal Kashyap and Shri Rajesh Kashyap vide registered sale deed dated 10.10.2014. It was also contended that subsequent to both the deeds, Shri Rajesh Gupta and Smt. Praveen Gupta vide registered sale deed dated 30.03.2015 had further sold the same property to Shri Pradeep Rawal and Shri Ashok Rawal, who have purchased the same by taking home loan of Rs. 35.00 lacs from the respondent-Bank by depositing the said sale deed with it, but no sale deed was executed by Rajesh Gupta and Praveen Gupta in favour of the appellant despite his continuous request and persuasions, therefore,

the appellant filed a suit on 16.06.2017 before the Civil Court for specific performance of contract against them.

Learned counsel further submitted that when the respondent-Bank published the auction notice in the Newspapers on 24.12.2017 scheduling the auction of the property in question on 16.02.2018, he enquired the matter with the respondent-Bank and challenged the entire proceedings of the respondent-Bank including the said sale by filing the S.A. No. 44 of 2018 before the Tribunal below, which has been dismissed vide order impugned holding that no measures have been initiated against the appellant, which is contrary to the fact of the case. It was further contended that the S.A. was filed against the measures taken by the Bank against the property in which the appellant had interest. It was thus contended that the finding of the Tribunal below that no measures were taken against the appellant is wholly perverse and illegal. Therefore, it was prayed that the order impugned may be set-aside and the appellant filed by the appellant may be allowed.

Learned counsel for the respondent-bank submitted that the registered agreement to sale executed by the original owners of the property in question does not confer any right or title over the property in question in favour of the appellant. It was further contended that the respondent-bank has no concern with the dispute between the appellant and Shri Rajesh Gupta and Smt. Raveena Gupta, as the respondent-Bank had sanctioned a housing loan of Rs. 35.00 lacs to Shri Pradeep Rawal and Shri Ashok Rawal, to which they created equitable mortgage over the

property in question by depositing the original title deed dated 30.03.2015 with the Bank, hence the Bank has every right to proceed against the secured assets for recovery of its dues.

Learned counsel further submitted that there is no privity of contract between the appellant and the respondent-Bank, therefore, the appellant has no locus to challenge the proceedings initiated by the respondent-bank under the provisions of the SARFAESI Act, therefore, the Tribunal below has rightly dismissed the S.A. of the appellant vide order impugned holding that no measures have been taken against the appellant. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with heavy costs by affirming the order impugned passed by the Tribunal below.

Having heard the learned counsels for the parties and considering the material available on record, undisputedly, Shri Rajesh Gupta and Smt Praveena Gupta were real owners of the property in question and they had mortgaged the same with the Bank of India for obtaining the credit facility of Rs. 5.00 lacs on 23.03.2005, but despite the same they executed a registered agreement to sale in favour of the appellant for the same property on 08.03.2014 and as per the said agreement, the appellant paid Rs. 15.00 lacs and Rs. 12.50 lacs to Shri Rajesh Gupta and Smt. Praveen Gupta, who are wife and husband.

It is also admitted fact that Mr.&Mrs. Gupta thereafter sold the same property to Mr. Harshal Kashyap and Shri Rajesh

Kashyap vide sale deed dated 10.10.2014. It is averred that despite execution of agreement to sale dated 08.03.2014 and sale deed dated 10.10.2014, Mr.&Mrs. Gupta again sold the same property to Shri Pradeep Rawal and Shri Ashok Rawal vide sale deed dated 25.03.2015, who had purchased the said property by taking a housing loan of Rs. 35.00 lacs from the respondent-Bank, which was sanctioned vide letter dated 25.03.2015. Thus it is clear that the registered agreement to sale dated 08.03.2014 executed by Mr. and Mrs. Gupta in favour of the appellant could not be finalized and no title over the property in question could be conferred in favour of the appellant, as it is admitted by the appellant in Para 5.13 of the memo of the appeal. It is settled proposition of law that agreement to sale does not create any right or title over the property. As such the appellant can be said to have no locus to challenge the proceedings of the respondent-Bank because the respondent-Bank had given the housing loan to Pradeep Rawal and Ashok Rawal and since they did not maintain the financial discipline, therefore, the measures under section 13(4) of the SARFAESI Act were taken against them and not against the appellant. No doubt, Mr.&Mrs. Gupta has played fraud not with the appellant, but with other persons also. In my opinion, in such facts and circumstances of the case, the appellant has no option but to pursue his suit, which was filed before the Civil Court on 16.06.2017 against Mr.&Mrs. Gupta for specific performance of contract, which is stated to be still pending.

In view of the discussions as held above, there is no infirmity or illegality in order impugned, therefore, the same does not call for any interference by this Tribunal. Consequently, the appeal filed by the appellant is dismissed with no order as to costs.

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


Justice R.D. Khare
Chairperson

VN Giri,PS