IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Regular Appeal No. 288/2018

Mrs. Renu Chaudhary, D/o Shri Shivjee Singh, R/o Flat No. 61, Patel Path, Dimna Road, Mango, Post Office & Police Station Mango Town Jamshedpur, District- Singhbhum East.

....Appellant

Versus

1. Syndicate Bank a body corporate constituted under the Banking Companies Acquisition and Transfer of Undertakings) Act, 1970, having its Branch at Syndicate Bank, Jamshedpur Main Branch No.1, Monument Road, Bistupur P.O. & P.S. Bistupur, District - East Singhbhum-831001.
2. The Chief Manager Cum Authorized Officer, Syndicate Bank, having its Branch at Syndicate Bank, Jamshedpur Main Branch No.1, Monument Road, Bistupur P.O. & P.S. Bistupur, District - East Singhbhum-831001.
3. Mr. Ajay Kumar Ghoshal, S/o P.C. Ghoshal, R/o Village Baramasia, P.O. & P.S. Baramisia, District Bokaro- pin 828134 and residing at 101, Alison Apartment, Thakur Bari Road, Ambagan Sakchi, P.O & P.S. Sakchi, District- East Singhbhum, pin-831001.
4. ICICI Bank, Bistupur Branch Home Loan, Natraj Mansion Bistupur, P.O. & P.S. Bistupur, Jamshedpur, Singhbhum East, pin- 831001.

....Respondents

Advocates who appeared in this case

For the appellant	Shri V. K. Shukla, Advocate
For the respondent nos. 1 & 2- Bank	Shri Maneesh Mehrotra, Advocate
For the respondent no. 3	Ex-parte
For the respondent no. 4	Shri Kundan Rai, Advocate

JUDGMENT

Date of Pronouncement : 22.07.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The present appeal has been filed under section 18 of the Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act") against the judgment and order dated 28.09.2018 passed by the DRT, Ranchi, whereby the securitization application filed by the appellant was dismissed as not maintainable.

2. Brief facts of the present case are that the respondent no. 3 was granted some financial assistance by the respondent-Bank, to which he created equitable mortgage over his property by depositing original title deed with the Bank on 22.06.2005. Since the respondent No. 3-borrower did not maintain the financial disciplines, therefore, the account was classified as NPA on 04.02.2006 and demand notice dated 20.03.2015 was issued under section 13(2) of the SARFAISI Act followed by possession notice dated 14.10.2015 under section 13(4) of the said Act.

3. It appears that the respondent No. 3 sold the property, which was mortgaged with the bank, to the appellant by way of sale deed dated 20.06.2011, but after coming to know about the possession notice dated 15.10.2015, the appellant filed the S.A. No. 10.2016 before the Tribunal below, which has been rejected as not maintainable vide impugned. Being aggrieved by the said order, the appeal has been filed by the appellant .

4. Learned counsel further submitted that after the execution of unregistered agreement to sale, the Respondent no.3 informed the appellant that he has taken home loan from the ICICI Bank and showed the letter dated 08/06/2011 issued by the bank. In that letter, it was mentioned that loan Account will be settled full and final on deposit of Rs. 3,15,000/- on or before 15/06/2011 and only after the payment of Rs. 3,15,000/-, the bank shall thereafter release the original property documents within stipulated time from

the date of payment, so the appellant had no option but to give Rs. 3.15 lacs on 14/06/2011 to the Respondent no. 3 for depositing in his loan account. It was further contended that after deposit of Rs. 3,15,000/- by Respondent no. 3, the respondent No. 4-ICICI Bank issued no dues certificate in respect of Home Loan account no. LBJMR00000351693 on 20/06/2011, in which ICICI Bank has clearly stated that the Bank has no claim or right anymore whatsoever against the respondent no. 3 or his property.

5. Learned counsel also submitted that After issuance of no dues certificate from the ICICI Bank, the Respondent no. 3 executed Registered Sale Deed in favour of Appellant in respect of Flat no. 406 situated on the fourth floor of JAGDEV PALACE PHASE II, Diman Road, Mango, Jamshedpur District Singhbhum East, which is registered in the office of Sub Registrar Jamshedpur on 20/06/2011.

6. It was further submitted that after lapse of one month of the issuance of no dues certificate from the ICICI Bank, no original title deed was given by the Respondent no. 3 to the appellant, so the appellant asked for the original deed from Respondent no. 3 and given reference of ICICI Bank's letter dated 08/06/2011, in which it is clearly stated that the bank shall after the deposit of settled amount release the original property documents within stipulated time from the date of payment. It was further contended that the Respondent no. 3 showed a letter of closure of Housing Loan of ICICI Bank, in which the Respondent no. 3 and Guarantor Dipali Ghoshal on 18/07/2011 received the documents, namely Agreement to Sale dated 21/05/2003, Own contribution receipt dated 21/05/2003, No objection certificate dated 21/05/2003, Certificate dated 06/06/2003 and Respondent no. 3 clearly written in that letter that original not received. It was also contended that the appellant was surprised to see this letter

and asked the Respondent no. 3 to return the original title deed dated 13/09/2004.

7. Learned counsel further submitted that the Appellant was in utter shocked and surprised to see the notice dated 14/10/2015 u/s 13(4) of the SARFAESI Act of Respondent no. 1, whereas the Appellant is neither the borrower nor guarantor of Syndicate Bank. It was further contended that the appellant purchased the Flat no. 406 situated on the fourth floor of JAGDEV PALACE PHASE II, Diman Road, Mango, Jamshedpur District Singhbhum East through Registered Sale Deed after satisfaction of first charge of ICICI Bank, so the appellant has no liability in respect of second charge of Syndicate Bank whatsoever. It was also contended that the appellant lodged an F.I.R. against Respondent no. 3 in P.S. mango, which is registered on 01/11/2015 u/s 406, 420 and 34 I.P.C. and the investigation in that case is still going on. It was therefore prayed that the order impugned may be set-aside and he appeal may be allowed.

8. Learned counsel for the respondent-bank submitted that the Bank granted credit facilities to the tune of Rs. 20.00 lacs and Rs. 7.24 lacs to the respondent no.3 and to secure the repayment of the aforesaid credit facilities, the respondent no.3 executed relevant loan documents and created equitable mortgage over his immovable property i.e. Flat no. 406, 4th floor Jagdeo Palace Phase-II Dimna Road, Mamgo, Jamshedpur in favour of the Respondent-Bank. It was further contended that the respondent no. 3 executed relevant mortgage documents on 22.6.2005 and deposited original title deed of the property in question in favour of the respondent-bank with intent to create equitable mortgage in favour of the respondent-bank.

9. Learned counsel further submitted that respondent-bank was compelled to classify the accounts as 'NPA' on 04.02.2006 and in pursuance thereof, the respondent-bank issued demand notice dated 20.03.2015 under Section 13(2) of the SARFAESI Act, 2002 and took symbolic possession of the property in question on 14.10.2015 and thereafter issued possession notice dated 14.10.2015.

10. Learned counsel for the respondent-bank submitted that the respondent-bank having prior mortgage over the property in question and has every right to proceed for recovery of its outstanding dues by initiating proceedings against the property in question. It was further contended that the appellant is a subsequent purchaser of mortgaged property so the appellant has no legal right to challenge the recovery proceedings initiated by the respondent-Bank under the provisions of SARFAESI Act, 2002.

11. Learned counsel for the respondent-bank also submitted that property in question was legally mortgaged by the respondent no.3 in favour of the respondent-bank on 22.6.2005 and thereafter by playing fraud the respondent no.3 sold the property in question by means of alleged sale-deed dated 20.06.2011 in favour of the appellant. It was further contended that the appellant has purchased a charged property and is having second charge over the property in question and she will not get a clear, valid and marketable title unless and until the dues of the respondent-bank are cleared.

12. Learned counsel for the respondent-bank further submitted that the alleged letter dated 05.01.2018 issued by the then Branch Manager, Syndicate Bank-Sri Mukesh Kumar has been issued without any authority and without perusal of relevant records and the respondent Bank has initiated

departmental proceedings against the then Branch Manager for issuing such letter without proper examination of the records of the case. It is further submitted that against the erring officer of the Bank explanation was called for and disciplinary proceeding has been initiated and it has been specifically stated in the letter dated 26.11.2024 that the property is mortgaged with the Syndicate Bank and it is also noted in the EMT Register and the same is also registered with the Central Registry, hence in view of the aforesaid facts and on the basis of incorrect letter written by the then Branch Manager, the appellant cannot escape from the liability.

13. Learned counsel further submitted that from the investigation report of the case diary of the police, it is very much clear that Ajai Ghoshal, respondent no.3 has obtained credit facilities from the respondent-Bank and for obtaining the said loan has deposited the original title numbered as Deed No. 6012 dated 19.10.2004 situated in Village Mamgo Plot no. 2423/2424 Khata no. 0713 area 17 decimal and 10 decimal respectively, therefore, the present appeal is liable to be dismissed.

14. Learned counsel for the respondent-bank submitted that the Presiding Officer, D.R.T. Ranchi has rightly dismissed the S.A. of the appellant as not maintainable in view of the facts that admittedly the appellant had purchased the property in question on 20.6.2011 much after the date when it was mortgaged with the respondent-bank on 22.06.2005. It was therefore prayed that the appeal filed by the appellant may be dismissed with heavy costs.

15. Learned counsel for the respondent no. 4 submitted that the present appeal is preferred by the appellant against the judgment and order dated 28.09.2018 passed by the

Presiding officer of DRT Ranchi in SA No.10 of 2016, whereby the SARFAESI Application filed by the appellant was rejected.

16. Learned counsel further submitted that after closure of the loan account, the ICICI Bank has no concern with the appellant or the respondent-Bank, as the appellant is merely arrayed as a proforma party in the present case.

17. Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the appellant is neither borrower nor guarantor or mortgagor to the credit facilities advanced by the respondent-Bank to the respondent no. 3.

18. It appears that some credit facility was granted by the Bank to the respondent no. 3 and the property in question was mortgaged by the respondent no. 3 in favour of the respondent-bank on 22.06.2005. Since the account became NPA on 04.02.2006, therefore, the SARFAESI proceedings were initiated by the bank against the property in question by issuing the demand notice dated 20.03.2015 and the possession notice dated 14.10.2015, but in the meantime, the respondent no. 3-Borrower sold the same vide sale deed dated 20.06.2011, thus, the said property was purchased by the appellant during the existence of mortgage created by the borrower on 22.06.2005, which is evident from the confirmation of deposit of title deeds dated 22.06.2005, copy of which is at page no. 10 of the reply filed by the respondent-Bank. From it, it is clear that the appellant has purchased the charged property and as such she is having second charge over the property in question, thus the sale deed dated 20.06.2011 executed by the respondent no. 3-Borrower in favour of the appellant is null and void and does not give any title/right over the property in question. Thus,

it can be said that the appellant has no locus to challenge any proceedings of the Bank initiated under the SARFAESI Act towards the property in question. As such the Tribunal below has rightly dismissed the S.A. of the appellant as not maintainable.

19. So far as the respondent no. 4-ICICI Bank is concerned, it is a proforma party in the present case, because it in its written argument has itself stated that it had granted some financial assistance to the respondent-Borrower, but the respondent no. 3 has liquidated the entire dues of the bank, account has been closed and no dues certificate has also been issued, thus, there remains nothing in the present case in respect of the said Bank, which is admitted by it.

20. In view of the aforesaid, the order impugned does not call for any interference by this Tribunal. The appeal is accordingly dismissed with no order as to costs.

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

CHAIRPERSON

VN Giri,PS