

OD-3

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APO/208/2017
WITH CP/211/2015
IA NO: ACO/1/2016(Old No: ACO/136/2016), ACO/2/2016(Old No:
ACO/150/2016), ACO/39/2026**

**SANCHAYANI SAVINGS AND INVESTMENT (I) LTD
VS
RESERVE BANK OF INDIA AND ORS**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Biswabrata Basu Mallick, Adv.

For Special Officer : Mr. Sakya Sen, Sr. Adv.
Mr. Suvadeep Sen, Adv.
Ms. Sormi Dutta, Adv.

For R.B.I : Mr. Dilip Kr. Kundu, Adv.
Mr. Arjun Basu, Adv.
Ms. Aditi Biswas, Adv.

HEARD ON : 24.06.2026

DELIVERED ON : 24.06.2026

DEBANGSU BASAK, J.:-

1. ACO/39/2026 is at the behest of a person seeking a direction on the Special Officer to forthwith execute and register a deed of conveyance in respect of unit no. 21 lying and situate at plots

bearing no. 62, 63 and 64 in Sector 15 CBD, Belapur, Navi Mumbai-400614.

- 2.** Learned Advocate appearing for the applicant submits that, one Ravji Bhanushali was the allottee in respect of such unit. He refers to the letter of allotment dated January 10, 1996.
- 3.** Learned Advocate appearing for the appellant submits that, the applicant is the purchaser of such unit from Ravji Bhanushali. He refers to a registered deed of sale dated March 5, 2019, entered into between Ravji Bhanushali and the applicant. He submits that, by virtue of that registered deed of sale valuable right accrued in favour of the applicant.
- 4.** Referring to the various orders passed from time to time by the High Court with regard to such unit, learned Advocate appearing for the applicant submits that, allotment of such unit in favour of Ravji Bhanushali was never cancelled. Applicant, in fact, paid all the dues in respect of such unit to the society at which, such unit was located. Applicant also wrote a letter stating that, the applicant is ready and willing to deposit the outstanding, if any, in respect of such unit. Applicant never received any communication from any authority including the society as also the Special Officer that there were any outstanding in respect of the unit concerned.
- 5.** Learned Advocate appearing for the applicant submits that, by virtue of the deed of transfer executed on March 5, 2019 and by reason of the allotment of such unit never being cancelled, the applicant is entitled to be treated as the owner of such unit. The

Special Officer should be directed to execute and register a deed of conveyance in respect of such unit, in favour of the applicant, as prayed for in the application.

- 6.** Learned Senior Advocate appearing for the Special Officer submits that, unit no. 21, which is the subject unit in the present application, was initially allotted to Ravji Bhanushali. The original allottee could not be located. He refers to various correspondence addressed to the original allottee from time to time. He submits that, the fact that, the original allottee in respect of the subject unit could not be located was noticed by the Court. He refers to an order dated March 3, 2020 passed by the Co-ordinate Bench. He submits that, the allotment of the original allottee in respect of the unit stood cancelled due to non-payment of the entire consideration.
- 7.** Without prejudice to his contention that, the allotment to the original allottee stood cancelled, learned Senior Advocate appearing for the Special Officer submits that, the transaction on the basis of which the applicant claims right, title and interest in respect of the unit concerned, is suspect. He points out that, initially, the original allottee could not be located. The unit is located in a housing complex, where the applicant was the Secretary of the owner's association. He submits that, money was allegedly put into the bank account of the society in respect of the unit, when, the applicant was a Secretary of such housing association.

- 8.** Learned Senior Advocate appearing for the Special Officer submits that, the alleged deed of transfer dated March 3, 2019 was executed by the applicant herein, in two capacities. The applicant claimed himself to be the Power of Attorney of the original allottee and executed the deed of transfer on behalf of the original allottee. The applicant accepted the deed of transfer as the vendor in such deed. He submits that, this documentation is suspect.
- 9.** Referring to the Power of Attorney, learned Senior Advocate appearing for the Special Officer submits that, such document is also suspect since, the original allottee could not be located contemporaneously by the Special Officer.
- 10.** Learned Senior Advocate appearing for the Special Officer refers to the Minutes of the meeting of the Asset Sale Committee held on June 10, 2022. He submits that, so far as the applicant is concerned, the claim of the applicant was not accepted. The Asset Sale Committee recommended the Special Officer to sell the subject unit by public auction.
- 11.** Learned Senior Advocate appearing for the Special Officer submits that, the applicant approached the High Court earlier with the similar prayer by way of ACO/13/2019 which was disposed of by an order dated February 3, 2020. He contends that, the conveyance on the basis of which the applicant seeks to rely upon in the present application was not disclosed in ACO/13/2019.
- 12.** Sanchayani Savings and Investment (I) Limited suffered an order of winding up. Appeal against the order of winding up is pending.

- 13.** Affairs of the company (in liquidation) received consideration both by the High court as also by the Hon'ble Supreme Court. Special Officer was appointed for the purpose of managing the affairs of the company (in liquidation) pending the appeal.
- 14.** Company prior to its liquidation, undertook several real estate development projects. One of the projects is at Pune, where the subject unit is located.
- 15.** Company prior to its liquidation allotted various units in the upcoming projects. Ravji Bhanushali was one of the allottees in respect of unit no. 21 which is the subject unit in one of the projects of the company in liquidation.
- 16.** On the Special Officer being appointed, attempts were made by the Special Officer to contact the allottees including Ravji Bhanushali. Four allottees in respect of the project, including Ravji Bhanushali could not be contacted by the Special Officer.
- 17.** Special Officer contacted the allottees in order to ensure that, the allottees deposited the agreed price for the housing project so that the project could be completed. As noted above, Ravji Bhanushali could not be contacted despite attempts being made by the Special Officer.
- 18.** It is the contention of the applicant before us that, the address of Ravji Bhanushali at which, the Special Officer tried to contact such allottee was incorrect. Therefore, Ravji Bhanushali could not be contacted.

- 19.** Records made available before us establish that, the applicant before us, was the Secretary of the owner's association of the housing society where such subject unit is lying. He resigned as Secretary of such association on August 19, 2018.
- 20.** Issue as to what is required to be done in respect of the units which stood allotted to allottees and such allottees were not taking any steps, received consideration by the Co-ordinate Bench. There is an order dated March 30, 2020 requiring the Special Officer to allow the allottees to deposit the balance amount along with interest.
- 21.** It is claimed by the applicant before us that, the applicant on behalf of the original allottee i.e., Ravji Bhanushali deposited the entire consideration with the housing society. In support of such claim of deposit, reliance is placed on a registered Power of Attorney and a registered deed of transfer. Both the documents are dated March 5, 2019. The registered Power of Attorney contains the so called details of payments made with respect of the subject unit. There are 12 items noted in the registered Power of Attorney in respect of payments made commencing from July 2, 2018 till December 15, 2018.
- 22.** Out of the 12 items of payments noted in the registered Power of Attorney, at least three payments stand out; first is the payment of Rs. 10,99,831/- to the society on July 9, 2018, the record is cash payment of Rs.8 lacs, originally made on September 8, 2018 and the third is property tax of Rs.10 lacs.

- 23.** When the original allottee allegedly made payment to the housing society, the applicant was the Secretary of the Society therein. The alleged payment was made on July 9, 2018 and the applicant resigned on August 19, 2018.
- 24.** Date of the payment of the property tax is not available on record. There is no document to establish that, the property tax of Rs.10 lacs was either demanded or paid.
- 25.** Ravji Bhanushali is not before us. As noted above, the applicant claims to be the transferee of the allotment made to Ravji Bhanushali in respect of the unit concerned.
- 26.** Applicant approached the High Court for similar relief of execution of deed in respect of such unit by way of ACO/13/2019 which was disposed of by an order dated February 3, 2020.
- 27.** The Co-ordinate Bench by the order dated February 3, 2020 noted that, out of 35 original allottees, 3 transferred their units in favour of third parties without obtaining prior approval from the joint venture or from the Special Officer in terms of clause 16 of the individual letters of allotment. In respect of unit no. 21, which is the subject unit in this application, the Co-ordinate Bench in the order dated February 3, 2020 noted that, the report of the Special Officer stated that the original allottees defaulted in payment of both principal and interest. The application of the applicant herein being ACO/13/2019 was considered by the Co-ordinate Bench in the order dated February 3, 2020. The Co-ordinate Bench allowed the entire dues whether on account of principal or interest, to be

cleared within 3 months from the date of such order. The outstanding amount was directed to carry interest at the rate of 8% per annum from the dates of default till the dates of payment.

- 28.** The documents of title that the applicant seeks to rely upon were not part of ACO 130 of 2019. Claims of payments prior to the order dated February 3, 2020 are rendered suspect by the conduct of the applicant.
- 29.** Subsequent to the order dated February 3, 2020, the applicant claims that, the applicant made various payments to the society. Such payment was recorded by the letter dated February 17, 2020 issued by the applicant to the society. No response of the society is on record. There is, however, a letter dated March 13, 2020 of the Special Officer on record which states that, the original documents of title are required to be scrutinized. A cheque of Rs.1,00,000/- tendered by the applicant was left without any encashment. The applicant responded to the letter dated March 13, 2020 of the Special Officer by writing a letter dated March 22, 2020. Although, such letter was addressed to the Secretary of the housing association, nonetheless, a copy was forwarded to the Special Officer. By such letter, the applicant offered scrutiny and verification of the documents pertaining to the unit.
- 30.** By a letter dated December 3, 2021, the Special Officer placed on record that, the notarised copy of the agreement of purchase, the Power of Attorney and the NoC issued by the society were

scrutinised. Request was made to the housing society to confirm the details of payment.

- 31.** Apparently, such confirmation was not made by the housing society. At least nothing is on record.
- 32.** As the documents and rival claims stand, in our view, issues raised cannot be decided finally on the basis of affidavit of evidence. Ideally, the parties should be allowed to lead oral as well as documentary evidence in support of their respective claims.
- 33.** We are hearing an appeal directed against an order of winding up. Although, our jurisdiction to hear suit under Section 446 of the Companies Act, 1956 is indisputable, nonetheless, in the facts of the present case, the applicant did not file any suit seeking to establish his title in respect of the unit concerned.
- 34.** In the midst of hearing of the appeal, noting the factual matrix as obtaining, we enquired of the applicant as to whether or not the applicant would file a suit to canvass his claim with leave under Section 446 of the Companies Act, 1956 being granted by us. Learned advocate for the applicant submits on the basis of instructions that, the applicant does not wish to file such suit. The applicant also did not want any leave under Section 446 of the Companies Act, 1956 to do so.
- 35.** In view of the refusal of the applicant to file suit after obtaining leave under Section 446 of the Companies Act, 1956, we are left with no other alternations than to decide the rival claims only on

the basis of affidavit evidence of the respective parties which we noted above.

- 36.** Affidavit evidence and the documents that are placed before us leave a lot of arena which are yet to be established conclusively. In other words, on the basis of affidavit evidence and the documents placed on record, we are not in a position to arrive at a conclusive finding that, there was a valid transfer of the right of allotment of the original allottee in favour of the applicant for valuable consideration and that, the applicant is entitled to be treated as the original allottee for all practical purposes in respect of the unit concerned. We find that, the applicant before us was Secretary of the Housing Society where the subject unit was located. Payment was made on July 9, 2018 to the housing society while the applicant was the Secretary thereof. He registered on August 19, 2018. Involvement of the applicant in the manner as suggested by the Special Officer cannot be overlooked on the basis of the affidavit evidence on record. All documents pertaining to payments in respect of the unit concerned are also not on record. In particular, evidence with regard to the so called cash payment and the property tax payment noted in the registered Power of Attorney are not on record. Housing Society did not confirm receipt of payment despite the Special Officer requesting for the same. These lacunas in the evidence are not filled up by the affidavit of the parties.

- 37.** Asset Sale Committee took a decision in respect of the subject unit as appearing in its report dated June 15, 2022. The report filed by the Special Officer annexing a copy of the decision of the Asset Sale Committee, however, does not contain all the pages. Therefore, we considered the original report dated June 15, 2022 of the Special Officer which is on record.
- 38.** Subject unit being unit no.21 was dealt with at page 4 of such Asset Sale Committee report. There, we find that, the Asset Sale Committee was of the view that, due to non payment of the full amount and the connivance of the applicant herein, the unit should be put up for sale by way of public auction.
- 39.** As on date, the Asset Sale Committee suspects the transactions on the basis of which, the applicant claims right, title and interest in respect of the unit. It recommended public auction for such unit.
- 40.** Applicant is aware of such decision of the Asset Sale Committee. Such decision is not under challenge. Moreover, in the earlier round of litigation in respect of the same unit, undertaken by the applicant being ACO/13/2019, the registered documents which the applicant seeks to rely upon herein were not disclosed.
- 41.** As noted above, this arena requires oral and documentary evidence of the parties.
- 42.** Since there is a cloud on the title of the applicant, which the applicant failed to dispel through the evidence on record and since the applicant refused to avail of the remedy under Section 446 of

the Companies Act, 1956, we are not in a position to grant any relief to the applicant.

43. ACO/39/2026 is dismissed.

(DEBANGSU BASAK, J.)

44. I agree.

(MD. SHABBAR RASHIDI, J.)

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AR(CR)