

Hridesh Kumar Pathak vs Bank Of Maharashtra on 20 July, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6774/2021

HRIDESH KUMAR PATHAK

Through: Mr. Anshul Gupta, Advocate

versus

BANK OF MAHARASHTRA

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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CM No. 21352/2021

20.07.2021

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 6774/2021 and CM No. 21351/2021

1. The submission of learned counsel for the petitioner is that the petitioner booked a flat with the builder, namely, Shubhkamna Buildtech Private Limited - which was coming up with the project "Shubhkamna City" in Greater Noida West, UP. The petitioner booked the flat by making a payment of Rs. 11,000/-. The petitioner has made further payments aggregating to Rs. 27,63,000/-. The builder took the loan for construction of the flats by entering into a Tripartite Agreement between the petitioner, the builder and the Bank. The Bank claims to have disbursed loan to the builder. The builder was obliged to return the amount, which has not been done. Even the flats have not been constructed. The petitioner has been left high and dry. The petitioner has lost his money to the tune of nearly Rs. 28 lakhs, and now the Bank is seeking to proceed against the petitioner to claim recovery of the amount disbursed to the builder.

2. The submission of learned counsel for the petitioner is that the process before the National Company Law Tribunal (NCLT) for Corporate Insolvency Resolution of the Builder Company is pending. There is a resolution plan formulated by the Insolvency Resolution Plan (IRP), the plan of Mr. Singhal and Mr. Sunil Agarwal was approved with 87.60% voting majority. Despite that, the respondent Bank is seeking to proceed against the petitioner before the DRT.

3. In our view, prima facie, it appears that the petitioner has been taken for a ride by the builder and it is not the petitioner, who has received the loan amount. The Bank has disbursed the loan amount to the builder, and in these circumstances, it remains to be seen as to whether, or not, the petitioner is at all liable. Moreover, the Resolution Plan appears to be on force and there would be no justification to subject the petitioner to the ongoing proceedings before the DRT at this stage.

4. We, accordingly, stay further proceedings in O.A No. 166/2019 pending before the DRT-II, Delhi, till further orders.

5. Issue notice to the respondent, returnable on 07.10.2021.

VIPIN SANGHI, J JASMEET SINGH, J JULY 20, 2021 kd