

Sh Ramesh Kapoor vs Sh Sanjiv Anand & Ors on 21 October, 2020

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS (OS) No. 296/2020 & I.A. No. 9177/2020

SH RAMESH KAPOOR

Through : Mr. Sunil Dutt Dixit,

versus

SH SANJIV ANAND & ORS.

.....Defen

Through : Mr. Anshuman Srivastava and M
Sagar Aggarwal, Advs. For Can
Bank.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 21.10.2020 [Court hearing convened via video-conferencing on account of COVID-19]

1. On 09.10.2020, the following had been recorded by me:

"2. The plaintiff claims to be the owner of the suit property i.e. property bearing no. 78, Bhera Enclave, Paschim Vihar, New Delhi-110087 ["property"].

2.1 It is the plaintiff's case that based on forged documents, sale deeds have been executed qua separate portions of the property and, thereafter, registered.

2.2 An extract of the sale deed dated 10.08.2018 [concerning ground floor of the property], which is appended on page 41 of the documents filed by the plaintiff, is relied upon by Mr. Sunil Dixit, who appears on behalf of the plaintiff, to contend that a fraud has been employed on the plaintiff.

2.3 A perusal of this document would show that the said sale deed was drawn in favour of, one, Mr. Sanjay Kumar i.e. defendant no. 3.

CS(OS)No.296/2020 page 1 of 4 2.4 Likewise, Mr. Dixit claims that another sale deed dated 08.08.2018 [concerning first floor of the property], which is also impugned and appended on page 41 of the documents filed by the plaintiff, has been executed in favour of Mr. Sanjiv Anand i.e. defendant no. 1.

3. It appears that defendant nos. 1 and 3 have mortgaged their interest in the portions of the property [which form part of the purported sale deeds executed in their favour], to the banks against loan taken by them.

3.1 Insofar as defendant no. 1 is concerned, he has created a mortgage in favour of Canara Bank i.e. defendant no. 2, while defendant no. 3 has created a mortgage in favour of Punjab National Bank [PNB] i.e. defendant no. 4.

4. Mr. Dixit says that the plaintiff had taken recourse to the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and approached the Debt Recovery Tribunal [DRT] for seeking relief against Canara Bank i.e. defendant no. 2. 4.1 It is Mr. Dixit's submission that the DRT did not grant any relief on the ground that the petitioner-plaintiff had not approached the civil court in respect of the impugned sale deed which is executed in favour of defendant no. 1/Sanjiv Anand. For this purpose, my attention has been drawn to page no. 72 of the documents filed by the plaintiff.

4.2 Insofar as PNB is concerned, Mr. Dixit says that it appears that the said bank has not taken any coercive action up until now in pursuance of the sale deed executed in favour of Mr. Sanjay Kumar/defendant no. 3.

5. Given the aforesaid, issue summons in the suit and notice in the captioned application to the defendants via all modes including email.

6. List the matter on 23.11.2020."

2. Upon service being effected, one of the defendant banks i.e. Canara Bank/defendant no. 2 has entered appearance in the matter through Mr. Sagar Aggarwal.

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3. It was brought to my notice that the concerned Debt Recovery Tribunal [DRT], in its order dated 25.09.2020, inter alia, observed that insofar as the sale deed-in-issue i.e. sale deed dated 08.08.2018 is concerned the plaintiff should approach the civil court. 3.1 Furthermore, Mr. Aggarwal informs me that the receiver appointed by the DRT, in exercise of its powers under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act], has fixed 26.10.2020 as the date for taking possession of the subject property.

3.2 It is Mr. Aggarwal's submission that the plaintiff, if aggrieved by the order dated 25.09.2020, passed by the DRT, should take recourse to the remedy provided under the SARFAESI Act and, if so advised, approach the appellate authority i.e. DRAT.

4. I have put to Mr. Aggarwal as to whether defendant no. 2 i.e. Canara Bank will stand over the proceedings fixed by the receiver, for taking over of the subject property, for a period of four weeks,

to enable the plaintiff to take recourse to an appropriate remedy provided under the SARFAESI Act.
4.1 Mr. Aggarwal, after confabulating with the concerned officer of defendant no. 2/Canara Bank, says that the said proceedings can be stood over for a period of four weeks.

4.2 Mr. Sunil Dutt Dixit, who appears on behalf of the plaintiff, says that if such a direction is issued, the suit can be disposed of.

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5. Accordingly, the suit and the pending application are closed with the following directions:

(i) The plaintiff will take recourse to an appropriate remedy under the SARFAESI Act against the DRT's order dated 25.09.2020.

(ii) For a period of four weeks, commencing from today, no coercive measures will be taken by defendant no. 2 i.e. Canara Bank. In other words, the proceedings fixed for 26.10.2020 by the receiver shall be stood over for a period of four weeks.

6. It is made clear that nothing stated herein will impact the proceedings, either before the DRT, or those that may be instituted by the plaintiff before the DRAT.

7. The DRAT will entertain the appeal, if preferred by the plaintiff, within the next four weeks, without being burdened by the aspect concerning limitation.

OCTOBER 21, 2020

Aj/KK

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