IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 196/2019

1. R. K. Agarwal, Chief Manager, Canara Bank, Branch at Abu Lane, Meerut-250001
2. Canara Bank, Branch at Abu Lane, Meerut-250001 through its Authorized Officer

……………..Appellants

Versus

Smt. Sudesh Narang, W/o Shri K.C. Narang, R/o House No. 213, Plot No. 6, Mansarovar Colony, Meerut-250003

……...Respondent

Advocates who appeared in this case

For the appellants Shri Maneesh Mehrotra, Advocate
For the respondent Shri Prashant Kumar, Advocate

JUDGMENT

Date of Decision: 16.03.2021

R. S. KULHARI, 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 order dated 17.05.2019 passed by the Presiding Officer, DRT, Lucknow in Misc. Contempt Complaint No. 05/2018, whereby the appellant-Bank was directed to hand-over the title deed of the secured asset to the mortgagor-respondent.

2. The appellant-Bank granted a housing loan to the respondent-Smt. Sudesh Narang and her husband Shri K.C. Narang. The loan was secured by mortgage of house No. 6, Mansarover Colony, Meerut belonging to Smt. Sudesh Narang. The said house was also mortgaged as collateral security to the loan granted to M/s GRS Papers and M/s GRS Hotels in the year 2009.

3. It appears that the term loan granted to M/s GRS Hotels was assigned by the Bank to M/s Phoenix ARC Private

Limited and the assignment agreement was executed on 26.06.2014. The remaining two loan accounts i.e. housing loan and the loan of M/s GRS Papers became irregular, therefore, the Bank issued demand notice on 20.02.2015 demanding a sum of Rs. 1,46,76,232.17 and further steps were undertaken under the SARFAESI Act.

4. The borrowers challenged the proceedings of the Bank by filing S.A. No.388/2015 before the DRT. However, the Bank and the borrower settled the matter during pendency of the S.A., therefore, the S.A. was disposed off on 14.06.2018 on the terms and conditions settled by the parties, one of which was as under:-

> *"8. After closing the loan account the Respondent Bank will return the title deed of the property to the applicant, if the same is not required for any other loan account of Canara Bank."*

5. The borrower complied with the terms and conditions and deposited entire agreed amount and hence, sought title deed of the property. However, the Bank has not delivered the same, so the respondent filed MCC No. 5/2018 before the DRT, which was allowed vide impugned order directing the Bank to handover the title deed to the respondent. Being aggrieved by the said order, the Branch Manager R. K. Agarwal-appellant no. 1 and the Canara Bank as appellant no. 2 have preferred this appeal.

6. Learned counsel for the appellants submitted that the property in question belongs to the respondent-Smt. Sudesh Narang, but the same was mortgaged against three loans, out of which two loan accounts have been closed and the third loan account, which had been assigned to M/s Phoenix ARC Private Limited, is still surviving. Since the title deed of the property was also deposited as collateral security towards the loan of M/s GRS Hotels, therefore, the Bank is legally bound to handover the documents to M/s Phoenix ARC Private

Limited and not to the respondent. As such the respondent is not entitled for the documents, unless the outstanding of M/s GRS Hotels is liquidated.

7. On the contrary, the learned counsel for the respondent contended that there was clear stipulation in the settlement order that the title deed will be delivered to Sudesh Narang, if not required for any other loan account of Canara Bank. All the accounts of Canara Bank have been closed, hence the Bank was required to handover the documents. Further, there is no mention of these documents in the assignment deed executed in favour of M/s Phoenix ARC Private Limited nor such pleading or contention was made at the time of settlement on 14.06.2018, in which the appellant-R. K. Agarwal himself had participated in the proceedings before the DRT.

8. Having heard the learned counsels for the parties and considering the material available on record, there appears to be no infirmity in the impugned order for the following reasons:-

   i. Admittedly, the third loan in the name of M/s GRS Hotels was assigned in favour of M/s Phoenix ARC Private Limited on 26.06.2014 and the rest two loan accounts remained with the Canara Bank. After assignment of third loan, the demand notice was issued by the Canara Bank for two loans only, which shows that the documents of the property remained with the Bank against these two loans. Moreover, after assignment of M/s GRS Hotels' account, the same cannot be said to be the loan account of Canara Bank, because all rights and liabilities qua the said loan have been assigned to M/s Phoenix ARC Private Limited as per terms of the assignment agreement. There was clear stipulation in the order dated 14.06.2018 that the Bank will return the title deed of the property, if the same is not required for any other loan account of Canara Bank. Interestingly, the appellant-R. K. Agarwal was present at the time of this settlement, but no such averment was made that the title deed is required against the loan assigned to M/s Phoenix ARC Private Limited. Since the order dated 14.06.2018 was a consented order, therefore, it is required to be complied with in letter and spirit. As both the loan accounts with Canara Bank have been cleared by the respondent, hence she became entitled to get the title deed from the Canara Bank.

ii. The Bank has placed on record the assignment agreement executed between the Canara Bank and M/s Phoenix ARC Private Limited. Learned counsel appearing for the Bank was not in position to demonstrate any condition in the assignment deed to the effect that the property in question is also mortgaged as collateral security and will be given to M/s Phoenix ARC Private Limited after clearance of two other loan accounts of the Canara Bank.

iii. A perusal of the assignment deed goes to show that as many as thirteen accounts were assigned to M/s Phoenix ARC Private Limited for purchase consideration of Rs. 138.00 crores. As per condition No. 2.1.4, the purchase consideration was to be paid upon execution of the assignment deed. Thus, it cannot be said that any future deal was pending as per terms and conditions of the assignment. Apart from this, the title deed of the property in question was not mentioned in the details of the documents related to the secured asset assigned to M/s Phoenix ARC Private Limited. Page 51 of the memo indicating the details of the documents, does not include the document dated 25.03.2019, whereby the title deed of the property was deposited with the Bank. Similarly, the details of security documents shown at page no. 58 reveals that the secured assets of M/s GRS Hotels were mentioned as primary security and the column with regard to collateral security was left blank. Even Columns No. 11 & 12 showing "details of future third party receipts" and "party entitled for future", have also been shown as "Nil". Had there been any intention of the assignor or assignee for collateral security of property in question, it would have been specifically mentioned in these columns. Thus, even as per the assignment deed, the Bank cannot say that the documents are required to be handed over to M/s Phoenix ARC Private Limited.

iv. Most importantly, M/s Phoenix ARC Private Limited, for which the appellant-Bank is intending to retain the documents, is not claiming the said documents. The Bank has neither raised any objection before the DRT to array M/s Phoenix ARC Private Limited as party nor has made it as respondent in this appeal. Thus, it appears that even otherwise M/s Phoenix ARC Private Limited has no interest in the property in question.

9. In view of the above, the appeal is devoid of merits, hence the same is dismissed with no order as to costs.

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

Chairperson

Date: 16.03.2021

VN Giri