Registered on : 28.07.2023

Decided on : 12.12.2023

IN THE DEBT RECOVERY TRIBUNAL-I AT MUMBAI

ORIGINAL APPLICATION NO. 258 of 2023

IDBI BANK LIMITED, a company incorporated and registered under the Companies Act, 1956 (1 of 1956) and a Company within the meaning of Section 2 (20) of the Companies Act, 2013 (Act 18 of 2013) and also A Banking company within the meaning of Section 5(C) of the Banking Regulation Act, 1949 (10 of 1949) having its registered office at IDBI Tower, WTC Complex, Cuffe Parade, Mumbai – 400 005.
And
Retail Asset center, 1st Floor, Marigold House, Plot No. A-34, Cross Road No.2 Marol, MIDC, Andheri (East), Mumbai 400 093.
And
Retail Asset Center, 1st Floor, Bhoomi Saraswati Complex, Ganjawala Lane, Opp. S. V. Road, Borivali (West), Mumbai 400 092.
And
A Retail Recovery Department IDBI Zonal Office, Mittal Court, C-wing, 2nd Floor, Nariman Point Mumbai 400 021 through its authorized representative Sheela Menon, Manger of the Applicant

...APPLICANT

VERSUS

1. **VICKASSH ISHWARDAS AGARWAL**
   aged 42 years, having address at-
   a. 501, Lee Orchid, 15th Khar Road, Khar Gymkhana, Mumbai 400 052.

b. Row House Villa No. 11, 12, Elite Villas, The Village Kalavakkam, Chengalpattu Taluka, District-Kancheepuram, Chennai, 603110.
c. C/-- Sunpower Trading Pvt. Ltd. Kids Campus Education Pvt. Ltd. Aquaires multiventures, 203, Trade Center, Bandra Kurla Complex, Mumbai-400 051.

2. JYOTI AGARWAL aged 42 years, having address at:-
a. 501, Lee Orchid, 15th Khar Road, Khar Gymkhana, Mumbai 400 052.
b. Row House Villa No. 11, 12, Elite Villas, The Village Kalavakkam, Chengalpattu Taluka, District-Kancheepuram, Chennai, 603110.

...DEFENDANTS

Counsel for the Applicant : Advocate Chetan Akerkar.
Counsel for the Defendants : Ex-Parte

JUDGMENT

1. The present OA has been filed by the Applicant for recovery a sum of Rs.4,53,44,428/- (Rupees Four Crore Fifty Three Lakhs Forty Four Thousand Four Hundred Twenty Eight only) and other charges till its realization.

2. Facts as succinctly set out in the OA are that Defendants applied for two home loans and upon the appraisal of the request of the Defendants, the Applicant sanctioned Rs. 1,73,00,000/- (Home Loan I) and Rs.1,76,25,000/- (Home Loan II).

3. It is submitted that the Defendant executed the following documents in favour of the Applicant

    a. Home Loan I

        i. Home Loan agreement dt.29.09.2018.
        ii. Power of Attorney.
        iii. Affidavit.
        iv. Memorandum of Deposit of title deeds dt.18.01.2019.
        v. Declaration and Undertaking.

    b. Home Loan II

        i. Home Loan agreement dt.29.09.2018.
        ii. Power of Attorney.
        iii. Affidavit.
        iv. Memorandum of Deposit of title deeds dt.18.01.2019.
        v. Declaration and Undertaking.

4. It is stated that on the basis of the aforesaid documents executed by the Defendants, the Applicant disbursed the entire said Home Loan I amount and also stated that at the time of initial sanction, the said Home Loan I was to be repaid along with the interest @ 8.85% p.a. as on the date or as applicable at the time of first/initial disbursement, (the ROI shall be benchmarked with 6 months MCLR with 6 months rests clause from the date of first/initial disbursement, the MCLR be rest based on extant Internal Regulatory guidelines issued from time to time in this regard and

the present MCLR rate @ 8.60%), with monthly rests within 240 months, by equated monthly instalment of Rs.1,53,988/-.

5. It is further stated that on the basis of the aforesaid documents executed by the Defendants the Applicant disbursed the entire said Home Loan II amount, and also stated that at the time of initial sanction, the said Home Loan II was to be repaid along with the interest @ 8.85% p.a. as on the date or as applicable at the time of first/initial disbursement, (the ROI shall be benchmarked with 6 months MCLR with 6 months rests clause from the date of first/initial disbursement, the MCLR be rest based on extant Internal Regulatory guidelines issued from time to time in this regard and the present MCLR rate @ 8.60%), with monthly rests within 240 months, by equated monthly instalment of Rs.1,56,880/-.

6. In order to secure the aforesaid two Home Loans the Defendants created mortgage of the two immovable properties i.e. residential villas situated at 1) Villa bearing No.11 on all that land total measuring acres 35.7483 cents comprised in Survey No.225/3B, 226/IC, 227, 229/IA, 241/2b3B, 247/6A, 247/7B, 247/9, 247/10, 248/1, 248/2, 248/3, 248/4, 248/5, 248/6, 248/7, 248/8, old survey no.199/2, new survey no.258/14 of Kalavakkam village, Taluka Chengalpattu, Kancheepuram District, within the registration District of Chengal patu and sub registration District of Tiruporur and 2) Villa bearing No.12, on all that land total measuring acres 35.7483 cents comprised in Survey No.225/3B, 226/IC, 227,

229/IA, 241/2b3B, 247/6A, 247/7B, 247/9, 247/10, 248/1, 248/2, 248/3, 248/4, 248/5, 248/6, 248/7, 248/8, old survey no.8, new survey no.8/10 (Part) and New survey No. 258/4 (part) and 199/2 (part) new survey no. 258/3, new survey no.258/13, old survey no.199/2, new survey no.258/14 of Kalavakkam village, Taluka Chengalpattu, Kancheepuram District, within the registration District of Chengal patu and sub registration District of Tiruporur, in favour of the Applicant and deposited all the title deeds with the Applicant Bank on 18.01.2019.

7. However, after availing the said Home Loans, the Defendants failed to adhere to the terms and conditions of the Sanction of aforesaid Loan Facilities and neglected to make the payment to the Applicant bank. Therefore, the account was declared as NPA on 31.12.2020. Thereafter, the Applicant issued the Legal notice dated 01.03.2023 and called upon the Defendants to make the payment of the outstanding dues but the Defendants failed to pay the dues. Hence, the present OA has been filed.

8. Notices were issued to the Defendants. Despite service, none appeared for the Defendants nor filed the WS thus, they were proceeded ex-parte on the even date.

9. The Applicant Bank has produced all the Original Loan documents and other relevant documents along with their Claim Affidavit filed on 10.11.2023 through Manager Ms. Sheela Menon.

10. I have heard the Ld. Counsel for the Applicant Bank and perused the record.

11. The witness of the Applicant Bank has fully corroborated the averments made in the OA, even otherwise the whole case of the Applicant is based on documents and the witness has duly proved all these documents as against the Defendants. In my view there is no question of disbelieving the evidence led by the Applicant Bank and the Applicant Bank has proved its case beyond reasonable doubt. The liability of Defendant No.1 & 2 is joint and several.

12. In the light of above discussions, the Original Application deserves to be allowed against the Defendant 1 & 2.

<u>O R D E R</u>

(i) I allow the present OA and direct the Defendant No. 1 & 2 to pay to the Applicant Bank, jointly and severally, within a period of 60 days, a sum of Rs.4,53,44,428/- (Rupees Four Crore Fifty Three Lakh Forty Four Thousand Four Hundred Twenty Eight only) and other charges till its realization.

(ii) Failing which the aforesaid amount shall be recovered from the sale of mortgaged assets and other secured assets, as well as other personal movable and immovable assets of these Defendants.

(iii) Defendants are hereby directed not to deal with their properties till further direction of Ld. Recovery Officer.

(iv) Defendants shall also pay the cost and expenses of the OA.

(v) Recovery Certificate be issued forthwith and be sent to the Recovery Officer of this Tribunal.

Copy of this order be sent to the parties as per rules.

File be consigned to record.

Place: Mumbai.
Date : 12.12.2023

(Dr. Rekha G. Dhakar)
Presiding Officer,
DRT-1, Mumbai

SP/-