

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

+ WRIT PETITION No.38351 OF 2014
AND
COMMERCIAL COURT APPEAL No.8 of 2018

% Date: 27.06.2024

P.Ramachandra Reddy and another
... Petitioners

vs.

\$ The Debts Recovery Appellate Tribunal at Kolkata and others
... Respondents

! Counsel for the petitioners : Mr. A.Vivek Jain, learned counsel

^ Counsel for the respondent No.2 : Mr. Prabhakar Peri, learned counsel

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. 2021 SCC OnLine SC 1097
2. (1999) 3 SCC 573
3. 2023 SCC OnLine SC 894
4. (2009) 4 SCC 193
5. (2020) 7 SCC 366

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AND
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WRIT PETITION No.38351 OF 2014
AND
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COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Vivek Jain, learned counsel for the petitioners.

Mr. Prabhakar Peri, learned counsel for the respondent
No.2/Bank.

2. In Writ Petition No.38351 of 2014, the petitioners have assailed the validity of the order dated 18.09.2014 passed by the Debt Recovery Appellate Tribunal at Kolkata, by which the appeal preferred by the petitioners under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') has been dismissed. Commercial Court Appeal No.8 of 2018 is directed against the Judgment dated 06.02.2018 passed in C.O.S.No.50 of 2017. On account of commonality of the issues, the writ petition as well as the Commercial Court Appeal were heard analogously and are being decided by this common judgment.

3. Relevant facts giving rise to the controversy involved in both the cases are that the appellants (hereinafter referred to as 'the owners') are the owners of four-storied building bearing Municipal Nos.3-4-683, 3-4-684 and New Shop adjacent to it and house No.3-4-685/1, admeasuring 297 square yards along with built up area of 13300 square feet, situated in front of Municipal Market, Narayanaguda, Hyderabad (hereinafter referred to as 'the schedule property'). The borrower had entered into a loan agreement on 11.12.2006 with the respondent No.2 (hereinafter referred to as 'the bank'). The respondent No.3 (hereinafter referred to as 'the borrower') approached the owners with an offer to purchase the schedule property for a sale consideration of Rs.1.50 crores. The buyers on receipt of three post dated cheques bearing Nos.422681, 422682 and 422683 executed the sale deed on 27.12.2006 in favour of the borrower, which was registered. On the same day, the owners and the borrower entered into a Memorandum of Understanding (MoU) which contained a stipulation that in the event of non-realisation of the amounts mentioned in the cheques, the owners shall be entitled to seek cancellation of the sale deed.

4. After execution of the sale deed, the schedule property was mortgaged on 27.12.2006 in favour of the Bank. The borrower defaulted in repayment of the loan amount. As a result, the loan account was declared 'Non Performing Asset'. The post dated cheques issued in favour of the owners being the sale consideration of the sale deed dated 27.12.2006 were dishonoured. It is the case of the owners that no sale consideration was paid to them.

5. Thereupon, the owners filed a suit seeking the relief of declaration that the sale deed registered by the owners in favour of the borrower being null and void be cancelled. The owners also prayed for consequential relief of injunction restraining the defendants or their agents from dealing with the schedule property in any manner.

6. During the pendency of the civil suit, the Bank initiated the proceedings under the SARFAESI Act and the owners challenged the validity of the action of the Bank in initiating the proceedings under the SARFAESI Act by way of a securitization application before the Debts Recovery Tribunal, Hyderabad. The Debts Recovery Tribunal, Hyderabad by order dated 28.10.2013 dismissed the securitization application preferred by the owners.

The aforesaid order passed by the Debts Recovery Tribunal, Hyderabad was upheld vide order dated 18.09.2014 in the appeal by the Debts Recovery Appellate Tribunal, at Kolkata. In the writ petition, the petitioners have challenged the validity of the aforesaid order passed by the Debts Recovery Appellate Tribunal, at Kolkata.

7. Thereafter, the Commercial Court by the Judgment and Decree dated 06.02.2018 dismissed the suit filed by the owners seeking the relief of declaration and injunction *inter alia* on the ground that the owners and the borrower have colluded and have failed to prove that they are in possession of the schedule property. In the Commercial Court Appeal, the owners have assailed the validity of the aforesaid judgment and decree.

8. Learned counsel for the owners while inviting the attention of this Court to the issues framed by the Commercial Court submitted that even though only two issues were framed in the suit, the owners have been non-suited on the ground that the suit was collusive in nature. It is pointed out that on the aspect of collusion between the owners and the borrower, no issue was framed by the Commercial Court. It is further pointed out that while deciding the suit, the Commercial Court has not taken into

account any material and evidence on record and has not recorded any finding on merits whether the owners are unpaid sellers and therefore, are entitled to benefit under Section 55(4)(b) of the Transfer of Property Act, 1882. It is submitted that the trial Court has not recorded any finding whether the sale deed is liable to be cancelled. It is, therefore, urged that the matter be remanded for decision afresh to the Commercial Court. It is also urged that the sale is not complete as no consideration was paid to the owners. It is contended that the owners have first charge against the property as the sale consideration has not been paid. In support of the aforesaid submissions, reliance has been placed on the decision of the Supreme Court in **Kewal Krishan vs. Rajesh Kumar**¹.

9. On the other hand, learned counsel for respondent No.2/Bank while inviting attention of this Court to Section 54 of the Transfer of Property Act, 1882 has submitted that the sale is not vitiated in law even if the sale consideration is not paid. It is urged that from various clauses of the sale deed, unequivocal intention of the parties to convey the property is axiomatic. It is also urged that the tender of cheque as sale consideration

¹ 2021 SCC OnLine SC 1097

amounts to payment of sale consideration and in case the sale consideration has not been paid to the owners, their remedy is to seek refund of the amount. It is also urged that there is a discrepancy in the dates of cheques mentioned in the sale deed as well as the cheques which are on record. It is submitted that in the sale deed, the date of the cheques have been mentioned as 27.12.2006, whereas the cheques on record bear the date of 21.02.2007, 28.03.2007 and 25.04.2007. It is further submitted the Section 55(4)(b) of the Transfer of Property Act, 1882 has no application to the facts of the case as the Bank is a transferee without notice of non-payment of the amount to the owners. It is pointed out that the Bank is not a party to the MoU executed between the owners and the borrower and therefore, the MoU does not bind the Bank. In support of the aforesaid submissions, reliance has been placed on the decision of the Supreme Court in **Vidhyadhar vs. Manikrao**² and **Yogendra Prasad Singh (died) through LRs vs. Ram Bachan Devi**³.

10. In the writ petition, it is contended by learned counsel for the Bank that the Debts Recovery Appellate Tribunal has given cogent reasons for upholding the action taken by the Bank. It is

² (1999) 3 SCC 573

³ 2023 SCC OnLine SC 894

submitted out that in view of the mandate contained in Section 34 of the SARFAESI Act, SARFAESI Act has overriding effect over any other provision of law. It is contended that the order passed by the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal do not call for any interference in the writ petition.

11. By way of rejoinder/reply, learned counsel for the owners submitted that the appellant is an unpaid seller for a consideration. It is further submitted that the trial Court in a casual and cavalier manner has dismissed the suit filed by the appellant without considering the evidence. It is contended that since the sale deed has been executed without any consideration, the same is void. In support of the aforesaid submission, reliance has been placed on the decision of the Supreme Court in **Kaliaperumal vs. Rajagopal**⁴.

12. We have considered the submissions made on both sides and have perused the record.

13. Undoubtedly, it is true that the Commercial Court has framed the following two issues:-

⁴ (2009) 4 SCC 193

“(1) Whether the plaintiff is entitled for a declaration that registered document No.4826, dated 27.12.2006 is null and void as prayed for?”

(2) Whether the plaintiff is entitled for perpetual injunction as prayed for?”

However, the suit has been dismissed on the ground that the same is a collusive suit. The issue with regard to collusion between the owner and purchaser has not been framed. However, mere non-framing of the issue, in the facts and circumstances of the case, is not fatal as the parties went to trial fully knowing the rival case and led the evidence in support of their contentions. It is equally well settled legal proposition that where the evidence on record is sufficient, the Court of Appeal would decide the issue on merits and should avoid an order of remand as the same gives longevity to the litigation. Therefore, in the state of evidence on record, as well as the fact that the parties went to trial knowing each other's case fully well and have led evidence, we are not inclined to remit the matter.

14. Before proceeding further, it is apposite to take note of Section 54 of the Transfer of Property Act, 1882, which reads as under:

“54. “Sale” defined:- “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale. – A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

Thus, in order to constitute a sale, there has to be a transfer of ownership from one person to another and same has to be for “a price paid or promised or part-paid and part-promised”. The words “price paid or promised or part-paid and part-promised” indicate that actual payment of whole of the price at the time of execution of the sale deed is not a *sine qua non* for completion of the sale. The real test, to determine whether a transaction is a transaction of sale or not, is to ascertain the intention of the parties. In order to constitute a

sale, the parties must intend to transfer the ownership of the property and they must also intend that price would be paid either in presenti or in future. The intention of the parties is to effect the sale can be gathered from the recitals in the sale deed.

15. The Supreme Court in **Vidhyadhar** (supra) has held that if a sale deed for a price of an immovable property has to be for a price. The said price may be payable in future, which may be partly paid or remaining part can be made payable in future. The Supreme Court in **Dahiben vs. Arvinbhai Kalyanji Bhanusali**⁵, has held that even though entire sale consideration had not, in fact, been paid, the same could not be a ground to cancel the sale deed. In **Kewal Krishan** (supra), the Supreme Court in paragraph 17 of the order has held that payment of price is an essential part of a sale covered by Section 54 of the Transfer of Property Act. It has further been held that if a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. Thus, a property can be sold subject to payment of a price or subject to the price which has been promised.

⁵ (2020) 7 SCC 366

16. In the backdrop of aforesaid well settled legal principles, we may advert to the facts of the case in hand. In order to determine the transaction in question between the parties, it is apposite to make a reference to the recitals contained in the sale deed:

“In pursuance of the Agreement of Sale and acceptance of the total sale consideration of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) , the Vendors have received the said entire sale consideration amount from the Vendee in the following manner:

1. Rs.50,00,000/- through Cheque No.422681, dated 27.12.2006.
2. Rs.50,00,000/- through Cheque No.422682, dated 27.12.2006.
3. Rs.50,00,000/- through Cheque No.422683, dated 27.12.2006.

All drawn on HDFC Bank, Jubilee Hills Branch, Hyderabad.

1. WHEREAS the Vendors hereby declare that they are the sole and absolute owners and peaceful possessors of the schedule mentioned property hereby conveyed and that except the above said Vendors, there are no any other person or persons have any manner of rights, or interests in the same, and the Vendors have got full authority to convey the same;

2. THAT the Vendors have put the Vendee in vacant and peaceful physical possession of the schedule mentioned property hereby sold by the Vendors to the Vendee;

3. THAT the Vendors hereby declared that they have paid all the taxes, charges, water and electricity

consumption charges, etc. and there are no dues of any kind whatsoever to the schedule property.

4. THAT the Vendors have handed over all the relevant papers, and documents, link documents, etc., relating to the Schedule mentioned property to the Vendee for his records.

5. THAT the schedule mentioned property is free from all kinds of encumbrances, charges, mortgages, prior sales, agreements, gifts, wills, court attachments, etc., whatsoever to the said property either by the Government or Public.

6. THAT the Vendors further assures to execute any Rectification or Supplementary Deed required by the Vendee in future regarding the Scheduled Property to make perfect title for the Vendee without demanding any fresh consideration to execute such documents.

7. THAT the Vendors have agreed to save harmless and keep indemnified the purchaser from and against all losses, damages, costs, expenses, which the purchaser may sustain or incur by reason of any claim being made by anybody whatsoever to the said property.

8. THAT the Vendors have transferred all external and internal right of ownership and interests, demands, in the scheduled property to the Vendee, to have, hold and enjoy the same as absolute and exclusive owner and forever.

9. THAT the Vendors have declared that the Vendee can mutate his name in Municipal Corporation or any other office or offices and also they can transfer the same to any person or persons by way of sale, gift etc., in the light of this document.”

17. Thus, the unequivocal intention to transfer the immovable property in favour of the purchaser can safely be gathered from

the recitals in the sale deed. The sale deed records the admission of the appellant that he has received cheque bearing Nos.422681, 422682 and 422683, dated 27.12.2006 for a sum of Rs.50,00,000/- each, thus total sale consideration of Rs.1,50,00,000/- (Rupees one crore and fifty lakhs only) towards sale consideration. The transfer of ownership has been effected for a price promised. Merely because the cheques have subsequently been dishonoured, the sale deed is not vitiated in law. Therefore, for the aforementioned reasons, the appellant is not entitled to seek the declaration that the sale deed is null and void and is liable to be cancelled. In view of the aforesaid conclusion, it is not necessary for us to advert to other contentions urged on behalf of the appellant in these cases.

18. In view of the preceding analysis, we do not find any ground to differ with the conclusion arrived at by the trial Court. In view of our conclusion recorded in Commercial Court Appeal No.8 of 2018, in our opinion, the Bank is justified in initiating action under the SARFAESI Act for recovery of the amount due to it.

In the result, the writ petition as well as the commercial court appeal fail and are hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

27.06.2024

Note: LR copy be marked.
(By order)
Pln