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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **C.R.P. 159/2025 & CM Appl.32457/2025**

KOTAK MAHINDRA BANK LIMITED .....Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. with Ms. Sanya Lamba, Mr. Aman Vasisth and Mr. Shrey Sharma, Advs.

versus

KANISHK KHANDELWAL AND ORS .....Respondents

Through:

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

O R D E R

% **26.05.2025**

CM Appl. 32456/2025*[Exemption from filing certified copies]*

1. Allowed, subject to just exceptions.

2. The Application stands disposed of.

C.R.P. 159/2025 & CM Appl.32457/2025*[Stay]*

3. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] read with Section 151 of the CPC impugning the order dated 08.04.2025 [hereinafter referred to as "Impugned Award"] passed by the learned District Judge-07, Tis Hazari Courts (West), Delhi. By the Impugned Order, the Application under Order VII Rule 11 read with Section 151 of the CPC and Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as "SARFAESI Act"] has been dismissed.

4. Briefly the facts are that the suit was filed by the Respondents/Plaintiffs seeking a decree of declaration that two sale deeds dated 20.01.2006 and 05.03.2007, executed with respect to the suit property

being House no. 42, Second Floor, Block No.A-3, Paschim Vihar, Delhi-110063 [hereinafter referred to as "suit property"] be declared as null and void.

5. It is the case of the Respondent Nos.1 and 2/Plaintiffs is that they have purchased the suit property from the Respondent No.3/Defendant No.1 through a sale deed dated 14.06.2019 which was duly registered. It is further contended that for making payment of the sale consideration of the suit property, the Respondent No.1 and 2/Plaintiffs obtained a home loan from Bank of Baroda after completing all the formalities. However, the Respondent Nos.1 and 2/Plaintiffs came to know that prior to the execution of the sale deed, the Respondent No.3/Defendant No.1 had already executed two sale deeds dated 20.01.2006 and 05.03.2017 in favour of Respondent Nos.4 and 5 (Defendant Nos. 2 and 3 before the learned Trial Court) respectively. Thus, it was stated that these two sale deeds were sham transactions and not intended to be acted upon by either party and that the Respondent No.3/Defendant No. 1 remained the owner and in possession of the suit property for all purposes.

6. The Defendants filed an Application under Order VII Rule 11 of the CPC stating that the suit is barred by Section 34 of the SARFAESI Act.

7. The learned Trial Court has examined the contentions of the Petitioner/Bank including the contentions in view of bar under Section 34 of the SARFAESI Act. The learned Trial Court has found, upon an examination of the plaint, that specific allegations have been made against the Petitioner/Bank and that its officials in connivance with remaining Defendants extended the credit facility to one of the parties of the suit.

7.1 The learned Trial Court examined the plaint and found that there are allegations of collusion which the learned Trial Court found to be a synonym of fraud. Paragraph 18 and 19 of the Impugned Order is set out below in this behalf:

> *"18. Now, turning to the contents of the plaint, the perusal of the plaint reveals that in para 9 and 12, the plaintiffs have made specific allegations against the secured creditor i.e. defendant no.4 that its officials in connivance with remaining defendants granted loan/extended the credit facility to M/s Megnostar Telecommunications Private Limited and accepted the original documents of the suit property as collateral for securing the loan.*
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> *19. Besides the term 'collusion' used by the plaintiffs in the body of the plaint, which is nothing but a synonym of fraud, the following facts pleaded by the plaintiff in the body of the plaint also persuades this Court in forming a prima facie opinion that the element of fraud is allegedly present on the part of defendant no.4, with respect to the charge created by defendant no.2 upon the suit property by mortgaging the same with defendant no.4:*
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> *(i) In para 3 of the plaint, the plaintiffs have pleaded that during the negotiations for the purchase of the suit property, the original sale deed dated 29.12.1999 executed by Sh. Chander Parkash in favour of defendant no. I qua the suit property was shown to them by defendant no. I. The said claim made by the plaintiffs is important as the fact of the matter is that the suit property is lying mortgaged with defendant no.4 by deposit of title deeds and it is unconscionable and hard to fathom that defendant no. I would still be having the possession of the aforesaid original title deed which is the source of title and should by all means be in the custody of defendant no.4 bank as equitable mortgage was created while sanctioning the loan in favour of M/s Megnostar Telecommunications Private Limited by deposit of title deeds of the suit property; and*
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> *(ii) In para 9 of the plaint, the plaintiffs have pleaded that the defendant no. I has availed the loan facility from HSBC Bank as well by mortgaging the suit property, creating equitable mortgage by deposit of title deeds and the said loan was repaid in the year 2009. The aforesaid plea of the plaintiff also raises several questions as it has been pleaded by them that defendant no.2 mortgaged the suit property by deposit of title deeds with defendant no.4 bank in the year 2008. So, it is inexplicable as to how defendant no.2 got hold of the original title document of the suit property while obtaining the loan from defendant no.4 bank when they were lying as security with HSBC Bank qua an another loan."*

8. The learned Trial Court relied on the judgment of the Supreme Court

in the case of ***Mardia Chemicals Ltd. & Ors. v. Union of India (UOI) and Ors.***: AIR 2004 SC 237 has held that that relying on the contents and documents of the plaint, the Application under Order VII Rule 11 of the CPC filed on behalf of the Petitioner/Bank is to be dismissed.

9. After some arguments, learned Senior Counsel for the Petitioner seeks some time to place on record his detailed note along with the judgments in support of his contentions.

10. Prior to issuing Notice in the matter, this Court deems it expedient to hear the Respondent as well. For this purpose, let a complete set of the paper book be supplied to the Respondents. A copy of the complete set of paper book be also supplied to the learned Counsel for the Respondents who appeared before the learned Trial Court. An affidavit of service be filed within two weeks.

11. Let a short note, not exceeding three pages each, be filed by the parties, at least three days before the next date of hearing, along with the compilation of judgments, if any, relied upon. All judgments sought to be relied upon shall be filed with an index which also sets out the relevant paragraph numbers and the proposition of law that it sets forth.

12. List on 12.08.2025.

13. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 26, 2025/r/jn

Click here to check corrigendum, if any